April 1, 1816.

ACCOUNT.—
ATTORNEY
AND CLIENT.

selves, to prove what was the real nature of the transaction, and what sums were really advanced.

Decretal order of the Court of Exchequer of July 5, 1813, affirmed as to the allowing of the first exception in so far as it went to the certification that the 500*l.* was actually advanced as the consideration for the bond; reversed as to the allowance of the rest of the first exception, which was over-ruled without prejudice to any question that might arise on the general account; affirmed as to the allowance of the second and third exceptions; affirmed also as to the allowance of the fourth exception with a variation, so as to bring it within the principle that Lewes should pay to the mortgagees whatever should appear due on the mortgage account, without prejudice to any question that might arise on the general account; and so far as not reversed or varied, affirmed generally.

Agent for Appellants, ———
Agent for Respondents, HUBERSTY.

IRELAND.

APPEAL FROM THE COURT OF CHANCERY.

COLCLOUGH—*Appellant.*
BOLGER and others—*Respondents.*

March 20, 22; June 28, 1816.

A. TENANT for life under a marriage settlement, remainder to his first and other sons in tail, with power to A. to lease.

at the best rent for thirty-one years or three lives in possession, without taking fines, &c. makes leases at an under value, taking fines, &c. and grants annuities for lives of the grantees in violation of the power. Suit in 1772 by incumbrancers, and the usual decree made; the son, remainder-man in tail, being then an infant eleven years of age. Master reports amount of the incumbrances, without stating yearly value of the estates, or the parts proper to be sold, though directed to do so by decree, and no exception taken by A. or any person for the infant. Sale before Master of part of the lands to B. at an undervalue, by collusion and management betwween B. and A. and A's agent, each of whom take some advantage from the transaction to the prejudice of the infant entitled to the inheritance; B. being cognizant of the leases and annuities in violation of the power and of the whole circumstances. A. dies in 1794, when the son was prisoner in France. Bill by the son in 1800, to set aside the sale as fraudulent as against him, and the above circumstances in evidence. Bill dismissed in 1808, in Ireland; but the decree *reversed* by the House of Lords, and the sale set aside as fraudulent as against the son.

March 20, 22; June 28, 1816. FRAUD.—FRAUDULENT SALES OF ESTATES NOT PROTECTED, THOUGH MADE UNDER COLOUR OF A DECREE IN EQUITY.

THE Appellant's father, Sir Vesey Colclough, on the death of his (Sir Vesey's) grandfather, Cæsar Colclough, in 1766, became entitled to an estate tail in the estates of the Colclough family, in Ireland, comprising the manor, town, and lands of Tintern, and town and lands of the Mocurry or Duffrey estate, with their several sub-denominations and appurtenances in the county of Wexford; and also in the impropriate tithes of several parishes in the manor of Tintern, and other parishes in the counties of Wexford and Carlow, subject to certain portions for daughters of Cæsar, the grandfather, and other incumbrances, amounting altogether to 14,000*l.*

1766. Sir Vesey Colclough entitled to estates tail.

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FRAUD.— FRAUDULENT SALES OF ESTATES NOT PROTECTED, THOUGH MADE UNDER COLOUR OF A DECREE IN EQUITY.

Sir Vesey intermarried, in 1767, with Catherine, the daughter of John Grogan, of John's Town, in the county of Wexford; and in consideration of the marriage, and 4,000*l.* portion with the wife, the abovementioned lands and tithes were, by deeds of lease and re-lease of June 12 and 13, 1767, strictly settled to the use of Sir Vesey for life, and to his first and other sons in tail male in the usual course of family settlements, Sir Vesey convenanting that the incumbrances did not exceed 14,000*l.*

1767. Marriage of Sir V. and settlement. Sir V. tenant for life; remainder to first and other sons in tail.

The settlement contained a power to Sir Vesey to demise the lands and tithes, &c. comprised in it, for any term not exceeding three lives, or thirty one years in possession, and not in reversion, remainder, or expectancy, provided there should be reserved on every such lease the best and most improved rent that could be reasonably obtained for the same, without taking money or any thing by way of fine for, or in respect of, such leases.

Power to Sir Vesey to demise at best rent, &c. and without taking fines.

July 7, 1767. Settlement registered.

This settlement was registered July 7, 1767, pursuant to the statute 6 Anne, and in Trinity term in the same year a fine was levied, and a recovery suffered of the hereditaments mentioned, to the uses of the settlement pursuant to a covenant contained in it.

Two children of marriage. Appellant the eldest son.

There were two children of this marriage, Cæsar Colclough, the Appellant, and John, his younger brother.

Sir Vesey becomes dissipated and embarrassed in his circumstances.

Sir Vesey neglected to keep down the interest of the incumbrances, or any part of it; and it was in evidence, and stated by the Lord Chancellor (whose statement of the case is here followed), to be indisputably clear on that evidence, that Sir Vesey Col-

clough after his marriage became improvident and extravagant, and gave himself up to excessive dissipation, and thereby became extremely embarrassed and distressed in his circumstances.

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Amongst other denominations of land within the manor of Tintern, were the lands of Nash, Cloonagh, and Garryduffe, which were contiguous to the demesne and residence of the family, and were from their local situation and good quality very valuable.

It was alleged, and, as observed by the Lord Chancellor, established in evidence that Sir Vesey had, subsequent to the settlement, executed leases of the lands of Nash and Cloonagh, and of the impropriate tithes of several parishes at an undervalue, and had taken fines for some of the leases; and amongst others Sir Vesey executed two leases to one John Hill, a person who had been employed by Sir Vesey as his agent, one dated September 18, 1779, of the entire lands of Cloonagh for three lives, at 80*l.* *per annum*, which lands were at that time in possession of tenants under old leases at 104*l.* *per annum*, and in 1779 were worth 200*l.* a year; and the other in 1781, of 112 acres of the lands of Nash at 50*l.* a year, which was not half the value, and which lands had been let by Sir Vesey in 1776 at 72*l.* 13*s.* a year, of which lease Hill was assignee when he obtained the lease of 1781.

Leases and annuities granted by Sir Vesey in violation of the power.

Sir Vesey had besides granted several other leases at an undervalue, and being merely tenant for life had granted annuities or rent-charges, one of them

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for a trifling consideration, and the other for the life of the person to whom it was granted.

FRAUD.—FRAUDULENT SALES OF ESTATES NOT PROTECTED, THOUGH MADE UNDER COLOUR OF A DECREE IN EQUITY.

In or about the year 1779, and from that to 1789, Sir Vesey employed a person of the name of Garrett Kavanagh as receiver of his rents, and in some sense as manager and steward of his property; and this person was much concerned in the transactions which formed the subject of complaint in this cause.

Garrett Kavanagh, Sir Vesey's manager and agent.

1772. Bill by incumbrancers for payment.

On July 24, 1772, a bill was filed in the Court of Chancery, in Ireland, by Joseph Johnson, who had intermarried with one of the daughters of Sir Vesey's grandfather, and by other incumbrancers upon the lands comprised in the settlement of 1767, praying an account and payment by sale of a competent part of the estates or otherwise.

1778. Decree and reference to Master to take an account; to report yearly value of the estates, and what parts most proper to be sold.

By decree made in that cause in 1778, it was referred to the Master to take an account of the debts and incumbrances affecting the estates comprised in the settlement, and to report what was the yearly value of the estates, and what the most proper parts to sell.

Appellant, Sir Vesey's eldest son, then an infant.

To this suit the Appellant, eldest son of Sir Vesey, was a necessary party, but being then an infant of only eleven years of age, the care of his interests fell into the hands of other persons.

Master reports amount of incumbrances, but not yearly value nor parts proper to be sold.

The Master reported the amount of the debts and incumbrances, but not the yearly value of the estates, nor the parts most proper to be sold; and in June, 1780, a final decree was made by which the debts and incumbrances mentioned in the report, then amounting to 25,680*l.* a considerable part of which was made up of accumulation of interest,

1780. Decree for payment.

were decreed charges on the estates; and it was decreed that the same should be paid in three months, or otherwise that a competent part of the estates should be sold to pay off the incumbrances.

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FRAUD.—FRAUDULENT SALES OF ESTATES NOT PROTECTED, THOUGH MADE UNDER COLOUR OF A DECREE IN EQUITY.

Sale under decree.

Under this decree certain purchases were made of the lands of Nash, Cloonagh, and Garryduffe, by a gentleman of the name of Henry Houghton, which purchases it was the object of the Appellant in this suit to set aside as fraudulent against him. Besides these, the tithes of certain parishes were purchased for Houghton, and the tithes of one parish in such a manner as that Houghton became entitled to a moiety, and a person of the name of Philip Roche to the other half.

1794. Death of Sir Vesey.

Sir Vesey died in 1794, when the Appellant, his eldest son, was a prisoner in France. Upon discovering the manner in which his interest had been neglected in this transaction, and what he conceived to be the fraud in the proceedings, he in 1800 filed his bill in the Court of Chancery, in Ireland, to set aside the sales as fraudulent against him. In this suit Mary Bolger, widow, devisee and sole executrix of the above-mentioned Henry Houghton, deceased, and also widow of Richard Bolger, deceased, whom she married after Houghton's death, Margaret Rossitor, widow and representative of James Rossitor, who had some concern in the transaction, Philip Roche, and Thomas Richard Houghton, heir at law of the said Henry Houghton, were made parties defendants.

1800. Bill by his son to set aside the sale.

Evidence.

It was in evidence for the Appellant, by admission in Mary Bolger's answer, and by deposition of witnesses, that Sir Vesey had, soon after his marriage,

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and till the time of his death, been a dissipated man, and embarrassed in his circumstances. It was also in evidence that he made many improvident and unjustifiable dispositions and conveyances of the family property; and that the trustees under the settlement had not been sufficiently attentive to the interests of the Appellant; that Sir Vesey took fines on making leases, and made them at an under-value; that Garrett Kavanagh, Sir Vesey's agent and manager, had great influence over Sir Vesey, and was a dissipated, extravagant, and necessitous man, and not of very respectable character; and had, soon after 1767, obtained a lease from Sir Vesey at an under-value; that Kavanagh corresponded with Houghton on the subject of the purchases in question, and, soon after they were completed, obtained from Houghton a valuable lease of part of the property, which interest Kavanagh sold for 1100*l.* and that Kavanagh aiso soon after obtained loans of considerable sums of money from Houghton, which Houghton never attempted to recover during Kavanagh's life time; and also that Sir Vesey was to receive, and did receive, money for himself for permitting the sales at an under-value; and that Sir Vesey was at the time of the sales in a state of particular embarrassment and distress in his circumstances.

For the Respondents it appeared in evidence that Henry Houghton had, soon after his purchase, applied to the Court to set aside the sales, or some of them, on the ground of misrepresentation on the part of Sir Vesey and Kavanagh; and it appeared that the biddings were opened, Houghton engaging

to offer as much as before, and he again became the purchaser at the former price. It was in evidence also that Henry Houghton was a man of respectable character, and one not likely to be concerned in a fraud. There was some evidence also that the price was a fair one, especially as to the tithes, which, from the combinations in Ireland in 1784-5-6, against the payment of tithes, were then of low value.

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The cause having come on for hearing before Lord Chancellor Manners in Hil. Term, 1808, the bill was dismissed without costs; and from that decree of dismissal the Plaintiff appealed.

1808. Cause heard, and bill dismissed.

Appeal.

It was contended for the Appellant that Henry Houghton could not but know that the leases had been made at an under-value by Sir Vesey, and were therefore a fraud on the son; and that a purchaser was as much bound to examine his title in a sale before the Master, as in the case of a sale elsewhere, and that a sale before the Master gave no particular authenticity to the title; and that it was clearly a case of fraud and collusion, where all the parties derived some benefit from the transaction at the expense of the remainder-man.

March 20, 22, 1816. Hearing in the House of Lords.

On the other side, it was urged that the proceedings in the Court below had been perfectly regular, and that it would be dangerous to disturb purchases made under decrees of Courts of Equity; that the price was not inadequate, and that Cornelius Grogan, the maternal uncle of the Appellant, and a party to the settlement, having been made a party to the suit of 1772, the interests of the infant remainder-man had not been neglected.

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Irish practice as to infants showing cause when of age against decrees affecting their interests.

Lord Eldon (C.) Is it the practice in Ireland in these cases to give the infant when he comes of age an opportunity of showing cause against the decree?

Lord Redesdale. I believe that is a point to which they have paid little attention. There have been decrees where that was not done, and I remember, I observed on that circumstance, and gave the opportunity. In this cause Sir Vesey was tenant for life, and the Appellant was the remainder-man in tail; and in such a case in this country, the remainder-man in tail having been an infant at the time of the decree, he would, when he came of age, have been called upon to convey, and might show for cause against the decree that his interest had not been sufficiently attended to, and he might, if he thought proper, file a fresh answer to the bill.

Sir S. Romilly and *Mr. Leach* for Appellant; *Mr. Hart* and *Mr. Wetherell* for Respondents.

Judgment, June 28, 1816.

Lord Eldon (C.) (after stating the case as above). The question below in this cause was whether the purchases were effected under such circumstances of undue management, as to induce the Court at the instance of this Appellant, whose inheritance was injured, to consider the sale as against him, as—in that sense in which a Court of Equity attaches to the word—fraudulent. The Lord Chancellor of Ireland thought that they were not, and the bill was dismissed, I believe, without costs. And the question now is whether that decree of dismissal was right.

Decree in equity no pro-

A great deal has been said, and justly said, re-

specting the danger and hazard of setting aside purchases made under decrees of Courts of Equity; and nobody can be more ready than I am to accede to that doctrine, or could be more ready to act upon that principle, provided the circumstances were such as would enable us to consider the transactions in question as really and fairly proceeding upon the decree of the Court, and not upon the mere management of the parties themselves. But after looking at this case minutely, and examining all its circumstances, the conduct of Houghton, of Kavanagh, and Sir Vesey Colclough, I find it impossible not to conclude that the interests of this Appellant, which some of them were bound to take care of, were in the course of these proceedings sacrificed.

tection to a purchase effected by management of vendor, tenant for life, and the purchaser himself, to the prejudice of the remainderman entitled to the inheritance, under colour of a decree in equity, the remainderman, though a party to the suit, being an infant at the time.

In the first place, the Master's report did not give the information which the Court required, viz. what was the yearly value of the estates, and what were the most proper parts to be sold. But this is not all; for before that suit of 1772 was commenced, Sir Vesey had granted annuities which he had no right to grant, and which would affect the price of the estates sold subject to them; and he gave leases which he had no power to make, and which being made at an undervalue must have brought the property to market under such circumstances, that it was impossible the infant entitled to the inheritance could have had his fair share of the consideration. But even that is not all; for I think it clear from the evidence that Sir Vesey was paid for his concurrence, that Garrett Kavanagh was paid for his management, by the benefit which he derived from the transaction, and that Henry Houghton was perfectly

Interests of the infant sacrificed; and how.

June 28, 1816.

FRAUD.—FRAUDULENT SALES OF ESTATES NOT PROTECTED, THOUGH MADE UNDER COLOUR OF A DECREE IN EQUITY.

Sales fraudulent and invalid as against the Appellant, though made under colour of a decree in equity.

cognizant of the leases, annuities, and all the circumstances which affected the sales.

It is under these circumstances, and for these reasons, of which I have given a general statement, that I think this a case in which I may safely say that, *as against this Appellant*, the sales ought not to be held valid, though they have the colour of the protection of a decree of a Court of Equity. Though they might be valid as between Sir Vesey and the other parties, yet they cannot be so held as against the infant entitled to the inheritance. I should propose, therefore, to your Lordships to reverse this decree, and to direct the proper accounts to be taken of the rents and profits of the hereditaments which formed the subject of sale, and of the principal and interest of the purchase money, and to declare that the sales were fraudulent as against the Appellant, and ought to be set aside, the lands, &c. standing as a security for the money actually advanced; I believe I may state that my noble friend (Lord Redesdale, present) concurs with me in this view of the case.

Decree *reversed*, with directions as above.

Agents for Appellant, SETON and PLOMER.
Agents for Respondents, FOULKES, LANGFORD, and WALFORD.