

SUMMARY: The document below reports the judgment in the Court of King's Bench in Easter term 1615 in the case of the Master and Fellows of Magdalene College in Cambridge.

The property which is the subject of the Court's judgment had been bequeathed to the Master and Fellows of Magdalene College, by Thomas Audley (1487/8–1544), Lord Chancellor of England:

Also I give and bequeath to the Master and Fellows of Magdalene Colledge in Cambridge all that my parsonage of Saint Katherine Christchurch within Aldgate in London with all titles and profits thereto belonging, they farming the cure thereof, except thereof all manner of tithes to be paid for my great mansion house that I dwell in in the said parish, and the tithes of the house in the tenure of the Lord Clinton, and the house late in the tenure of the Lady Burgh, and of all other houses in the churchyard next adjoining to my said chief mansion house, whereof I will no tithe shall be paid;

Also I give to the said Master and Fellows all that my great garden in the said parish of Saint Botolph's in the tenure of one Cacy [=Casey?] for the yearly rent of £9 by the year, to have and to hold the said parsonage and the said garden, except thereof before excepted, unto the said Master and Fellows and to their successors forever for the finding of such number of the Fellows of the said House as shall be limited by the discretion of mine executors and according to such ordinance as they shall devise for the same;

Also I will that my said executors shall devise and make all such statutes & ordinances concerning the said Master and Fellows and the same House as by their discretions shall be thought reasonable and convenient for the wealth and commodity of the said House.

In violation of the statutes of Magdalene College which prohibited grants apart from leases of up to 10 years, and in violation of a statute enacted in 13 Elizabeth [=1571] making all grants by a college void with the exception of leases for 21 years or three lives, the then Master of Magdalene College, Roger Kelke (1523/4–1576), and the Fellows of the College sold the messuage and great garden of Christchurch outright to the Queen on 13 December 1574 for a perpetual annual rent of £15. On 29 January 1575, in accordance with a pre-arranged agreement, the Queen conveyed the premises to the merchant Benedict Spinola (d. 12 July 1580). On 15 June 1580, Spinola sold the messuage and great garden to Oxford, and on the day after Trinity Sunday, 1582, a fine was levied to Oxford and his heirs, a usual legal practice at the time which ensured that the purchaser obtained clear title.

Three decades later, the Master and Fellows of Magdalene College contested the validity of the foregoing transactions by entering into possession of a single messuage on the property under the following circumstances. On 9 May 1583, Oxford had leased a certain messuage on the property in question to Edward Hammond for 51 years. On 9 November 1584 Hammond assigned his lease to William Masham, who died intestate on 4 October 1604. Masham's widow, Alice, took administration of his estate, including Masham's

interest in the assignment of lease by Hammond. On 17 December 1606, Alice married Sir Francis Castillion (1561-1638), who thus became possessed of Masham's interest in the assigned lease. In the interim, Queen Elizabeth had died on 24 March 1603, and Oxford had died on 24 June 1604 and had been succeeded by his 11-year-old son, Henry de Vere (1593-1625), 18th Earl of Oxford, who became a royal ward. At this juncture, Dr Barnaby Goche (d.1626), son of the poet Barnabe Googe (1540–1594), became Master of Magdalene College. Goche reasserted the College's rights to the property on the ground that the original sale to the Queen contravened the Statute of 13 Elizabeth, c. 10, and was not cured by the Statute of 18 Elizabeth, c. 2. Although on 29 September 1606 Goche undermined his legal position by accepting from Edward Hammond the usual payment of the £15 annual perpetual rent as the Master and Fellows had done in previous years, on 5 February 1607 Goche directly challenged the possession of Sir Francis Castillion (1561-1625) by making a six-year lease of the messuage in question to John Smith, Master of Arts and Fellow of Magdalene College. On 29 December 1610 Castillion made a two [or three?] year lease of his interest in the messuage to one John Warren, who then brought an *ejectione firmæ*, i.e. an action of ejectment, in Easter term 1611 against Smith.

The trial was delayed by an information filed in the Court of Wards on behalf of Henry de Vere (1593-1625), 18th Earl of Oxford, alleging that he had a right to the property despite the fact that in 1591 his father, Oxford, had conveyed the reversionary interest to his brother-in-law, Francis Trentham. The Court of Wards took the view that the issue should be tried in the common law courts, and the case was argued in the Court of King's Bench before Sir Edward Coke and other justices. However according to the report of the subsequent case in Chancery, before judgment was rendered by the Court of King's Bench, John Warren's two-year lease ended, thus preventing him from taking possession of the messuage if he were successful in his action of ejectment against John Smith. Nonetheless, Warren asked the court to render a special verdict, which went against him, but before the judgment could be entered on the roll, Henry de Vere (1593-1625), 18th Earl of Oxford, and Thomas Wood brought suit against Dr Barnaby Goche (d.1626) in the Court of Chancery. These latter circumstances are described in the report of the Chancery case as follows:

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 [=That the plaintiff take nothing by his bill].

The Court of King's Bench thus found in favour of John Smith, and by extension, Magdalene College. The decision set a precedent in the common law, since on the issue of whether the original sale to the Queen had been legal the court ruled that the Queen was not exempted from a statute even though not expressly named in it. Moreover, as noted by Purnell, the Court took a dim view of the Queen's role in the original transaction:

The College, disabled by law from conveying to Spinola direct, had endeavoured to do so indirectly, making the Queen, essentially the fountain of justice, the instrument of injury and wrong.

Although the Court's interpretation of the common law was doubtless correct, it created an inequity because the property had been extensively developed and was now worth £800 per annum whereas in 1574 it had been worth only £15 per annum. As mentioned above, Henry de Vere (1593-1625), 18th Earl of Oxford, and Thomas Wood then brought suit in the Court of Chancery against Dr Barnaby Goche and John Smith, who denied the court's jurisdiction and refused to make answer, whereupon they were committed to the Fleet prison in October 1615 by the Lord Chancellor. In March 1616, judgment was rendered in Chancery in the Earl's favour. Nevertheless, both sides continued to pursue their claims for many years to come without essentially affecting the result of the Chancery judgment. At one point in these subsequent proceedings and negotiations, Goche was offered £10,000 to settle Magdalene College's claim, but refused. It seems clear from the court's findings of fact in the judgment below that Oxford exhibited considerable financial acumen in acquiring and developing this valuable property.

For further discussion of the judgment below and the subsequent proceedings in the courts and in Parliament, see Purnell, Edward Kelly, *Magdalen College*, pp. 67-73, and Cooper, Charles Henry, *Annals of Cambridge*, Vol. III (Cambridge: Warwick and Company, 1845), pp. 89-92, both available online. See also The Earl of Oxford's case in Chancery in *English Reports*, Vol. 21, pp. 485-9; the inquisition post mortem taken on Oxford's Great Garden property, TNA C 142/305/103; documents from the Magdalene College Archives on this website; TNA REQ 2/178/60; STC 1057; and the will of Thomas Audley (1487/8-1544), TNA PROB 11/31, ff. 3-6. For Sir Francis Castillion (1561-1638), said to have been a distant relative of Baldassare Castiglione, author of *The Courtier*, see Spokes, P.S., *Coats of Arms in Berkshire Churches*, pp. 149-53, and G.E.C., *The Complete Baronetage*, Vol. I (Exeter: William Pollard, 1900), p. 182, both available online.

It should be noted that in the report below, the lease from Sir Francis Castillion to John Warren is said to have been a two-year lease running from 29 September 1610 to 29 September 1612, whereas in the case in Chancery it is said to be a lease of three years. It should also be noted that in the report below it is stated that Roger Kelke, Master of Magdalene College, died on 8 January 1601/2, whereas in the entry for Roger Kelke in the online edition of *The Dictionary of National Biography* it is stated that he died on 6

January 1576 and was buried two days later in the Church of St Mary the Great, Cambridge.

The Case of the Master and Fellows of Magdalen College in Cambridge. Pasch. 13 Jac. 1 [=Easter, 1615] Coke, Part 11, in *English Reports*, Vol. 77 (Edinburgh: William Green & Sons, 1907), pp. 1235-52.

John Warren brought an ejectione firmæ against John Smith, Master of Arts, which began in the King's Bench, Paschæ 9 Jac. Regis [=Easter 1611], Ret. 288, and declared on a lease made by Francis Castillion, Knight, 29 Decemb. anno 8 Jac. [=29 December 1610] of an house in London, in parochia Sancti Botulphi extra Aldgate in Warda de Aldgate, from the Feast of St. Michael the Archangel then last past for two years [=29 September 1610 - 29 September 1612], by force of which the plaintiff entered, and was possessed till ejected by the defendant.

The defendant pleaded not guilty; and the jury gave a special verdict, viz. that long before the trespass and ejection, Rogerus Kelke Sacrae Theologiae Professor, Magister, et Socii Collegii Sanctae Mariae Magdalenae in alma academia Cantabrigie, seisiti fuer' de infrascripto messuagio cum pertinen' in dominico suo ut de feodo in jure collegii sui praed', and so being thereof seised, 13 Decem' anno nuper Reginae El. 17 [=13 December 1574], by their indenture in English, between the said Queen El. of the one part, and the said master and fellows of the said college of the other part, and enrolled in the Chancery of record, the said master and fellows "for divers considerations them thereunto especially moving, did give and grant to our Sovereign Lady the Queen all that their messuage (which was the messuage mentioned in the declaration) with the appurtenances, lying in the parish of St. Botulph without Aldgate, London, to have and to hold the said messuage, with the appurtenances to our said Sovereign Lady the Queen, her heirs and successors for ever; yielding and paying therefore yearly to the said master and fellows, and their successors, at the feast of St. Michael the Archangel, 15l." with clause of distress, and under this condition or proviso following, viz. "Provided nevertheless, that if our said Sovereign Lady the Queen, her heirs and successors, shall not sufficiently convey, and assure by letters patent under the Great Seal of England, the said messuage with the appurtenances unto one Benedict Spinola, Merchant of Genoa, and his heirs, before the first day of April next ensuing, that then this present indenture, and every gift, grant, and article therein contained, shall cease and be utterly void, and of none effect," as by the said indenture, whereof one part was sealed with the seal of the said master and fellows, and the other with the Great Seal of England appears.

And the jury further found the Act of 13 Eliz. c. 10. by which it is enacted by authority of Parliament, that from thenceforth, all leases, gifts, grants, feoffments, conveyances or estates, to be made, had, or suffered by any master and fellows of any college, dean and chapter of any cathedral or collegiate church, master or warden of any hospital, parson, vicar, or any other, having any spiritual or ecclesiastical living, or any houses, lands, tithes, tenements, or other hereditaments, being parcel of any such college, church,

cathedral, hospital, rectory, vicarage, or any other spiritual living, &c. to any person or persons, bodies politic or corporate, other than for the term of 21 years, or three lives, shall be utterly void and of none effect to all intents, constructions and purposes, &c. and they found likewise the Act of Confirmation of letters patent made 18 El. cap. 2 by which it is recited, that where, after the 18th day of November, in the first year of the reign of the said Queen Elizabeth divers and several honours, castles, lands, tenements, rents, reversions, services, and other hereditaments, were conveyed and assured to the said late Queen, her heirs and successors, by divers and sundry persons, and bodies politic, as well for the discharge and satisfaction of great debts and sums of money, as for other good considerations, for the perfect assurance, confirmation, and further surety of which, it was enacted by authority of Parliament, that all feoffments, fines, surrenders, assurances, conveyances, and estates in any manner conveyed, had or made, or to be made at any time within seven years after the end of the session of the same Parliament, “To or for our sovereign Lady the Queen’s Majesty, by or from any person or persons, bodies politic or corporate, of any honours, castles, manors, lands, tenements, &c. for any debt, sum, or sums of money, or other consideration whatsoever, shall stand, remain, and be good and available in law to all intents, constructions, and purposes, according to the true meaning, intent, and purport of the same, saving to all and every person and persons, &c.” And further it was enacted, that all letters patent, indentures and other writings, sealed with the great Seal of England, or the seal of the duchy of Lancaster, or the seal of the County Palatine of Lancaster, then made and granted by the said Queen for any sum of money, or for any other consideration, essent bona, perfecta, and effectual in law, &c. against the said Queen, her heirs and successors, according to the tenor and effect of the same letters patent, &c.

And they further found, that the said Queen Elizabeth 29th January, in the said 17th year of her reign [=29 January 1575], by her letters patent under the Great Seal, granted unto the said Benedict Spinola (who was then a free denizen) the said messuage with the appurtenances, to have and to hold to him, his heirs and assigns for ever: which Benedict Spinola, 15 Junii, anno 22 Eliz. [=15 June 1580] by his deed indented and enrolled within six months in the Court of Chancery, did, for money, bargain and sell the said messuage, with the appurtenances, to Edward Earl of Oxford, and his heirs; by force whereof the said earl entered, and was thereof seised in his demesne as of fee, prout lex postulat; and he being thereof so seised, Rowland Broughton, gent. and Elizabeth his wife, crast. Trin. anno 24 Eliz.[=day after Trinity, 1582] levied a fine of the said house, with the appurtenances, to the said Earl of Oxford and his heirs, with proclamations, which were found at large according to the statute.

And afterwards 9 Maii, anno 25 El. [=9 May 1583] the said earl demised the said house to Edward Hamond for 51 years, who 9 Novemb. anno 26 Eliz. [=9 November 1584] assigned all his interest and term for years in the said house, to one W. Masham, who 4 Oct. anno 2 Jac. [=4 October 1604] died thereof possessed intestate, after whose death Alice his wife took administration of his goods, &c. and 1 Feb. anno 4 Regis nunc [=1 February 1607], took to husband the said Francis Castillion, Knight.

And that the said Roger Kelke, master of the said college, 8 Jan. anno Domini 1602 [sic], (which was anno 44 Regni Reginae Eliz.) died; and after his death Barnaby Gooche, Doctor of the Civil Law, was elected and made Master of the said college, and that the said Edw. Hamond, in the name and stead of the said earl, then tenant of the said house, paid to the said Barnaby Gooche, then master of the said college, 15l. of the rent aforesaid, to the said master and fellows of the said college due at the Feast of St. Michael, anno Domini 1606; [=29 September 1606]; which 15l. the said Barnaby Gooche, then master, received, and by writing under his hand, without a seal, acknowledged that he had received it.

And that the said Barnaby Gooche, within five years after he was chosen master, and after the receipt of the said rent, viz. 5 Feb. anno 4 Regis nunc [=5 February 1607], into the said house, with the appurtenances, upon the possession of the said Francis Castillion and Alice his wife, did enter in jure collegii sui praed', and the said master and fellows of the said college, 5 Feb. anno 4 Regis nunc [=5 February 1607], by their indenture under their common seal, demised the said house with the appurtenances, to the said J. Smith the defendant, for six years; and that the said Francis Castillion, Knight, upon the possession of the said John Smith, re-entered and made the lease to the said John Warren, prout in the declaration, who was ejected by the said J. Smith, prout in the declaration; and the question which the jury referred to the Court was, whether, upon the whole matter, the entry of the said J. Smith was lawful or not, &c.

And this case was argued at the Bar by Hobart, then Attorney-General, Montague the King's Serjeant, George Croke _____ for the plaintiff; and Yelverton the King's Solicitor, Thomas Crew _____ for the defendant.

And in this case four points were moved and argued at the Bar.

1. If the said conveyance made to Queen Elizabeth by the master and fellows of the said college, of the said house, parcel of the possessions of the said college, after the said act of 13 Eliz. Reginae, was restrained by the said Act?
2. Admitting the said conveyance was restrained by the said Act of 13; if the said Act of 18 Eliza. has supplied the defect thereof, and has made it perfect and effectual?
3. Admitting also, that the Act of 18 Eliz. doth not extend, nor give any force to it, if the said fine levied, and five years passed, shall bind the right of the master and fellows of the said college for ever?
4. If the said acceptance of the rent aforesaid, by the said master of the said college, should disable or conclude him from entering into the said house? And if any of the said points should be adjudged against the defendant, then his entry was not lawful, and by consequence judgement should be given for the plaintiff, bonum defendentis ex integra causa, malum ex quolibet defectu [=The good of a defendant arises from a perfect case, his harm from some defect].

[The four points above were all resolved in favour of Magdalene College. The judges' reasons, which are given at length in the report, are omitted here.]

And according to these resolutions judgment was given, quod querens nihil caperet per billam [=That the plaintiff take nothing by his bill].