

the defendant, the next term after the mortgage was forfeited, brought an ejectment against the plaintiff's father, and turned him out of possession ; and the term next following, the defendant brought a bill against the plaintiff's father, who put in an answer to the bill, and then the defendant got a common bailiff, one of a scandalous character, to make an affidavit, that the plaintiff's father had left his habitation, and (as he believed and was credibly informed) was gone beyond sea ; upon which affidavit, the now defendant got an order, that service of the then defendant's clerk in court might be good service ; whereas the plaintiff's father was then living, and publicly appeared in the next county with his wife's relations ; but upon this false affidavit, and order made thereupon, the cause was heard *ex parte*, and the report made *ex parte*, and confirmed absolutely, by which means the plaintiff's father became absolutely foreclosed, although the estate was of much greater value.

The defendant pleaded this decree and report, and both made absolute, signed and inrolled.

Lord Chancellor. All these circumstances of fraud ought to be answered ; which the defendant has been so far from doing, that he only pleads that decree and report as a bar, which the plaintiff seeks to set aside ; (1) and the decree being signed and inrolled, the plaintiff has no other remedy ; and if these [75] matters of fraud laid in the bill are true, it is most reasonable that the decree should be set aside.

Wherefore over-rule the plea, and let it not stand for an answer : and though it was objected, that according to this rule, a decree might be set aside by an original bill :

His Lordship replied, such a gross fraud as this was an abuse on the court, and sufficient to set any decree aside. (So, *Richmond v. Tayleur*, ante, 1 vol. 737. *Galley v. Baker*, Ca. temp. Tal. 201. *Sheldon v. Fortescue*, post, 3 vol. 111. *Bradish v. Gee*, Amb. 229 ; S. C. *Kenyon*, 73.)

(1) See Mitford, Pleading, 195. *Bayley v. Adams*, 6 Ves. 586. *Sanders v. King*, 6 Madd. 61. *Thring v. Edgar*, 2 S. & S. 274. *Pennington v. Beechey*, ib. 282.

Case 15.—ANONYMOUS. [1722.]

An uninhabited country newly found out, and inhabited by the *English*, to be governed by the laws of *England*.—A conquered country to be governed by such laws as the conqueror will impose : but until the conqueror gives them new laws, they are to be governed by their own laws, unless where these laws are contrary to the laws of God, or totally silent.

Memorandum, 9th of *August* 1722, it was said by the Master of the Rolls to have been determined by the Lords of the privy council, upon an appeal to the King in council from the foreign plantations,

1st, That if there be a new and uninhabited country found out by *English* subjects, as the law is the birthright of every subject, so, wherever they go, they carry their laws with them, and therefore such new found country is to be governed by the laws of *England* ; though, after such country is inhabited by the *English*, acts of parliament made in *England*, without naming the foreign plantations, will not bind them ; for which reason, it has been determined that the statute of *frauds and perjuries*, which requires three witnesses, and that these should subscribe in the testator's presence, in the case of a devise of land, does not bind *Barbadoes* ; but that,

2dly, Where the King of *England* conquers a country, it is a different consideration : for there the conqueror, by saving the lives of the people conquered, gains a right and property in such people ; in consequence [76] of which he may impose upon them what laws he pleases. But,

3dly, Until such laws given by the conquering prince, the laws and customs of the conquered country shall hold place ; unless where these are contrary to our religion, or enact any thing that is *malum in se*, or are silent ; for in all such cases the laws of the conquering country shall prevail.

See the case of *Blankard versus Galdy*, Salk. 411.(1)

(1) See also *Campbell v. Hall*, Cowp. 204. *Spragge v. Stone*, Doug. 38. *Rex v. Vaughan*, 4 Burr. 2500. *Attorney General v. Stewart*, 2 Mer. 143. *Forbes v. Cochrane*, 2 B. & C. 463.