

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Attorney-General and the Receiver-General for Jersey v. Le Moignan, from the Royal Court of the Island of Jersey ; delivered 21st May 1892.*

---

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD HANNEN.

SIR RICHARD COUCH.

LORD SHAND.

[*Delivered by Lord Hannen.*]

This is an action brought in the Royal Court of Jersey by (the Appellants) the Attorney-General and the Receiver-General of that Island, to recover from the Respondent, the Queen's Prévôt in the parish of St. John, 3 livres 16 sous, old French currency, and 9 hens, 3 pullets, 4 geese, and 40 eggs, being the rent due annually to Her Majesty for the years 1886, 1887, and 1888 in respect of her fief in the said parish.

The Prévôt, by way of defence, stated that he had always been ready to collect the rents which might be due to Her Majesty for the said fief, but that, in spite of his repeated applications, he had not been able to obtain from the Receiver-General the list of the persons who owed the said rents to Her Majesty.

Thus the only question raised by the Prévôt was, whether or not it was the duty of the Receiver-General to furnish him with such a list.

70775. 100.—5/92.

A

The Royal Court held that the Appellants ought, for and in the name of Her Majesty, to furnish to the Prévôt a statement or list of the persons who owe the rents and dues claimed in the action, in order to enable the Prévôt to collect the same.

This judgment purports to be based on certain findings which are of importance. First, that it appears from the extent given in evidence that the rents and dues claimed are due "par assemblage;" secondly, that the Prévôté in question is a "Prévôté Receveuse;" thirdly, that every Prévôt Receveur is bound to collect the sums due from the vassals to the Lord, and is responsible in the first instance for their non-payment, but that the Lord is bound to give him a list of the seignorial rents and dues claimed, indicating those exigible and not disputed; fourthly, that, in the event of any of the rents or dues indicated in the list being disputed, the Lord is bound to defend them on notice from the Prévôt, who remains discharged till settlement of the dispute. This judgment was affirmed by a majority of the Royal Court (Superior Number), and the reasons (motifs) of the judgment were also adopted.

The present appeal is brought from the judgment of the Superior Number. The Respondent (the Prévôt of St. John's) has not been represented on the argument of this appeal.

The nature of the tenure by which the fief in question in the parish of St. John is held appears from a series of documents, the earliest of which is an inquisition of 2 Edw. I.

In an extent of 1331 (Edw. III.) it is said: "And it is to be noted that the tenants of this fief are bound each year to elect a prévôt, who is bound to collect all the rents which are due of old to the Lord the King in the said fief."

In an extent of James I. (1607), after finding the rents and revenues in the fee of Esverert, it is said: "Also the sayd tenants shall yearly at Easter choose them one head officer of their owne perill called a Prevost, which Prevost ought to collect the Kinges ferme, and the amerciements of the Kinges Courts, due within the said parish, and the same to deliver wholly unto the Kinges Receaver at the due and accustomed termes. Also the said Prevost ought to certifie unto the Bailiff or Kings Clarke all sales of lands or rents sould within the Kinges fee;" and it then proceeds under the heading of St. John: "The poullage, &c., due yearly to the King in this parish in manner and form aforesaid." It then enumerates five tenants owing "poullage to the Kings proper," and continues, "the Kings Provost of this parish: 4 geese, 9 hens, 3 chickens, 40 eggs. The Kings Provost of this parish oweth yearly by assemblement a grevery of 50 sous 9 drs." These are the dues now sued for.

In an extent of 1668 (Charles II.), under the heading of St. Jean, after enumerating the "Pains et poulages deubs au propre, et payable cõme en la paroesse de St. Martin," it is said, "Le Prévost du Roy doit par assemblement quatre oyes, nœuf poules, trois poucins, et quarante œufs. Et est choisi par tour par les tenants du fief d'Orville" (of which St. John's is a part) "entre yceux." . . . "Greverie deubs par assemblement, et payables à la feste St. Paul cõme en St. Martin. Le Prévost du Roy de ceste paroesse 50 sols. 9 denrs." This appears to have been certified by the Governor, the Bailly, the justices and officers of the King upon the report of twelve of the principal and best informed men of each of the parishes of the Island, sworn before the Bailly and justices.

These rents, thus ascertained, appear to have been paid without question by the several successive Prévôts from that time to the present. It is to be observed that throughout the long period covered by the documents in this case, no trace appears of any list of the persons from whom the rents, &c., were to be collected having been furnished by the Crown to the Prévôt, or demanded by him; and in the nature of things the knowledge as to who those persons liable to pay the rents, &c., from time to time were, would not be with the Crown, but would be with the Prévôt who is elected by the tenants, and whose duty it is, as appears from the extent of 1607, to certify all sales, and who by his oath of office is bound to declare all successions, forfeitures, &c., in the fief.

As the duty of the Crown to furnish this list is asserted by the Respondent, and as no other question is raised by him, the total absence of proof of the sole fact on which he rests his defence, contradicted by the unvaried usage of the past, would be sufficient to dispose of the case, but their Lordships will briefly consider the evidence and the grounds upon which they understand the Royal Court proceeded.

The chief question is as to the meaning of the expressions "assemblement" and "Le Prévost du Roy doit par assemblage."

For the Appellants, it is contended that these phrases signify that the Prévôt is bound to pay to the Crown the gross amount of the rents "in solidum," whether or not he has collected in full the sums or dues which the said rents represented, and that they are due from the Prévôt as an undivided total, without regard to the individual contributions by which they are constituted.

In support of this contention the Appellants

rely on the fact that in the several extents in which these rents and dues are mentioned, they are stated to be owing from the Prévôt without any reference to the individual tenants, or holdings liable to contribute, and the uninterrupted payment by successive Prévôts during so great a length of time, without any question having been raised as to their liability, is referred to as strongly confirming the Appellant's construction of the expressions "assemblement" and "doit par assemblage."

On the other hand no interpretation is put upon these words in the judgment appealed from, while it holds that every "Prévôt Receveur" (which the Respondent is found to be) is bound to collect the rents from the vassals, and is in the first instance responsible for their non-payments. This obligation, however, is said to be conditional on the Seigneur furnishing the Prévôt with the list of rents and dues claimed, before referred to.

Their Lordships are informed that the argument for the Respondent in the Court below was mainly based on the case of the Marquis de Pirou, decided by one of the Courts of Normandy in the year 1693, that is after the formation of the "Coûtume Réformée" for Normandy in 1585.

This Board has, on more than one occasion, pointed out that the "Coûtume Réformée" and the commentaries on it are not of any authority as to what was the law in force in Jersey before the final separation of the Duchy of Normandy from the Crown of England, which still remains the customary law of Jersey, although the "Coûtume Réformée" and the commentaries on it may be referred to to assist in determining what the law was before the separation, in the same way as English decisions are referred to in American Courts upon questions of English common law.

In the case of the Marquis de Pirou, as stated in M. Houard's "Dictionnaire de la Coûtume de Normandie" (Ed. Rouen, 1782), it appears that the Marquis alleged that some Seigneurs (of whom he claimed to be one) had made concessions in gross to the inhabitants in general of their fiefs, who by consequence were bound in common for the payment of the dues, subject to the determination of the contribution of each in proportion to their holdings, and that for the collection of this contribution they were bound to name one of their number, who was, as their representative, bound to pay "à leur garantie" the total of the Seigneur's "droits."

The facts of the case do not appear, but the Court held that the Seigneur de Pirou had failed to establish by title this allegation. There is nothing to show that the Seigneur de Pirou had been for a long course of years accustomed, as in the present case, to receive the rents, &c., of his fief from the Prévôt as due from him "par assemblage;" no such expression occurs in the notices of the Marquis de Pirou's case.

Holding, as the Court did, that the Seigneur de Pirou had failed to give proof of his claim, it proceeded to lay down certain regulations or ordanances with regard to "Prévôtés Receveuses." Some of these regulations have been treated by the Royal Court as propositions of law applicable to the present case. They appear to have been adopted from the treatise of Flaust, in his work on the "Coûtume et Jurisprudence de Normandie" (Ed. Rouen, 1781) under the heading "Du Gage-Pleige, et du Service de Prévôté."

The material passages are as follows:—

"La Cour, par son arrêt" (in Pirou's case), "en déclarant la Prévôté Receveuse, ordonna—

" 1°. Que tous les hommes et tenants d'icelle sont tenus de nommer chaque année des Prévôts

bons et solvables, chacun en leur rang et degré, pour faire la recette des rentes et redevances, suivant le rôle et charge qui leur seront baillés par le Seigneur.

“ 2°. Que dans ce rôle et charge le Seigneur ne pourra employer que les rentes et redevances seigneuriales, exigibles et non contredites, dues par les anciennes fieffes de ladite seigneurie, et reconnues par les vassaux et employées dans les aveux où le service de Prévôté est avoué, ou justifiées par les recettes des comptes qu'en ont rendus les précédents Prévôts depuis quarante ans.

“ 4°. Qu'en cas de contredit de quelques-unes des rentes et redevances employées dans ledit rôle, le Seigneur de Pirou sera tenu d'y défendre sur la dénonciation qui lui en sera faite par ledit Prévôt-Receiveur, qui en demeurera d'autant déchargé jusqu'à la vuide dudit contredit.”

It is to be observed that the “ rôle ” which is referred to in these passages is one, not of the tenants, but of the “ rentes et redevances exigibles et non contredits.” The rents and dues in this case have never been disputed, and are proved not only by the extents, but by the receipts of former Prévôts for far more than the time prescribed in the Seigneur de Pirou's case.

But even assuming that the “ rôle ” there required was one containing the names of the tenants as well as the amounts due, there are considerations connected with the Norman tenures under the “ Coûtume Reformée ” which are not applicable to the fiefs of Jersey. In Normandy there was a proceeding in Court called “ Gage-Pleige,” intimately connected with the office of “ Prévôté,” and treated together with it in the work of Flaust already referred to:—

“ One of the objects of the ‘ Gage-Pleige ’

(says Flaust) "is that the vassal may acknowledge the rent and service, and declare in particular the heritages for which they are due. This supposes (implies) that the vassals are bound to sign 'sur les gages-pleiges' their declarations or acknowledgments. . . . The third obligation which is prescribed to the vassal is to declare in particular the heritages in respect of which the rents are due. This results from the words 'déclarer en particulier' . . . . The last object of the 'Gage-Pleige,' indicated in Article 185, is to declare whether since the last 'aveu' the vassal has sold or acquired the heritage, and before whom the contract has been executed."

The "Gage-Pleige" therefore supplies the particulars which the lord is to furnish in the "rôle" to be given to the Prévôt. No such institution or proceeding as the "Gage-Pleige" is known in Jersey, while on the other hand, as has been already pointed out, it appears, from the extents and the oath of office taken by the Prévôt in Jersey, that he is bound to certify to the bailiff all sales of lands or rents sold within the King's fee, and to make known "any successions, forfeitures, denunciations, seizins, disseissins, and treasure trove." Thus, in Jersey it is the duty of the Prévôt to give that information which in Normandy it is the object of the "Gage-Pleige" to secure. Further, it appears on the Records of the Royal Court that there is in Jersey a proceeding called "appériement," for the purpose of enabling the Prévôt to have any question as to the tenants, and the proportions of rent payable by them, determined. This is a judicial proceeding to which the Sovereign as Seigneur is not a party. By it the tenants are required to bring in the true measurement of their lands in the form of an "aveu," to be delivered into the hands of the



Prévôt "pour procéder à un appériement des "Prévôtés," and in case of default their lands are liable to seizure. The "appériement" is signed on behalf of the Court "to serve as a guide for "the future amongst the tenants of the fief."

There are other differences between the law of Normandy relating to Prévôtés and that of Jersey, but as these differences relate to matters not relevant to the present inquiry, it is unnecessary to touch upon them. The distinction also drawn between "Prévôtés Receveuses" and those called "Tourneyantes ou Commanderesse," and others, need not be discussed, as the Prévôté of St. John is admittedly "Receveuse."

For these reasons their Lordships are of opinion that the Crown has established its right to demand of the Prévôt personally the payment of the rents due in respect of the fief, whether or not he has received the contributions thereto of his co-tenants, and that there is no obligation on the part of the Crown to furnish the Prévôt with a list of the persons liable to him for contribution in respect of the said rents, and they will humbly advise Her Majesty that the judgment appealed from be reversed, and that judgment be entered for the Crown in the terms of the claim.

The Respondent must pay the costs in the Court below, and also the costs of the preparation by the Greffier of the record and of the transcript forwarded by him to the Privy Council. There will be no costs of this appeal.

---

