

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Reverend William Clavell Ingram v. William Leece Drinkwater, from the Court of the Staff of Government, Isle of Man; delivered 25th June, 1875.*

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Present:

SIR BARNES PEACOCK.  
SIR MONTAGUE SMITH.  
SIR ROBERT P. COLLIER.  
SIR HENRY S. KEATING.

THIS is an Appeal against a Judgment of the Court of the Staff of Government of the Isle of Man, reversing a Judgment of the Deemster of the Island in a suit by the Respondent against the Appellant, to recover the amount of a rate made upon him as Vicar of Michael, under the provisions of an Act passed by the Legislature of the Isle of Man, in the year 1860, intituled "An Act to provide an Asylum for Lunatics and Insane Persons."

The facts of the case were not disputed between the parties, the only question being whether, in point of law, the rate made upon the Appellant was a valid rate.

In the year 1839 an Act was passed by the Island Legislature, entitled "An Act for the Commutation of Tithes in the Isle of Man." It recited an agreement that the sum of 5,575*l.* was a fair compensation to be paid annually for all tithes, moduses, and prescriptive payments in lieu of tithes, &c., and provided that the amount should be apportioned by way of rent charge amongst the owners of the lands then liable to tithes, who should pay the same to an agent appointed by the parties entitled, who was to

distribute it amongst such parties in certain proportions specified in the Act, which proportions, however, did not correspond with the amounts previously received by them from the tithes.

To the Vicar of the parish of Michael the Act directed the sum of 141*l.* 8*s.* to be paid.

In 1860 the Act was passed which gives rise to the present question. It is "An Act to provide an Asylum for Lunatics and Insane Persons," and directs (sec. 2) the appointment of "*three* competent persons to value the lands and other real estates within the said Isle (except the real estates and properties in towns), and *two* competent persons to value the real estates and properties within the towns thereof."

It then directs the valuers to make a separate valuation, "at their net annual value, of all lands and *other* real estate held by each proprietor or tenant within their respective parishes or towns; the particulars of such valuations shall be entered in a book to be provided for that purpose, in the form set forth in Schedule A, which book, when complete, shall be delivered to the Clerk of the Rolls," and copies deposited with various officers, and to be open "to the inspection of every person whose property is included *in such valuation*."

Section 2*B* directs, "That the valuers of the houses, *real estate*, and property, *in towns*, shall describe *the same* by the street or place where the same is situate, and shall state the name of the proprietor and occupier of each house and place separately valued." Directions are then given for conducting the valuation, and Section 4 provides an appeal by "the proprietor or occupier of any lands or other such real estate" aggrieved by the valuation. Section 6 (the rating clause) provides that as soon as *the valuation* is completed as aforesaid, the Tynwold Court is to lay a rate on the proprietors "of all lands and other real estate, *according to such valuation*." Provided that the rate is to be a charge upon the property rated "*in priority next after the Lord's Rent and Tithes*, and be paid by the person in the actual occupation of the rateable property at the time of the rate made for the current year, and in his default then by the person subsequently in the occupation of the property for

that year, from whom such rate shall be demanded, and the person so paying shall be entitled to *deduct the sum from his rent.*" The rate may be recovered before the Deemster as a debt (section 48). Provided that if unpaid "under any execution, and there be no sufficient distress liable to the payment thereof, it shall be lawful for such Deemster to issue his order to put such Committee of Management into possession of *the house or lands chargeable with such rate* or arrears, and the same to hold " till satisfied.

The valuation which was actually made under this Act, did not include the sums payable to the parties entitled to the rent-charge under the Act of 1839, the valuers apparently considering that they were not liable to be rated under it. The Governor, however, ordered such sums to be included in the valuation, and the proportion assessed upon the sum of 1417. 8s., the amount paid to the Appellant under the Act, having been demanded, was refused by him to be paid, whereupon a suit was instituted against him before the Deemster, who was of opinion that the Act did not authorize the rating of that payment, and dismissed the suit. On appeal, however, to the Court of the Staff of Government, the decision of the Deemster was reversed, and the question to be decided on the present Appeal is whether such reversal was right.

It is clear that under the 6th section of the Act of 1860, the rate can only be laid on property legally liable to be included in the valuation under the 2nd section, and the only words in that section, or throughout the Act, which the Respondent relies upon to make the amount paid to the Vicar rateable, are the words "real estate," which, doubtless, are large enough to comprehend it, if intended to do so, but which have not *necessarily* that effect unless so intended; and looking to the collocation of those words in the different sections, as well as to the whole frame and general wording of the Act, their Lordships are of opinion that the rating powers were not intended to include or apply to the amounts payable to the Appellant, and others similarly circumstanced under the Act of 1839, but that the later Act contemplated the rating of lands "*and other real estate*" of the same corporeal nature; and

not of a mere incorporeal right to a proportion of a sum of money, though arising from a rent-charge in lieu of tithes.

The particulars of the "lands and other real estate" valued, are directed to be entered according to forms set forth in the Schedule to the Act, one for lands, &c., not in towns, and the other for properties in towns—both are applicable exclusively to corporeal property, and even assuming they were not intended to be literally binding so as to exclude several descriptions of corporeal property, not expressly specified, they still give a meaning to other parts of the Act which appear to point to the exclusion of mere incorporeal hereditaments. The Rating Clause itself (section 6), with its proviso, the terms of which have been already referred to, seems inconsistent with the notion of rating a payment such as that in question, whilst the 48th section, giving the remedy for non-payment of the rate, appears equally to exclude it.

It is observable that the Act of 1839 (the Commutation Act) contains no enactment similar to that found in the English Tithe Commutation Act, 6 and 7 W. IV, c. 71, s. 69, expressly making the rent-charge rateable, and although it was suggested that the omission arose from there being no rates at that time existing in the Isle of Man; yet, when the Legislature in 1860 came to impose rates, they knew of that omission, and knew also of the mode in which the commutation of the tithes had been effected, and of the distribution of the rent-charge amongst the different parties specified in the Act; yet their Rating Act not only does not contain apt words applicable to the rent-charge, but is framed so as to apply in terms to corporeal property, without any express reference to incorporeal hereditaments.

The cases of *R. v. Neville* (8 Q. B. 466), and *Colebrook v. Tickell* (4 A. and E., 928), show clearly that when it is sought to impose a rate, the burden lies on those seeking to enforce it to show that the words used by the Legislature are clear and unambiguous in order to charge the subject. In the present case such words are not to be found; their Lordships are therefore of opinion that the rate made upon the Appellant was invalid, and that the Judgment of the Court of the Staff of Government was erroneous.

They will therefore humbly advise Her Majesty that the Judgment appealed from be reversed, and that the Judgment of the Deemsters Court be affirmed. The Respondents will pay the costs of this Appeal.

