

Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of Charles Nicolle for leave to appeal, from the Royal Court of Jersey; delivered Tuesday, 16th December 1879.

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS case comes before their Lordships on the petition and doléance of Mr. Charles Nicolle of St. Heliers in Jersey. It appears that in 1867 the Royal Court of Jersey appointed a "curateur" of the person and property of the Petitioner on the ground that he was a person of intemperate and prodigal habits. It must be assumed that all the proceedings in the case were duly had, and that the order was made in accordance with the law of Jersey, which will be afterwards considered. On the 9th of November 1878 he presented a remonstrance to the inferior number of the Royal Court, stating that the reasons for his interdiction had ceased to exist, and that he was then perfectly fit to have the care of his own person and the management of his property, and praying that this curateur, the persons named as the surviving electors of the curatelle, and also a sufficient number of the principal inhabitants of the parish of St. Heliers where the Petitioner was domiciled, should be duly summoned, in order that in the presence of the said curateur and of the said electors, and after having heard the said principal inhabitants

(les dits principaux), the Court might be pleased to annul the said "curatelle," to "rehabilitate" the remonstrant, and to restore him to the enjoyment of all his civil rights, and for such other relief as the Court should consider that the case deserved.

The Court proceeded to summon these persons, the evidence of the principal inhabitants was taken in the usual way, and it certainly went to establish that the habits of the Petitioner were reformed, and that he was of sound mind; but the Court came to the conclusion that although a proper case for releasing his person from the curatelle had been established, there was ground for maintaining the curatelle so far as it related to the administration of his property. The order, which bears date the 28th December 1878, is in these words: "Après
 " avoir entendu par le moyen de son Avocat,
 " et conformément aux conclusions dudit
 " Sieur Procureur Général de la Reine,
 " paraissant que la conduite dudit Sieur
 " Charles Nicolle est depuis quelque temps
 " devenue telle qu'il est apte à avoir le libre
 " soin de sa propre personne, mais qu'il n'est
 " pas suffisamment établi qu'il y ait lieu de le
 " réintégrer dans l'administration de son bien;
 " qu'en conséquence il y a lieu de le réhabiliter
 " en ce qui concerne la liberté de sa propre
 " personne, et de le maintenir sous interdiction
 " quant à la gestion de son bien. Partant la
 " Cour a ordonné que le dit Sieur Charles
 " Nicolle demeure présentement sous la curatelle
 " dudit Clement Nicolle Ec^r en ce qui concerne
 " son bien seulement." From this order the
 Petitioner appealed to the Full Court, which,
 after again summoning and itself examining the
 "curateur," "electeurs," and "principaux" on
 the 22nd of May 1879, passed the following order:
 " Après que le dit curateur, et ses électeurs, et

“ les dits principaux ont été entendus par
 “ serment, la Cour, par la pluralité des opinions,
 “ et conformément aux conclusions du dit
 “ Procureur Général de la Reine affirmant la
 “ décision du Nombre Inférieur, a jugé qu’il
 “ y a lieu de maintenir le dit Rémonstant sous
 “ interdiction en ce qui concerne l’administration
 “ de son bien.”

The Petitioner being dissatisfied with these orders, and the Royal Court of Jersey having refused to give him leave to appeal against them, presented a petition to Her Majesty in Council praying that he might have special leave to appeal against the orders in question in the usual way, or else that the merits of the case might be inquired into on the hearing of the petition by way of doléance, and that the orders might be reversed or varied, and the Petitioner reinstated in the management of his property. When this petition first came before this Board, their Lordships conceived that a case had been made for further inquiry into the correctness of the orders impeached; but thought that the proceeding by way of doléance would afford the least expensive and probably the most convenient mode of trying the question. This mode of proceeding, though termed “odious” by the Code of 1771, has been approved of and recommended by Her Majesty’s Commissioners on the law of Jersey; and their Lordships need hardly say that its adoption on the present occasion implies no disrespect towards the Royal Court.

The learned Judges of that Court have made a return in the ordinary form, and their Lordships have now to consider how far that justifies the orders that have been made, or whether the Petitioner is entitled to any and what relief in respect of them.

Their Lordships will assume that the Court was justified in refusing the Petitioner leave to appeal.

inasmuch as according to the law and practice of the island no appeal in such cases lies as of right to Her Majesty. That of course does not prevent Her Majesty from granting by virtue of her prerogative, either special leave to appeal or the relief now sought by way of doléance. The substance of what the learned Judges have returned to this Board is as follows: They say, "In the course of the inquiry it appeared that Charles Nicolle had not of late addicted himself to excessive drinking, and that his conduct at the hospital had been regular and unexceptionable. With this evidence before them the inferior number of the Royal Court unanimously, and on appeal the majority of the Jurats present, were of opinion that while there were sufficient grounds to relieve Charles Nicolle from curatelle as regarded his person, it was expedient, in the interest of his children, that it should be maintained as regards his property for some time longer. It is obvious that the opinion of the principaux who considered him capable of having the management of his property is founded on no facts within their knowledge, and it is to be remarked that of the three whose affidavits are annexed to the petition, one Dr. Le Crouier is careful not to make any statement on that point, but confines himself to testifying that Charles Nicolle has ceased to be a drunkard, that his conduct has for the last three years been exemplary, and that he is a man of perfectly sound mind. Not a single circumstance was brought under the notice of the Court of a character to lead to the belief that Charles Nicolle could be safely trusted with the care of his family and the management of his property. Not only during the last 12 years has he administered nothing, but during 10 years of that time he has not sought to help himself or his children in the

" slightest degree, with the exception of six
 " months, when an attempt was made, as has
 " been said, to find him employment with a
 " farmer, but without success. He has remained
 " in the hospital in voluntary idleness, and even
 " since he has found employment in the hospital
 " he does not appear to have done anything for
 " his children to have shown any solicitude for
 " their education, or to have taken any interest
 " in their welfare. The Court therefore thought
 " it was expedient to delay restoring to him the
 " management of his property for a short time
 " longer, that is, until his youngest children have
 " completed their apprenticeship and are able to
 " provide for themselves." Then they state the
 general law: "It is to be observed that by the
 " law of this island recourse may be had to a
 " curatelle, not only in cases of lunacy and
 " mental incapacity, but whenever through
 " drunkenness, prodigality, misconduct, or in-
 " capacity of any other kind it may become
 " necessary or expedient to subject a person to
 " control in the management of his property."

Their Lordships conceive that this statement
 as to the law is somewhat too wide. They have
 been referred to the Report of the Royal Com-
 mission on the law of Jersey, and to the evidence
 taken under it, and the conclusion to which
 they have come is that according to the law
 under which these proceedings have been had,
 it is necessary, in order to place a man under
 "curatelle" in the first instance, to satisfy the
 Court not only that he is prodigal or likely
 to mismanage his property, but that he is so
 by reason of his habitual intemperance in the
 matter of drink. Mere prodigality without
 proof of habitual drunkenness will not suffice
 to support the original grant of an interdiction;
 and in order to establish the intemperance the
 Court must have not merely the evidence of

relatives (les electeurs), but the presentment after examination of les six principaux. A similar procedure seems to be adopted on an application like the present, for the removal of the interdiction, and the re-instatement of the party in his civil rights. Six principaux are again summoned and examined. In the present case les principaux are agreed that the Petitioner has been cured of his intemperance; and the Court are so far satisfied of that that they rehabilitated him in all that concerns the liberty of his person. Their Lordships fail to see that when there has been such a reformation of the intemperate habits as justifies the reversal of the interdiction in respect of the person, there exists any legal power in the Court to continue the curatelle as to the property upon a mere suggestion that it will be better and more expedient for the family so to do. The Royal Court of Jersey has no doubt made the orders under consideration from an honest conviction that it would be better for the children that the property should continue to be administered by the curator rather than by the Applicant himself; but their Lordships cannot find any law which authorised the Court to deprive the Petitioner, if cured of his intemperance, of the management of his property upon any consideration of that kind. If the law had clearly given them such a discretion, their Lordships would have been slow to interfere with its exercise; but they are bound to see that in the administration of this exceptional, though possibly wholesome law, the Judges do not exceed the limits of their authority.

Under these circumstances their Lordships think that a sufficient case has been made out upon this petition and doléance to justify them in humbly recommending Her Majesty to reverse the orders of the 21st of December 1878, and the 22nd of May 1879, to declare that the

Petitioner having been found to be now fit to have the free use of his own person, and to be released from the curatelle as to his person, ought also to be re-instated in the management of his property, and to direct the Royal Court to pass an order in the usual form for the annulment of the curatelle, the rehabilitation of the Petitioner and his re-instatement in the enjoyment of all his civil rights.

