

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Roberts v. Ercant (Connétable of the Parish of St. Saviour's), from the Royal Court of the Island of Jersey; delivered the 19th December 1904.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ARTHUR WILSON.

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[*Delivered by Sir Arthur Wilson.*]

This is an Appeal from a Judgment of the Superior Number of the Royal Court of Jersey dated the 22nd October 1903, affirming a Judgment of the Inferior Number of the same Court. There is no serious doubt as to the facts, nor is there any dispute as to the principles of law which must govern the decision. The controversy is as to application of admitted law to the particular facts of the case.

The Plaintiff is one of the *principaux* of the Parish of St. Saviour, in the Island of Jersey, and as such he is a member of both the assemblies by which the affairs of the parish are controlled, the Ecclesiastical Assembly and the Civil Assembly.

On the 4th February 1903 a meeting of the Ecclesiastical Assembly of St. Saviour's was held to consider the report of an architect as to the condition of the parish church, and certain specifications, plans, and estimates for the purpose of putting the church in a perfect state of repair.

On the 10th February 1903 the matter came before the Civil Assembly, and the resolution then arrived at by that body is thus recorded: "The Assembly having taken cognisance of the act of the Ecclesiastical Assembly, dated the 4th February 1903, according to the terms of which Mr. Curry, Civil Engineer and Architect, is charged to prepare plans, specifications, and estimates of the various works which would be required to put the whole of the church in a good state of repair, has authorised the Connétable to pay the preliminary costs which will have to be incurred by reason of the said decision." It was stated and not disputed that the Plaintiff, Appellant, was not present at either of these meetings.

A fuller report from the Architect was then obtained, dated the 12th August 1903, in which he recommended repairs estimated to cost 2,000*l*. And on the 25th August that report came before the Ecclesiastical Assembly for consideration. The Ecclesiastical Assembly at that Meeting adopted the Architect's report, and decided to execute the works recommended; and "owing to the insufficiency of the Trésor funds the Assembly decided to ask the Civil Assembly to vote the necessary amount for the execution of the said repairs."

The matter came before the Civil Assembly on the 3rd September. That Assembly voted the sum of two thousand pounds for the works recommended by the Ecclesiastical Assembly according to the report of the Architect and resolved to issue a loan; and charged the Parochial Committee to carry out the Act of the Assembly. It was not disputed that the Appellant was present at this meeting and opposed the resolution.

Two other members of the Assembly, Messrs. Pritchard and Richardson, who had also opposed

the resolution of the 3rd September 1903, instituted an action in the Royal Court on the 5th September in which they sought to annul the decisions of the Meeting. The case was heard by the Inferior Number of the Court and on the 12th September 1903 the action was dismissed on the ground that the then Plaintiffs were precluded from maintaining it by the course they had taken with reference to the February resolution of the Civil Assembly.

On the 16th September, the Parochial Committee met to carry out the resolution of the 3rd of that month, and accepted a tender for the execution of the repairs. On the following day, the 17th, a contract with the contractors was executed.

On the 19th September, the first Court day after the 12th, the now Appellant filed the present suit against the Connétable of the Parish, in which he asked that the vote of 2,000*l.* for the repairs of the parish church, and the resolution to issue a loan of the 3rd September might be declared to be illegal and void, and that the Defendant be ordered to expunge them from the Acts.

At the hearing, which took place on the 26th September before the Inferior Number of the Royal Court, the Defendant submitted a preliminary plea to the effect that, under the circumstances of the case, the Plaintiff had neglected to prosecute his objections in proper time.

On this point the Court held that "inasmuch as the Petitioner took no steps before the Act of the Assembly which he contests had been partly put into execution by the acceptance of the tender of a contractor, and by the commencement of the works ordered by virtue of this Act and of previous Parochial Acts referring to the same subject, the Court ruled that the Petitioner is too late in complaining." The

decision of the Court as to the resolution for a loan is not material for the purposes of the present Appeal. The Superior Number of the Royal Court affirmed this decision on Appeal, and against that decision the present Appeal has been brought.

It was not disputed in argument that the Royal Court has jurisdiction to interfere if the Civil Assembly of the Parish passes a vote which would apply the funds under its control to purposes not warranted by law, when the Court is put in motion by the proper person and under proper circumstances. It was not disputed, on the other hand, that one who seeks to invoke the assistance of the Court for such a purpose must appeal to the Court with due promptitude. What their Lordships are asked to say upon this Appeal is that the Royal Court was wrong in holding that the Plaintiff, Appellant, had failed to comply with this condition.

It was pointed out in argument that the resolution against which the attack is actually directed was passed on the 3rd September, and that the present suit was instituted on the 19th of the same month, a short interval in any case. And it was contended that allowance should be made in the Appellant's favour for the period during which the suit of Messrs. Pritchard and Richardson was pending.

On the other hand, there are very serious matters to be considered. It is true that the resolution formally attacked was of the 3rd September. But the series of proceedings began in February and form a continuous sequence, all based upon the view that the Civil Assembly was to hold itself responsible for the necessary repairs of the church, and all directed, step by step, to carry that view into effect. It is not alleged that the Appellant was not throughout aware of those proceedings. It seems clear that the

necessity for repairs was urgent and called for immediate action. The Appellant appears to have deliberately delayed taking action until after the result of the earlier suit of Messrs. Pritchard and Richardson was known, though there does not seem to have been any arrangement that that suit was to be regarded as a test action. And, in fact, the Appellant did not take action until after the parish authorities had acted upon the impugned resolution by entering into a contract for the execution of the repairs.

Their Lordships see no reason to dissent from the conclusion arrived at by the Royal Court. They will humbly advise His Majesty that the Appeal should be dismissed. The Appellant will pay the costs.

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