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17,1954

No. 13 of 1951.

In the Privy Council.

ON APPEAL

FROM THE ROYAL COURT OF THE ISLAND OF JERSEY.

37697

BETWEEN

ARTHUR VILLENEUVE NICOLLE (Plaintiff) . *Appellant*

AND

HENRY FREDERICK JAMES WIGRAM
(Defendant), HENRY AHIER, Connetable of
the Parish of St. Martin (cited) *Respondents.*

UNIVERSITY OF LONDON
W.C.1.
24 FEB 1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

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Case

FOR THE SECOND RESPONDENT.

RECORD.

1. This is an appeal from a judgment dated the 19th October, 1950, of the Superior Number of the Royal Court of the Island of Jersey which affirmed a judgment dated the 13th April, 1950, of the Inferior Number dismissing with costs the Appellant's action against the First Respondent which sought to compel the First Respondent to fill in six windows which the First Respondent had built in his house "La Chaire Annexe," to remove certain pipes and to pay damages to the Appellant.

p. 33.
p. 26, l. 29-p. 32,
l. 45.
p. 32, l. 6.
p. 3, ll. 39-46.

20 2. The action raised the question, amongst other questions, whether a roadway adjoining "La Chaire Annexe" belongs to the Parish of St. Martin as a public road or (subject to public rights of way) is the Appellant's property. At the instance of the First Respondent the Court therefore ordered that the Connetable of the Parish (who is the proper officer to represent the Parish) be cited. This Respondent's predecessor in office accordingly became a party to the proceedings and supported the First Respondent's defence based on the road in question being vested in the Parish.

p. 3, l. 47-p. 4,
l. 16.
p. 12, l. 30-p. 13,
l. 40.

30 3. There are concurrent findings of both courts below that the road in question is vested in the Parish. This Respondent respectfully submits

p. 31, ll. 30-42;
p. 33, ll. 7-9.

that the fact is thereby conclusively established unless the Appellant shows that the findings were based on such an erroneous proposition of law that if that proposition be corrected the finding cannot stand. This Respondent submits that the Law was properly applied by both courts.

p. 76, ll. 5-24.

4. In 1810 the War Department acquired land in the Parish of St. Martin for Rozel Barracks, the walls of which enclosed a then existing road ; but a strip of land outside the west and north walls running from the main entrance north and then east to the seashore was substituted as a new road, and is the road now in question. The public, without hindrance 10 by the War Department, used this road as a public road and the Parish treated it as a public road. Thus records going back to 1866 show that the Parish has sold the right to the sweepings, which are only sold from public roads vested in the Parish.

p. 24, ll. 8-38.

p. 18, ll. 10-13.

p. 17, ll. 10-12.

p. 17, ll. 23-33.

pp. 37-38.

5. On the 5th December, 1910, the Parish Road Committee visited the road, examined documents relating thereto, and inspected boundary stones bearing the Government Mark which delimit the land acquired by The War Department in 1810 including the site of the barracks and the road now in question. The Committee considered the site of the road to be Crown property subject to a full public right of way, which made 20 it proper for the Parish to maintain the road as a public road. By letter of the 1st March, 1911, the War Department acquiesced in the view that the road belonged to the War Department subject to a public right of way, and that the road be maintained as a public road ; and the Department offered (without expense to the Department) at once to transfer the road to the Parish, reserving certain rights to the Department and its successors.

p. 39, ll. 14-37.

p. 22, l. 11.

p. 67, l. 12-p. 68,
l. 32.

6. On the purchase of Rozel Barracks by a Mrs. Rose who in 1926 became Mrs. Bayntum-Roberts the contract, dated the 6th September, 1924, and duly registered, provided for the full public use of the road according to the decision of the 5th December, 1910, and the letter of the 30 1st March, 1911. Her legal advisers on the 8th September, 1924, by letter to the Constable of the Parish referred to the terms of the letter of the 1st March, 1911, and said that they took it that, as there seemed to have been no written confirmation from the then Constable, the stated conditions were tacitly accepted and " now operate."

p. 41.

p. 44.

p. 21, l. 1-p. 22,
l. 27.

7. As a result the Parish Road Committee visited the road on the 9th January, 1925, and decided to confirm the transfer of the road to the Parish. A Parish Assembly held on the 15th January, 1925, approved and confirmed this decision. These steps had the full approval of 40 Mrs. Bayntum-Roberts. Her future husband, as her representative, had been present when the Road Committee visited the road, and knew and welcomed the decision to take the road over. Moreover, on the 23rd January, 1925, the Constable wrote to her legal advisers informing them that as the Parish had looked after the road for many years, the Constable took it that the conditions of the letter of the 1st March, 1911, had been tacitly accepted. The letter also informed them of the Parish

p. 42, ll. 1-21.

Assembly's decision to confirm the acceptance of the War Department's offer. They reported to Mrs. Bayntum-Roberts, who thought the matter to be "quite in order now." p. 43.

8. By contract dated the 6th February, 1932, and duly registered, Mrs. Bayntum-Roberts sold Rozel Barracks to the Appellant. If the road in question had throughout remained an appurtenance of Rozel Barracks, this contract would have transferred the ownership of the road to the Appellant. p. 67, l. 12-p. 68, l. 32.

9. This Respondent submits that by the law of Jersey a road within a Parish, privately owned, becomes a public road vested in the Parish if an offer to transfer the road to the Parish is accepted by act of the Parish Roads Committee confirmed by the Parish Assembly; and that there is no support for the Appellant's contention that the only effective way of vesting a road in a parish is by a deed of transfer which has been duly acknowledged by the parties thereto before the Royal Court and which has then been registered in the Registry of Deeds.

10. Although roads may undoubtedly be transferred by deed acknowledged and registered, many roads have been taken over by act of Parish Assemblies. A schedule of 63 roads which had been taken over between 1817 and 1939 was prepared by the First Respondent. In only five of these cases had there been registration. The Appellant admitted that in all 63 cases the Parish had purported to take over the road. This Respondent submits that the method adopted in these cases covering well over a century was not ineffective, and was in accordance with the law of Jersey. Support for this submission is also found in cases (referred to in paragraph 15 of the First Respondent's Case) decided by the Royal Court in 1825 and 1865. Moreover, by Article 7 of the Law of 1869 on Chemins Ruraux (which was in force until 1941) an agreement for a Parish to acquire land for widening a road could be registered in the Public Register at the option of the Constable. This, it is submitted, is quite inconsistent with the Appellant's contentions in the present case. pp. 34-36. p. 77, ll. 1-11.

11. The Royal Court (Superior Number) in all respects agreed with the judgment of the Inferior Number. This judgment traced the history of Rozel Barracks and the transactions affecting the property, and held that by the custom of Jersey the Parish Assembly can accept the offer by the owner of a private road for its transfer to the Parish to be maintained thereafter as a public road without the necessity of a contract passed before the Court, and that from the act of the Assembly accepting the offer the road becomes in the full legal sense a public road. The Court decided that through her legal advisers and her future husband acting for her, Mrs. Bayntum-Roberts had renewed the offer in the letter of the 1st March, 1911, to transfer the road in question to the Parish, and that on the 15th January, 1925, the Parish Assembly had accepted that offer with the result that from that date the road became public, subject to the rights reserved to the owner of Rozel Barracks by the letter of the 1st March, p. 33, ll. 7-9. p. 28, l. 11-p. 31, l. 20. p. 31, ll. 21-29. p. 31, ll. 30-42. p. 31, l. 43-p. 32 l. 5.

1911; and consequently no further rights in the road passed to the Appellant on the sale of Rozel Barracks to him in 1932. His action was therefore dismissed.

12. This Respondent submits that the judgments of the Inferior Number and Superior Number of the Royal Court were right, and that this appeal should be dismissed with costs for the following amongst other

REASONS

- (1) BECAUSE whether the road in question is a public road is a question of fact which, without error of law, has been determined by both courts below in favour of the Respondents. 10
- (2) BECAUSE the evidence supports the finding that the road in question is a public road belonging to the Parish of St. Martin.
- (3) BECAUSE by the law of Jersey land may be transferred to a Parish to be a public road by offer accepted by the Parish Assembly.
- (4) BECAUSE a deed acknowledged before the Royal Court and registered in the Public Register is not essential to the transfer of a road to the Parish as a public road. 20

FRANK GAHAN.

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Case

FOR THE SECOND RESPONDENT.

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