

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Giraud v. Paterson from the Supreme Consular Court, Constantinople; delivered 30th June, 1869.*

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Present:

SIR WILLIAM ERLE.

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE GIFFARD.

THE Petition on the part of the Appellant in this case was, in substance, for damages in consequence of his being wrongfully deprived of his property in a certain farm, and the stock that was thereupon. The matter was litigated in the Court at Smyrna, and afterwards in the Supreme Consular Court at Constantinople. The Judgment of the Consular Court at Constantinople is, that the Appellant had no right to the damages which he sued for, and upon the Appeal from that Judgment the question is raised whether such Judgment is right, and their Lordships have come to the conclusion that it is their duty to recommend that the Appeal should be dismissed.

The interest of the Appellant in the farm in question is derived under the indenture of demise, which gave him an interest of six years, to commence in October, 1860. There were the usual terms between landlord and tenant for the reparation of a farm in the country where these farms are situated, and covenants for the payments of rent, for the keeping in repair, and for some course of cultivation, as to which their Lordships would make the general remark that it was essential that the lessee should continue in the occupation in order that he might be enabled to do his duty as tenant, in respect of those covenants.

There is another provision in the deed, which bears upon the stock. There was a covenant on the part of the lessor for advances to be made by him amounting to 1055 Turkish liras, 555 down, and 500 by way of further advances; and the lessee, Giraud, in consideration of those advances, and by way of security for them, mortgaged, pledged, and made over to Mr. Paterson all the stock upon the farm. It appears that Mr. Giraud entered upon the farm and continued in occupation. There are provisions about rights to the labour of the labourers, and other rights which led to contests, and which led to an unsatisfactory conduct of the farm. Before a year had elapsed there were proceedings, perhaps of a criminal nature, against Mr. Giraud for assault, under which he was arrested and taken to prison, where he was confined for forty-seven days. Before the time of his going to prison, there had been an omission on the part of Mr. Giraud to collect in the crops at the time when they were ripe, and persons were put upon the farm to collect in those crops for the mutual interest of the landlord and the tenant.

Upon the whole of the evidence, as it was reviewed by the Judge of the Consular Court, and as far as it has been brought to our attention, the fact of Mr. Paterson putting in persons to come upon the farms and collect in the crops in 1861 was not an eviction by Mr. Paterson of Mr. Giraud.

Very much turns upon the point whether or no Mr. Paterson can be considered to have been the cause of, or in any way accessory to bringing about the arrest of Mr. Giraud and taking him to prison. The imputation has been made. It has been attempted to be supported here by a report heard by Mr. Giraud from some of the witnesses that they had been paid by Mr. Paterson to come; but their Lordships are of opinion that there is no sound ground upon which they can rely in fixing upon Mr. Paterson an imputation of such very grave guilt as procuring Mr. Giraud to be wrongfully arrested and confined in prison in order that during the time that he was so confined he might take advantage of his absence, take possession of his farm, and otherwise damage him in respect of his property. Their Lordships can find no ground for that imputation.

Then, having cleared the ground so far, their Lordships come to that which is the cardinal point on which their opinion turns; and the cardinal point upon which the judgment of the Consul in the Court below turned. He states that the point is, who first by his own act annulled this contract? Mr. Giraud says that the imprisonment was substantially the breaking of that contract; but it is not found that that was caused by Mr. Paterson.

Then whilst Mr. Giraud was in prison it seems that he had formed the intention of what may be described as abandoning the farm. He came to the conclusion that his imprisonment had been procured through Mr. Paterson, and his evidence at page 19, line 63, is in effect that he did not return to Berguine because he knew it was in possession of Mr. Paterson's agents whom he had seen there,—the agents that were put there to collect the crops, as we understand the evidence. He goes on to say, "I did not go near Mr. Paterson after I was released, and I did not go back to the farm, and did not intend to go, as I intended to sue him, Mr. Paterson; and as far as I was concerned, I did not care what became of the farm."

Their Lordships in this case find a great conflict of evidence about many of the facts, but the cardinal fact of the case, in their judgment, is established by the plain explicit statement of Mr. Giraud himself. They have no hesitation in relying upon that statement, and they gather from it that he, knowing that the farm was vacant, intentionally avoided returning to that farm, intentionally left it for Mr. Paterson at his peril to deal with it as he might choose, but it was a vacant possession which the tenant had abandoned; and according to the passage that I have read it is an abandonment, not without example, probably, in many parts of the British dominions, where the tenant, believing that he has got an interest for some time, does not intend to do his duty as tenant, and cultivate the farm, and keep up as well as he can a performance of the duties which are cast upon him by the lease, but means to keep the nominal interest in the farm, and rest entirely upon the litigation and the damages which he may obtain in the course of the litigation. We do not at all pretend to judge between Mr. Giraud and Mr. Paterson, further than

as to the facts upon which our Judgment is founded. Mr. Giraud was of opinion that Mr. Paterson was the cause of his imprisonment. If he was wrong in that, we think that he was not justified in abandoning that farm, and not justified in bringing any litigation upon Mr. Paterson for preventing that farm from being ruined, and taking possession of it, and taking care of it. Mr. Giraud did not intend to go back. So far as the interest in the farm is concerned, their Lordships think that there would be no claim to damages.

Then, with respect to the stock that was left on the farm, the amount of the stock is a matter upon which there is much conflicting evidence. Upon one side, Mr. Giraud makes a large claim; on the other side, there is no evidence upon which the Consul in the Court below could rely, and the provision in the indenture of lease that the whole of the stock on the farm should be considered as mortgaged to secure repayment to the Plaintiff of the advances of 1055 Turkish liras, comes in aid of Mr. Paterson to prevent any claim for substantial damages in respect of the stock that was upon the farm, and which was charged as a mortgage security. The term had not, in time, come to an end, but the term virtually, as between landlord and tenant, was at an end; the interest of the tenant was abandoned, and in substance the intention of the parties to that mortgage would be carried out by holding that the landlord, with that mortgage, was entitled to secure himself by the stock upon the farm.

This being a suit in which damages alone are to be recovered, if there was a nominal interest which might be the subject of an action in some of the Courts of Common Law, that species of nominal interest for the mere nominal claim for damages would be no ground before the Judicial Committee of the Privy Council to recommend that the Judgment of the Court below should be reversed, and the Appellant to be entitled to their Lordships' Judgment.

Their Lordships will, therefore, recommend to her Majesty that this Appeal be dismissed with costs.