

Petty Debts Court

33A

14A

1st October, 1986

The Jersey Maincrop Potato Marketing Board

v.

Arthur George Rolland

Before Mr. R.G. Day, Judge.

The Jersey Maincrop Potato Marketing Board -v- Rolland

Reasons for Decision

Pursuant to the Agricultural Marketing (Jersey) Laws 1953 - 1961 the States, on the 29th October, 1968, adopted a Maincrop Potato Marketing Scheme to be administered by a body to be called 'The Jersey Maincrop Potato Marketing Board'. Art. 24(1) of the scheme - which is in that part of the Law<sup>\*</sup> headed "Financing Provisions" provides, inter alia, for the raising of funds by authorising Registered Producers to grow the number of vergées of potatoes allocated by the Board and to pay a cash contribution in respect of each vergée so allocated. Paragraph 24(3) of the scheme (as amended) provides that Registered Producers who grow a greater number of vergées than the number of vergées allocated to them by the Board shall "contribute" to the Board's funds in respect of each vergée in excess of the allocation a sum twenty times the amount per vergée payable in respect of the area allocated.

The defendant, a Registered Producer, during the year 1985 grew three vergées in excess of his allocation and the contribution per allocated vergée having been fixed at £6 per vergée the defendant was required by the board to make a contribution in the sum of £360.00 in respect of the excess (3 x £6 x 20). The defendant failed to pay the money and is now actioned by the Board to recover the sum alleged to be due as a civil debt. The facts so far recited are agreed by both parties to this action.

\* Maincrop Potato Marketing Scheme (Approval) (Jersey) Act, 1968 (R.O. 5159), as amended (R.O. 5830, 6616, 7165, 7258, 7326).

It is convenient here to deal with two matters of dispute revealed by the pleadings. The defendant claimed that he had not 'sold' any of the potatoes he grew. He conceded however that some of the potatoes had been supplied to customers of a restaurant he owns at 'Haute Tombette' and I have decided that for the purposes of the law such disposal amounted to a sale. Secondly the defendant put the plaintiff to proof on the pleaded submission to the effect that by prescriptive resolution numbered 55 and dated the 7th November, 1983, the sum payable under para. 24(1b) was fixed at £6 per vergée and that by prescriptive resolution numbered 55 dated the 14th November, 1983, the plaintiff implemented the provisions of para. 24(3) of the Scheme and resolved to recover the amounts due by Registered Producers thereunder by legal action. I am satisfied that both resolutions in the form stated were indeed passed by the Board.

At the conclusion of the evidence the advocates for both parties addressed me on the Law and at my request they gave preliminary attention to my suggestion that the Maincrop Potato Marketing Scheme goes beyond the powers conferred by the Agricultural Marketing (Jersey) Law, 1953.

The last mentioned law is modelled upon and closely follows the terms of English legislation dealing with the same subject matter such legislation now being consolidated in the English 'Agricultural Marketing Act, 1958' there is to be found in that Act a provision which reads as follows:-

'Where the minister has made an order .... approving a scheme .... the making of the order shall be conclusive evidence that the requirements of this Act have been complied with and that the order and the scheme approved thereby have been duly made and approved and are within the powers conferred by this Act.'

The 1953 Jersey statute contains this provision at Article 2(7):

'Where the States have approved a scheme as aforesaid the approval shall be conclusive evidence that the requirements of this law have been complied with and that the scheme contains all the provisions required by this law'.

The absence in the Jersey statute of the words which validate a scheme even if the scheme is not within the powers conferred by the Law cannot be an accident and it is accordingly necessary to consider whether or not the parts of the Scheme which are said to give rise to the defendant's liability to the Board are within the powers conferred by the Law. In other words I have to decide whether or not provisions in the Scheme which give rise to the defendant's liability are ultra vires.

Provisions which must be incorporated in any scheme are set out in Article 8 of the 1953 Law and provisions which may be incorporated are set out in Article 11 of the same law, and I find no specific power in either of those articles to justify the incorporation in any scheme of provisions which limit a producer's right to grow as many potatoes as he chooses. Accordingly Article 24(3) of the Scheme is outside the powers conferred by the Act unless one can find in the Act words which by implication suggest that the States envisaged the direct control of production. I am unable to find anything in the Law which indicates the States intention to restrict production of the regulated produce and I have not overlooked Article 11(2) which states that any scheme may provide for such matters as are 'incidental to or consequential on the provisions of this Law'. Marketing of a product can readily be

controlled without restricting its production. The Board advanced the argument that, in truth, the Scheme does not seek to control the acreage of Maincrop potatoes and that the terms of Article 24 of the Scheme are no more than fund-raising provisions. Fund-raising may be the purpose of Art. 24 but its effect is to prohibit the production of potatoes in Jersey without the consent of the Board and this whether or not the producer intends selling the potatoes here, elsewhere or at all. Under Art. 4 of the Law the Committee of Agriculture is required to make provision for the registration of producers and this the Committee has done. Indeed, it appears that all persons registered with the Department of Agriculture are automatically registered with the Maincrop Potato Marketing Board and without consultation. The same Article requires the Committee to prescribe conditions in which producers may be exempt from registration but this the Committee has failed to do. Again, there is in the Law - Article 8(b) - a requirement that every scheme shall contain provisions empowering the Board to exempt from all, or any of the provisions of the scheme, such producers and transactions as may be prescribed or determined by the Board. This power has not been included in the 1968 Scheme except in respect of Part 4 of the Scheme and Part 4 does not include Article 24.

Notwithstanding my decision that Article 24 of the Scheme is prima facie ultra vires the Law, I have to consider the Court's primary duty which is to uphold the intentions of the legislature, if this is possible. I am encouraged to do this since it seems, from the evidence, that under its present policies the Board would not have actioned the defendant if he had not sold his crop locally. Furthermore I am satisfied that it would have been possible to produce a scheme which was within the powers conferred by the Law where those acting as did the defendant would have found themselves under a liability to the Board as a result of selling

potatoes other than in accordance with orders made by the Board, lawfully applying such scheme. I have reached the conclusion that these considerations do not allow the Court to uphold the present claim since it is clearly a claim for the recovery of a penalty rather than for the recovery of a contribution. Those who comply with the allocation pay £X per vergée, whilst those who exceed it are penalised by having to pay £X x 20 per vergée. The only power of the Board to impose a penalty is conferred by Art. 8(ba) of the Law and the maximum allowable penalty for any offence is £100.00.

In summary, I have decided that to allow the present claim would be to allow controls and activities by the Board which were never envisaged by the States when the Law was enacted and the Scheme approved.

R. G. Day  
Juge