

Jersey & Guernsey Law Review – October 2013**SHORTER ARTICLES****THE ECCLESIASTICAL COURT OF JERSEY: THE COURT OF THE DEAN OR OF THE BISHOP?****Gregory White**

By reason of the unique constitutional and ecclesiastical history of Jersey, the legal position of the Ecclesiastical Court in Jersey differs from that of a consistory court in a Diocese in England (which is the Bishop's Court). Consequently the Ecclesiastical Court of Jersey is the Court of the Dean of Jersey and is not that of the Diocesan Bishop.

1 Recent events, including an Episcopal Visitation of the Deanery of Jersey, have raised the issue of the status in law of the Ecclesiastical Court of Jersey. Comparison has been drawn between the role and standing of the Jersey court and those of other courts of the Church of England at diocesan or provincial level.

2 In England, the role of an ecclesiastical court is as provided for in the Ecclesiastical Jurisdiction Measure of 1963. As William Bailhache explained last year in this *Review*¹ following the introduction of the Jersey Canons of 2012,² Measures of the Church of England do not extend to the Channel Islands without a Scheme approved by the Islands themselves through their own Synodical government.³ The 1963 Measure does not extend to Jersey or Guernsey. The diocese of Winchester, to which the Channel Islands are annexed, is expressly deemed not to include the Islands for the purpose of the 1963 Measure.⁴

3 The position of an ecclesiastical court under English law is that found under the 1963 Measure, s 1: that for each diocese there shall be a court of the bishop thereof, to be called the consistory court of the

¹ Bailhache, 1623 *Revisited* (2012) 16 J&G L Rev 272 para 16.

² Order in Council of 14 March 2012.

³ Channel Islands (Church Legislation) Measures, 1931 and 1957.

⁴ Section 84 of that Measure.

diocese. The consistory court has the original jurisdiction, in non-disciplinary matters, conferred on it by that Measure and the principal jurisdiction is in terms of faculty applications for the alterations to the fabric of churches. It is clear therefore as a matter of the applicable law in England, that the consistory court in Winchester, presided over by the Diocesan Chancellor, can properly be referred to and treated as the Court of the Lord Bishop of Winchester. But can the same be said of the Ecclesiastical Court of Jersey, presided over by the Dean of Jersey, which has jurisdiction over faculty applications in respect of the fabric of the Island's Anglican churches? Is it the Bishop's Court or that of the Dean?

4 In the absence of any Measure extending an English ecclesiastical court system to the Island we must be guided by the principal sources of Jersey law and the Canons of 1623⁵ and now of 2012.

5 It is understood that the principal argument in favour of the court in Jersey being that of the Bishop derives from the Bishop having jurisdiction within Jersey as Ordinary⁶; that as the holder of episcopal office exercising "ordinary jurisdiction" he should be held to be the "judge in ordinary" in the Island. The 2012 Canons are, however, clear that the Bishop's "ordinary jurisdiction" does not extend over places or persons exempt by law and custom. If, as a matter of Jersey law and custom, the Ecclesiastical Court of Jersey is that of the Dean, then it is immaterial that the Bishop is described in the Jersey Canons as the Ordinary. Any argument that the legal position of a court in Jersey must necessarily be analogous with that in England should be readily discounted at the outset.

6 It has also been contended that the Dean of Jersey, as the recipient of a Commission from the Bishop of Winchester, exercises jurisdiction in the court as Commissary of the Bishop, and that thereby the court is the Bishop's.⁷ To this one may counter that although the Dean does exercise the Bishop's ordinary jurisdiction through the Commission, jurisdiction is conferred upon the Dean by the Letters Patent from the Queen⁸ in which Her Majesty requires acceptance of the lawful Dean with such "jurisdictions as do belong to the said Office and Dignity".

⁵ Order in Council of James I of 30 June 1623.

⁶ Canon C16.2.

⁷ The jurisdiction of the Dean of Guernsey may differ from that of the Dean of Jersey in this regard. The Calvinist interlude in Guernsey lasted longer and its ecclesiastical court was not restored until 1662.

⁸ See for example the Letters Patent on the twenty-sixth day of September in the fifty-fourth year of the Reign of Her Majesty's Queen Elizabeth II requiring that Robert Frederick Key be admitted as Dean of Jersey.

Aside from the Commission he receives, the Dean is required under the 2012 Canons to exercise his jurisdiction in accordance with the terms of his Letters Patent, the Canons themselves and local law and custom.⁹ The Commission from the Bishop should not be determinative of whether the court is the Dean's or the Bishop's since if the Bishop has chosen to delegate powers he does not possess as a matter of Jersey law and custom then such delegation is ineffectual and equally if the Dean already possesses as a matter of Jersey law and custom the powers purported to be delegated by the Bishop then such delegation is superfluous.

7 From Jersey's unique constitutional and ecclesiastical history it can be established that the Island's Ecclesiastical Court differs from that of a consistory court in a Diocese in England. The court is consistently referred to as the Dean's Court and it is relevant that since the Reformation the Bishop has been far removed from the Island.

The evolution of the Ecclesiastical Court at customary law

8 The Ecclesiastical Court in Jersey is of ancient origin, established at a time in the Island's history when its diocesan Bishop was a bishop in Normandy, not England. It appears significant to the development of the court that since 1204 the Bishop has had his seat or *cathedra* in a territory of a different legal jurisdiction. The Rolls of the Ecclesiastical Court (which may be viewed in the Jersey Archives) date back centuries.¹⁰ The earliest are in Latin and reflect a time when Jersey was under the See of Coutances, before the Order in Council of 1568 by which the Islands were annexed to the See of Winchester.

9 Certain of the Rolls dating after the annexation of the Island to the Winchester Diocese at the time that the Canons of the Church in Jersey were promulgated in 1623 contain an oath of office of *Surveillants* (or Churchwardens). That oath refers, in connection with bringing matters to the court, to the "*Doyen de cette Ile*" [the Dean of this Island] but significantly makes no mention of the Bishop whatsoever.

10 According to written histories (notably Rev Philip Falle's *Account of the Island of Jersey*¹¹ and Charles Le Quesne's *Constitutional History of Jersey*¹²), the Ecclesiastical Court evolved in Jersey by

⁹ Canon C17.2.

¹⁰ Jersey Heritage catalogue, Reference G/B.

¹¹ Falle, *Account of the Island of Jersey*, ed Rev Edward Durell, Jersey, Richard Giffard, 1837.

¹² Le Quesne, *A Constitutional History of Jersey*, London, Longman, 1856.

custom along with the other courts of the Island rather than at the specific behest of a bishop. This was reflected in the evidence given in 1946 to the Privy Council Committee on Channel Islands Reform. The Committee stated in its report¹³ that—

“The States was never conceived of as something purely secular, but just as there were 12 Jurés Justiciers of the Civil Court there were also 12 Assessors of the Ecclesiastical Court, and there was this combination which was joined in the 13th or 14th century.”

11 The Office of Dean of Jersey is explained by Falle¹⁴ to be of like standing here as Christianity itself. From early times in the establishment of the Church in Jersey the Dean had been left “cognizance of all matters of ecclesiastical jurisdiction”. The Deans in Falle’s day were vested with that same historic power “with this limitation, that they are to govern themselves by the advice and opinions of the rest of the ministers, who are to be their constant assessors” which Falle describes as “an excellent government and grounded on the primitive pattern.” This practice continues under the Canons of 2012 where the Dean sits with the Rectors of the Ancient Parishes as his assessors.

12 By Order of King Edward II on 15 May 1309¹⁵ it was affirmed that natives of the Island were not obliged to answer before the Bishop of Coutances. By contrast the Ecclesiastical Court, presided over by the Dean, had clear jurisdiction over the inhabitants of Jersey. The Sovereign, being mindful to protect the liberties of his Jersey subjects, could not have considered the Ecclesiastical Court in the Island to be the Bishop’s Court.

13 The constitution of the Ecclesiastical Court evolved in parallel with the Royal Court in the ecclesiastical sphere. Falle’s *Account* further explains that¹⁶—

“Now as the Bailly here is at the head of the Civil, in like manner is the dean at the head of the Spiritual Jurisdiction; and as one has the Jurats for his Assessors, so has the other the Ministers; to wit those who are Rectors of the Churches, not mere Auxiliaries or Lecturers only. And the Constitution of the two Courts is very much alike, the Instituted Ministers coming in for Participation of the Ecclesiastical Regimen”

¹³ Report of the Committee of the Privy Council on Proposed Reforms in the Channel Islands. Cmd 7074. London: HMSO, 1947, p 25.

¹⁴ Falle, *op cit*, p 186.

¹⁵ Rymer (Rec Comm Edn), vol 2, part 1, p 73.

¹⁶ Falle, *op cit*, pp 205–206.

and later, that—

“Two or three Ministers with the Dean, or Vice Dean, suffice to hold a Court; but as many as please may come, and the Opinion is to be taken of all that are present. This Court keeps the same Terms of the Civil . . . and has belonging to it a Greffier or Registrar, two Advocates or Proctors, with an Apparitor and others to execute its Summons.”

14 Reverend Durell’s note on Falle’s *Account*¹⁷ refers to the Canons promulgated in 1623 and how they provided that the Dean has the same authority in the Ecclesiastical Court as the Bailiff has in the Civil Court (what is now called the Royal Court). From this it follows that the Dean is the Chief Justice in ecclesiastical causes in the Island as the Bailiff is chief justice in civil causes in the Island; and the Dean is second only to Her Majesty the Queen (who is the fount of all justice) in respect of the hearing of ecclesiastical causes, as the Bailiff is second only to the Queen in the hearing of civil causes. It is relevant in each regard that both Dean and Bailiff hold office under the Queen by Letters Patent and are Presidents of their respective courts. It is worth noting that by contrast a Diocesan Chancellor, as President of a consistory court in England receives his Letters Patent from the Diocesan Bishop.

15 The Canons of 1623 emphasised¹⁸ that government of the Church was by *Archevesques, Evesques, & Doyens* [Archbishops, Bishops and Deans] and that those who impugned this principle were liable to *ipso facto* excommunication and could only be restored by the Dean in open court. The Canons conferred no powers in relation to the court in Jersey upon the Bishop. The Bishop’s role was purely in an appellate capacity.

References to the Dean’s Court

16 There abound numerous references to a “Dean’s Court” in Jersey but any references to the Bishop’s court are to that which existed at Coutances or in Winchester (in the person of the Lord Bishop).¹⁹ Since the Order in Council of 2012 appeals from the Ecclesiastical Court will go to the Inferior Number of the Royal Court²⁰ and ultimately to

¹⁷ Falle, *op cit*, note 241, p 251.

¹⁸ Canon 22 of the 1623 Canons.

¹⁹ Canon 56 of the 1623 Canons.

²⁰ Canon F2.6.

the Privy Council, and the appellate function is no longer exercised by the Bishop. In relation to that appellate function, Falle insisted²¹ that—

“One thing however I may not pass unobserved, because ‘tis part of our Privileges, *viz.* that when an Appeal goes from this Court to the Bishop of Winchester as superior Ordinary, or (in case of the Vacancy of that See) to the Archbishop of Canterbury, those Prelates are to hear and determine the same in their own proper Persons, and not send us to substitute Judges or Officials on whom we in no wise depend.”

17 It is to be inferred that a Bishop who was a “*superior Ordinary*” to the court in Jersey, was outside of that court and not part of it. Indeed, Rev Durell’s notes on Falle’s *Account*²² contain the passage from Falle’s earlier edition which Durell regarded as “the most correct and constitutional view of the matter” in which Falle argued that—

“if one examines the Canons carefully, unwarped by the fear of disobliging, or by the hopes of personal favour, it would be evident that the Bishop of Winchester has very little ecclesiastical power in Jersey, and that he be little more than a Judge in Appeal.”

18 The appellate function can be traced back before the annexation to Winchester. The Cecil papers of 1568²³ contain a note of the ecclesiastical jurisdiction pretended to be had in the Isle of Jersey by the Bishop of Coutances in Normandy, which states that—

“Also the Bishop hath all appeals of ecclesiastical causes rising in controversy within the isle to his jurisdiction, insomuch as all men may appeal from the Dean’s Court unto his Court at Coustance, and the same is to be pursued and answered accordingly in all times of peace between England and France.”

This explicitly sets out a divide between the Dean’s Court in Jersey and the Bishop’s Court in Coutances.

19 A significant historical document in which the Ecclesiastical Court is referred to as the Dean’s Court is the petition sent from the Island on 4 June 1524 to Cardinal Wolsey. This petition, which was later printed by the *Société Jersiaise*,²⁴ concerned the difficult situation in the Islands owing to the constant state of warfare then prevailing and

²¹ Falle, *op cit*, p 206.

²² Falle, *op cit*, note 199, p 438.

²³ Cecil Papers: 1568, Calendar of the Cecil Papers in Hatfield House, vol 13: Addenda (1915), pp 86–94.

²⁴ *Bulletin Annuel de la Société Jersiaise*, ed Toulmin Nicolle, vol VII, p 198.

made a specific complaint about Helier de Carteret, the then Bailiff of Jersey. The petition ends with the words—

*“In fidem et testimonium omnium et singulorum premissorum
Sigillum magnum curie Decanatus hujus Insule hiis presentibus
est appensum anno domini millesimo quingetessimo vicesimo
quarto, quarta Die Junii”*

translated as—

“In faith and testimony of each and singular the premises, the great seal of the Court of the Dean of this Island has been affixed hereto in the year of our Lord one thousand five hundred and twenty four, the 4th day of June.”

20 There is later judicial authority for the proposition that the Ecclesiastical Court is the Dean’s Court. On 11 March 1841 the Privy Council heard a civil appeal by a newly appointed Dean of Jersey on behalf of his deceased predecessor. In delivering his judgment,²⁵ Sir Herbert Jenner referred to the Canons of 1623 as constituting the ecclesiastical law of Jersey and that—

“The Ecclesiastical Jurisdiction, as constituted by these Canons, is exercised by the Dean in his Court, in which he presides either in person or by his Commissary whom he has power to appoint by the 30th of these Canons . . . The 22nd Canon enumerates the cases of which the Dean has cognizance, and the offences in which he is empowered to punish according to the Ecclesiastical Law.”

21 Relevant authority can also be found in statute. The preamble to the Probate (Jersey) Law, 1949 sanctioned by Her Majesty in Council states that it is a law “to provide for the transfer of probate jurisdiction from the Dean and the Ecclesiastical Court to the Royal Court (Probate Division) . . .”. Significantly this law contains no mention of jurisdiction in the Bishop, but explains how the probate jurisdiction was vested until 1949 in the Dean and the Ecclesiastical Court. Indeed the emoluments received by the Dean in his judicial role as regards probate were reported in an *Account of the Annual Salaries of Judges in the Courts of Probate* ordered to be published by the House of Commons on 22 March 1861.²⁶ The entry for “Le Breton, Very

²⁵ *Jersey (Dean) v Rector of* — III Moo 230, [1840] UKPC 18.

²⁶ An Account presented pursuant to Acts 20 & 21 Vic c 77 & 79 of the Annual Salaries of the Judges, Registrars, Deputy Registrars, Clerks and all Others holding Offices in the Courts of Probates in the year ended 31 December 1860, p 11.

Reverend William C.” describes his Office as “Dean, Court of the Dean of the Island of Jersey, Diocese of Winchester”.

22 Other writings confirm the status of the court as that of the Dean. In reference to a *cause célèbre* where a clergyman was hanged, Le Quesne²⁷ states that “The name of that priest was Richard Averty. He was the promoteur or official of the Dean’s Court”. Durell’s note on Falle’s *Account*²⁸ said that “The account of Richard Averty is in . . . the Jersey Chronicles. It is said there that he resided in St. Brelade’s parish, and that he was the Official of the Dean’s Court.” Chapter XXVIII of the 1832 edition of the *Chroniques*²⁹ refers to Averty as “*promoteur de la Cour du Doyen en la dite Isle*”. The historian George Reginald Balleine wrote that Averty had been a “Proctor of the Dean’s Court” who had “grievously oppressed the poor folk”.³⁰

23 Le Quesne’s constitutional history went further in referring to the Ecclesiastical Court as that of the Dean. In reference to the end of the presbyterian interlude which followed the Reformation in Jersey he says³¹ that—

“Bandinel was therefore the first protestant dean of Jersey. His patent is of the year 1620, and he was sworn into office on the 15th April of that year. He held his Court for the first time on the eighth day of May following.”

Durell’s note on Falle’s *Account*³² reflects the continuity of the court from earlier times, and that the Court was Bandinel’s (the “first Protestant Dean”), not Lancelot Andrewes’ (the then Bishop).

24 Thomas Lyte says in his *Sketch of the History and Present State of the Island of Jersey*³³ that “There is also a Dean’s Court, for the transacting of ecclesiastical matters, at which the Dean presides, and the twelve ministers are his assistants.”

²⁷ Le Quesne, *op cit*, p 150.

²⁸ Falle, *op cit*, Note 198, p 438.

²⁹ Syvret, *Chroniques des Iles de Jersey, Guernesey, Auregny et Serk auquel on a ajouté un abrégé historique des dites Iles*, Guernsey: Mauger, 1832.

³⁰ Balleine, *History of Jersey*, Chichester: Phillimore & Co Ltd, 1981.

³¹ Le Quesne, *op cit*, p 151.

³² Falle, *op cit*, Note 207, p 442.

³³ Lyte, *Sketch of the History and Present State of the Island of Jersey*, London: Egerton, 1808.

25 In an article on Bishop Sir Jonathan Trelawny, who was translated to the See of Winchester in 1707, the Rev Michael Smith³⁴ is unequivocal when he says that—

“The ecclesiastical court of the Dean of Jersey was restored and exercised a jurisdiction similar to that enjoyed by any archidiaconal court in England, indeed greater, because matrimonial cases usually reserved for consistory courts were also to be tried before the dean. In deference to presbyterian synodical practice the dean was never to act as sole judge. All rectors might sit with him and a minimum of two was needed to validate the sentences . . .”

26 The Office of Dean of Jersey, being a Royal *donatis*, is distinct from the office of rural or area dean of a deanery in England. It is, however, important to consider that even in England the rural deans held court, particularly in the twelfth and thirteenth centuries. Felix Makower, in his *Constitutional History and Constitution of the Church of England*,³⁵ notes that the English rural dean’s jurisdiction “was afterwards absorbed by the archdeacon’s court; and but few traces of it have survived until the nineteenth century”, but adds as a footnote to that paragraph—“Here belong the jurisdiction of the dean in Jersey and Guernsey”.

The absence from Jersey of the Bishop

27 Despite the annexation of the Channel Islands to the See of Winchester in 1568, no bishop of the Church of England set foot in Jersey until 1818, and no Bishop of Winchester visited in person until later that century. Le Quesne³⁶ states that—

“Although attached to an English diocese, the Channel Islands were deprived of the advantage of the presence of a protestant bishop till the year 1818. Then Dr Fisher, bishop of Salisbury, acting for the old and infirm bishop of Winchester, landed in the Islands; and for the first time, the rite of confirmation by a protestant bishop was administered to them.”

28 Without a Bishop to confirm Islanders, decisions as to admittance to Holy Communion had to be made in the Island without reference to

³⁴ “Bishop Trelawny and the Church in the Channel Islands 1680-1730” *BSJ*, 1981–1984, 320 at p 321.

³⁵ Makower, *Constitutional History and Constitution of the Church of England*, London: S. Sonnenschein, 1895.

³⁶ Le Quesne, *op cit*, p 178.

the Bishop. Oversight of these matters was in the hands of the court presided over by the Dean of Jersey.

29 In the absence of a Bishop from Jersey for 250 years there was no establishment by a Church of England bishop of a court in Jersey. We must therefore conclude that the Ecclesiastical Court continued in existence after 1623 with the sanction of James I in the form it had

previously taken. That court has continued after 2012 with the sanction of our present Queen, as the court of the Dean of Jersey.

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