

MISCELLANY

The King is dead: long live the King!

1 The publication of this issue coincides with the retirement of one of our Patrons and a distinguished Bailiff of Jersey, Sir Michael Birt, and the swearing in of his successor, William Bailhache, currently Deputy Bailiff of Jersey, under Letters Patent granted by the Queen. It seems apt to recall, particularly as the occasion is by chance close to the 400th anniversary of the issue of the relevant Letters Patent,¹ the acrimonious dispute between one of the Bailiff's predecessors, Jean Hérault, and the Governor of the day, Sir John Peyton, which laid the foundation for the division of responsibility between the two offices that endures to this day.²

2 The dispute, or “controversy” as described in the Letters Patent, related, ostensibly, to the issue of whether the Bailiff was appointed by the Governor, or was a Crown appointment in his own right. There is little doubt that, in the immediate aftermath of the schism of 1204, the Bailiff was a subordinate of the Warden, subsequently known as the Captain or Governor.³ When Peyton was appointed as Governor, his Letters Patent gave him the nomination of the Bailiff and other Crown Officers. On 28 July 1611, however, Hérault obtained a Patent from the Crown, according him the reversion to the office of Bailiff. The incumbent, George Paulet, resigned and Hérault then claimed the office. Peyton objected and petitioned the King to suspend the mandate in Hérault's favour, or otherwise to refer the matter to the Privy Council.

3 Peyton's case rested upon the authority of his own Letters Patent and the practice of his predecessors. He asserted that—

“the office of Bailiff is *ad placitum*;⁴ and that Mr George Paulet was by my verbal gift constituted in the said office, and

¹ Letters Patent of King James I, issued at Westminster on 9 August 1615. The Letters Patent are printed in full as an appendix to Falle's *Caesarea* (London, 2nd edn, 1734, at 335).

² Sir John Peyton succeeded Sir Walter Raleigh as Governor of Jersey in 1603 upon the accession of James I.

³ See Le Patourel, *The Medieval Administration of the Channel Islands 1199–1399* (1937, OUP, at 51 *et seq.*).

⁴ That is, a decision of the Governor.

accordingly so as he had no power to resign that wherein he had no settled estate. That all former governors have been trusted with the nomination of all officers, as well of judicature as otherwise . . .”

4 Hérault responded by appealing to the King’s pride and his known stance on the extent of the royal prerogative. He claimed that the King had from time immemorial made the appointment of Bailiff by letters patent under the great seal, and that His Majesty’s noble predecessors had—

“not only the appointment of . . . the bailly, but also all other officers of justice and other royal prerogatives are expressly reserved unto his Majesty and his noble successors, kings of England; and the captain and jurats of the same Island forbidden to intermeddle in the nomination thereof in any ways. Notwithstanding, some of the late captains of the said Island, having no lawful authority, have taken upon them to establish the same officer.”

5 But Hérault’s trump card was the charter of King Henry VII,⁵ wherein it is ordered—

“that the king shall have the nomination of the bailly, of the dean, of the sheriff [Viscount], and of his Attorney in the said Isle, and that neither the captain nor the jurats shall in any wise intermeddle in the appointment of them.”⁶

There were bitter and ill-tempered further exchanges before the point of law as to the primacy of one or other of the Letters Patent was referred by the Privy Council to the Lord Chief Justice of England.

6 Hérault was the undoubted victor. The Order in Council of 9 August 1615 was expressed in unequivocal terms—

“. . . wee doe ordain and command that the said Hérault be put in the present and peaceable possession of the said office of bayliffe, accordinge to the purport and meaninge of our said letters pattents, without any disturbance or hinderance to bee by the said Sir John Peyton, or any other of the same Island, or any other captaine or governour that shall hereafter succeed in that

⁵ 7 June 1497.

⁶ See the much fuller account of this dispute in Le Quesne, *A Constitutional History of Jersey* (London, 1856, Longman Brown, Green and Longmans, at 242 *et seq.*).

place, or under any pretence or colour whatever, by any other person or persons whatsoever.”⁷

7 The Order in Council continued—

“And we do likewise command and enjoyne the said Sir John Peyton, and all others, captaines or governours of the said Island, present and to come, never hereafter to attempt or intermeddle in any wise in the nomination, institution, and appointment of the said offices of bayliffe, deane, viscount, or attorney or advocate, or any other publicke officer of justice within the said Isle, or in any wise to infringe or violate either the privileges granted to the inhabitants thereof by the most excellent prince, of famous memorye, King Henry the Seventh, or the statutes and ordinances made by the same kinge for the good and peaceable government of the said Island, upon paine to incurre our indignation and further punishment at our pleasure.”⁸

8 Sir John Peyton was bloodied but unbowed, and later made further complaints to the Privy Council about the conduct of Bailiff Hérault. The complaints are too numerous to recount here in full. *Inter alia*, according to Peyton, Hérault had expressed himself in the Royal Court as having primacy over all the King’s officers in the Island, had stated that Peyton was no more than the captain of the castles and “the muster-maister of the country”, and that the Bailiff took precedence over the Governor. Peyton further complained that Hérault had asserted the power to convene the States Assembly without the direction of the Governor. Most serious of all, he claimed that [Hérault’s]—

“attempts and usurpations are most dangerous in a frontier place soe near to the defected duchie of Normandie, whereof it was sometime a member, especially considering he is a native, borne of so presumptuous and daring a spirit, and whose fidelity is cautionable by nothing but his person.”

9 Hérault responded in kind, and did not mince his words. He denied the first allegation and stated that Peyton had not ceased to attempt to undermine his authority as Bailiff, inducing the people to disobedience. As to the convening of the States, Hérault replied that jurisdiction and execution of laws had always been the responsibility of the Bailiff and Jurats; that in recent years it had become customary to consult the Rectors and Constables, and that the Bailiff had always

⁷ *Ordres du Conseil* Vol 1, 1536–1678, at 90 *et seq.*

⁸ *Ibid.*, at 96.

convened and presided over the assembly of the Three Estates.⁹ Hérault conceded that he was a native, and—

“hopeth that your highnes will not esteem him the worse for it, especially considering that all the former bayliffs, or the most part of them, have been natives of that country; and that it cannot be showed that ever any of the said bayliffs, being that countrymen, have ever at any time given occasion to suspect their loyalty.”

He went on to assert the loyalty of all the inhabitants in all ages to their sovereign.

10 The matter was determined by His Majesty in Council, and an Order issued on 18 February 1617. Again, Hérault was vindicated, although this time there was a sting in the tail. The Order stated—

“We do acquit the said bailly of any undutifulness to the king’s majesty, or any injustice in the civil government; but not from heat of words which have unfitly fallen from him, for which we thought fit to give him a sharp reprehension.”

Most significantly, the Order continued—

“we hold it convenient that the charge of the military forces be wholly in the governor, and the care of justice and civil affairs in the bailiff.”¹⁰

11 With this economy of words was the constitution of the Island settled. The Governor (for which one might read the UK government) was responsible for defence; the Islanders under their Bailiff were confirmed in their judicial independence and domestic autonomy. No one at that stage considered that foreign affairs merited a mention.

12 The antagonism between Peyton and Hérault continued until Hérault’s death in 1626. In 1621, Peyton even secured Hérault’s suspension in relation to different issues, but the Bailiff was later reinstated with all his rights and privileges. Hérault was undoubtedly a difficult man, haughty despite his humble origins, and even overbearing at times. But he was a just man, with a strong sense of

⁹ Hérault lost this argument. The Privy Council decided that the States Assembly could only be convened with the Governor’s consent.

¹⁰ Visitors to the Island are always amused to find that this Order in Council finds representation in the furniture and ceremonial of the Royal Court and the States Assembly. The Lieutenant Governor’s seat is seven inches lower than that of the Bailiff, and on all occasions when the Governor attends, the Bailiff precedes the Queen’s personal representative into the Court or the States as the case may be.

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what was right, and a passion for the constitutional privileges of his native Island.¹¹ Le Quesne records that Hérault once dismissed his own brother from his clerkship for having charged a fee of four sous when he was entitled only to one.¹²

13 Relations between Governors and Bailiffs during the last 70 years have been more cordial, if not, indeed, friendly. Yet the need to protect and defend the constitutional privileges of the Island has not diminished. The *Review* takes this opportunity of thanking Sir Michael for his years of service to the Crown and to the Island, and of welcoming Mr William Bailhache as our new Patron.

¹¹ Sir Edward Conway and Sir William Bird, Royal Commissioners, reported of Hérault in July 1617—

“We think it our duty for his majesty’s service to give our opinions of the bailiff; that his violence is rather in words to keep up his authority than in act to oppress justice; believing him, even by the testimony of his enemies, to be very sincere in the execution of justice, and judging upon good experience.”

¹² See Le Quesne, *op cit*, at 261. Le Quesne also records that Hérault was the first Bailiff to wear a robe in the Royal Court.