

MINQUIERS AND ECREHOS CASE

Judgment of 17 November 1953

The Minquiers and Ecrehos case was submitted to the Court by virtue of a Special Agreement concluded between the United Kingdom and France on December 29th, 1950. In a unanimous decision, the Court found that sovereignty over the islets and rocks of the Ecrehos and the Minquiers groups, in so far as these islets and rocks are capable of appropriation, belongs to the United Kingdom.

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In its Judgment, the Court began by defining the task laid before it by the Parties. The two groups of islets in question lie between the British Channel Island of Jersey and the coast of France. The Ecrehos lie 3.9 sea miles from the former and 6.6 sea miles from the latter. The Minquiers group lie 9.8 sea miles from Jersey and 16.2 sea miles from the French mainland and 8 miles away from the Chausey islands which belong to France. Under the Special Agreement, the Court was asked to determine which of the Parties had produced the more convincing proof of title to these groups and any possibility of applying to them the status of *terra nullius* was set aside. In addition, the question of burden of proof was reserved: each Party therefore had to prove its alleged title and the facts upon which it relied. Finally, when the Special Agreement refers to islets and rocks, in so far as they are capable of appropriation, it must be considered that these terms relate to islets and rocks *physically* capable of appropriation. The Court did not have to determine in detail the facts relating to the particular units of the two groups.

The Court then examined the titles invoked by both Parties. The United Kingdom Government derives its title from the conquest of England by William Duke of Normandy in 1066. The union thus established between England and the Duchy of Normandy, including the Channel Islands, lasted until 1204, when Philip Augustus of France conquered continental Normandy. But, his attempts to occupy also the islands having been unsuccessful, the United Kingdom sub-

mitted the view that all of the Channel Islands, including the Ecrehos and the Minquiers, remained united with England and that this situation of fact was placed on a legal basis by subsequent treaties concluded between the two countries. The French Government contended for its part that, after 1204, the King of France held the Minquiers and the Ecrehos, together with some other islands close to the Continent, and referred to the same mediaeval treaties as those invoked by the United Kingdom.

The Court found that none of those treaties (Treaty of Paris of 1259, Treaty of Calais of 1360, Treaty of Troyes of 1420) specified which islands were held by the King of England or by the King of France. There are, however, other ancient documents which provide some indications as to the possession of the islets in dispute. The United Kingdom relied on them to show that the Channel Islands were considered as an entity and, since the more important islands were held by England, this country also possessed the groups in dispute. For the Court, there appears to be a strong presumption in favour of this view, without it being possible, however, to draw any definitive conclusion as to the sovereignty over the groups, since this question must ultimately depend on the evidence which relates directly to possession.

For its part, the French Government saw a presumption in favour of French sovereignty in the feudal link between the King of France, overlord of the whole of Normandy, and the King of England, his vassal for these territories. In this connection, it relies on a Judgment of the Court of France of 1202, which condemned John Lackland to forfeit all the lands which he held in fee of the King of France, including the whole of Normandy. But the United Kingdom Government contends that the feudal title of the French Kings in respect of Normandy was only nominal. It denies that the Channel Islands were received in fee of the King of France by the Duke of Normandy, and contests the validity, and even the existence, of the judgment of 1202. Without solving these historical controversies, the Court considered it sufficient to state that the legal effects attached to the dismember-

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ment of the Duchy of Normandy in 1204, when Normandy was occupied by the French, have been superseded by the numerous events which occurred in the following centuries. In the opinion of the Court, what is of decisive importance is not indirect presumptions based on matters in the Middle Ages, but the evidence which relates directly to the possession of the groups.

Before considering this evidence, the Court first examined certain questions concerning both groups. The French Government contended that a Convention on fishery, concluded in 1839, although it did not settle the question of sovereignty, affected however that question. It is said that the groups in dispute were included in the common fishery zone created by the Convention. It is said also that the conclusion of this Convention precludes the Parties from relying on subsequent acts involving a manifestation of sovereignty. The Court was unable to accept these contentions because the Convention dealt with the waters only, and not the common user of the territory of the islets. In the special circumstances of the case, and in view of the date at which a dispute really arose between the two Governments about these groups, the Court shall consider all the acts of the Parties, unless any measure was taken with a view to improving the legal position of the Party concerned.

The Court then examined the situation of each group. With regard to the *Ecrehos* in particular, and on the basis of various mediaeval documents, it held the view that the King of England exercised his justice and levied his rights in these islets. Those documents also show that there was at that time a close relationship between the *Ecrehos* and Jersey.

From the beginning of the nineteenth century, the connection became closer again, because of the growing importance of oyster fishery. The Court attached probative value to various acts relating to the exercise by Jersey of jurisdiction and local administration and to legislation, such as criminal proceedings concerning the *Ecrehos*, the levying of taxes on habitable houses or huts built in the islets since 1889, the registration in Jersey of contracts dealing with real estate on the *Ecrehos*.

The French Government invoked the fact that in 1646 the States of Jersey prohibited fishing at the *Ecrehos* and the *Chausey* and restricted visits to the *Ecrehos* in 1692. It mentioned also diplomatic exchanges between the two Governments, in the beginning of the nineteenth century, to which were attached charts on which part of the *Ecrehos* at least was marked outside Jersey waters and treated as *res nullius*. In a note to the Foreign Office of December 15th, 1886, the French Government claimed for the first time sovereignty over the *Ecrehos*.

Appraising the relative strength of the opposing claims in the light of these facts, the Court found that sovereignty over the *Ecrehos* belonged to the United Kingdom.

With regard to the *Minquiers*, the Court noted that in 1615, 1616, 1617 and 1692, the Manorial court of the fief of Noirmont in Jersey exercised its jurisdiction in the case of wrecks found at the *Minquiers*, because of the territorial character of that jurisdiction.

Other evidence concerning the end of the eighteenth century, the nineteenth and the twentieth centuries concerned

inquests on corpses found at the *Minquiers*, the erection on the islets of habitable houses or huts by persons from Jersey who paid property taxes on that account, the registration in Jersey of contracts of sale relating to real property in the *Minquiers*. These various facts show that Jersey authorities have, in several ways, exercised ordinary local administration in respect of the *Minquiers* during a long period of time and that, for a considerable part of the nineteenth century and the twentieth century, British authorities have exercised State functions in respect of this group.

The French Government alleged certain facts. It contended that the *Minquiers* were a dependency of the *Chausey* islands, granted by the Duke of Normandy to the Abbey of Mont-Saint-Michel in 1022. In 1784 a correspondence between French authorities concerned an application for a concession in respect of the *Minquiers* made by a French national. The Court held the view that this correspondence did not disclose anything which could support the present French claim to sovereignty, but that it revealed certain fears of creating difficulties with the English Crown. The French Government further contended that, since 1861, it has assumed the sole charge of the lighting and buoying of the *Minquiers*, without having encountered any objection from the United Kingdom. The Court said that the buoys placed by the French Government at the *Minquiers* were placed outside the reefs of the groups and purported to aid navigation to and from French ports and protect shipping against the dangerous reefs of the *Minquiers*. The French Government also relied on various official visits to the *Minquiers* and the erection in 1939 of a house on one of the islets with a subsidy from the Mayor of Granville, in continental Normandy.

The Court did not find that the facts invoked by the French Government were sufficient to show that France has a valid title to the *Minquiers*. As to the above-mentioned facts from the nineteenth and twentieth centuries in particular, such acts could hardly be considered as sufficient evidence of the intention of that Government to act as sovereign over the islets. Nor were those acts of such a character that they could be considered as involving a manifestation of State authority in respect of the islets.

In such circumstances, and having regard to the view expressed above with regard to the evidence produced by the United Kingdom Government, the Court was of opinion that the sovereignty over the *Minquiers* belongs to the United Kingdom.

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Availing themselves of the right conferred on them by Article 57 of the Statute, Judges Basdevant and Carneiro, while concurring in the decision of the Court, appended to the Judgment statements of their individual opinions. Judge Alvarez, while also concurring in the decision of the Court, made a declaration expressing regret that the Parties had attributed excessive importance to mediaeval evidence and had not sufficiently taken into account the state of international law or its present tendencies in regard to territorial sovereignty.