

Between	H.M.'s Receiver General	Plaintiff (S.C.N.)
And	Selab Securities Securities Limited	Defendant (R.A.F.)
And	Elizabeth Chrystie Obbard (née Gauntlett)	Third Party (C.M.B.T.)
And	H.M.'s Attorney General	Fourth Party (S.C.N.)

Before Deputy Bailiff, Jurats H. Perrée and
C.S. Dupré

30th January, 1985

Judgement of Court on Preliminary Issue of whether or not the infill is situated over the foreshore (~~see S.C.N.'s letter to Bailiff's Secretary of 28th January, 1985~~),

Deputy Bailiff:

This action arises from a claim by H.M.'s Receiver-General that the Defendant has erected some gabions which is a form of sea protection, on land, which is claimed by H.M.'s Receiver-General as belonging to the Crown as the owner of the foreshore.

The land is situated to the South of the property "Roqueberg", owned by the Defendant, and the Court had the opportunity this afternoon of visiting the scene.

By agreement between the Parties, the Court was asked to decide a preliminary issue, which is a question of fact, as to whether, when the seawall was built, in 1873, it was erected either on the foreshore and close to and abutting the Defendant's land, or further out on the foreshore, and there was some infilling between it and the Defendant's land. We were referred, by Counsel, to a number of plans, the most important one being in 1873 when the wall was built, as part of the general policy of the States, at that time, of protecting certain parts of the Island from erosion by the action of the sea. There is shown on that plan the seawall which was eventually built and north of it is a line; that line, it is said, is the foot of the bank which was there at the time the wall was built and it therefore follows that there is a gap between the foot of the bank and the north side of the seawall, which was the Crown's and remains so. However, we were directed by Mr Falle,

for the Defendant, to a section of the 1873 plan, which to our mind shows clearly that the section, which is at the West end of the seawall, which is a continuation from "Roqueberg", westward, that the top of the bank was aligned more or less level with the top of the seawall and we are satisfied that that section showed that the builders placed their foundations as close as they could to the land which they were protecting. We are satisfied that that was a principle which they carried out right through the building of the wall, and therefore we came to the conclusion that the wall was built practically up against the land of "Roqueberg". We were referred to a report of 1947 by the States' Engineer or an official in his Department in which he refers to the wall in respect of "Roqueberg" as being "at present against a bank". Now, it is clear to us that the bank has disappeared because of wind and tide, but we are satisfied that it is clearly shown in that report as being there. And secondly, there is a comment at the bottom of Mr Le Sueur's report, which is interesting. He says this, after referring to the wall "Whether this Committee (that is the Public Works and Main Roads Committee's Empiètement Section) recommends to claim any ground going East of this promenade (the promenade is of course, West of "Roqueberg"), is a point to be decided upon. There is no doubt that the width could not be very great".

Mr Falle has asked us to find that, even if there is some possible foreshore to the North of the wall abutting "Roqueberg", that portion is very small. We are satisfied, as we have said, that the interpretation which Mr Falle wishes us to place on the plan is the correct one. Miss Nicolle, for the Crown, has argued that certain measurements shown on a 1938 plan, which is in fact a copy of the 1873 plan, are the correct measurements, and indicate that the line, which I have said, is shown running North of the coping of the seawall in the 1873 plan represents the foot of the bank. We cannot accept that interpretation. We think, on balance, that the interpretation of Mr Falle is the correct one.

We look now at the Order of Justice, and we find that the Defendant is being asked to remove as much of the gabion wall as encroaches on the land belonging to Her Majesty. Well, we are satisfied that none of the gabion wall encroaches, and therefore we cannot confirm that order. We therefore do not do so. The gate, which I understand was there, has been removed, by agreement, pending the hearing of the case, and we express no views on that at all. And therefore, looking at the plan - although I say here that it might have been easier, for us, had we had the advantage of hearing an engineer today to assist us to look at the plan, but I think that it was sufficiently clear for us to understand it, we find on balance for

the Defendant on the preliminary point as to exactly where the wall was built. It follows that we think that the infill is not situated over the foreshore. If there is any infill situated over the foreshore, it is a relatively small amount.