

ROYAL COURT
(Superior Number)

5th June, 1989

Before: R. Vibert, Esq., O.B.E., Commissioner, and
Jurats Coutanche, Vint, Lucas,
Mrs. Myles, Baker, Le Boutillier,
Orchard, Hamon, Gruchy,
and Mrs. Le Ruez.

Referral by the Inferior Number to the
Superior Number, on the 19th May, 1989,
of the 'Assermentation' of Fred Philip
Webber Clarke as 'Connétable' of the
Parish of St. Helier.

The Attorney General,
Advocate F.C. Hamon for Mr. Clarke.

ROYAL COURT

5th June, 1989

Constable of St. Helier

COMMISSIONER VIBERT: Mr. Fred Philip Webber Clarke was re-elected as Constable of St. Helier on the 26th April, 1989. The Inferior Number of the Royal Court, by Act of the 28th April, 1989, referred to the Full Court the question whether the relationship of Mr. Clarke with the Company C. Le Masurier Limited was incompatible with the position of Constable of St. Helier.

On the 8th May, 1989, the Full Court was informed by both the Attorney General and Counsel for Mr. Clarke that the Company was the owner of a great number of on-licence and off-licence establishments in St. Helier and the Island; Mr. Clarke was a Director and Chairman of the Board, and took the Chair at its meetings; and that he daily opened the Company mail and signed the Company cheques.

On the basis of these facts, the Court found that there was incompatibility between Mr. Clarke's position in the Company and the office of Constable of St. Helier.

The Court ruled that Mr. Clarke had to choose between the two positions, and that if he was willing to resign his position as Chairman and Director of Le Masuriers the incompatibility would cease, and his swearing-in could proceed. The Inferior Number was asked to reconsider the position on Friday, the 19th May. If by that time Mr. Clarke had resigned these positions, and held no office in the Company, his swearing-in could proceed. If not, the Inferior Number was to order a new election.

On that day the matter duly came before the Inferior Number. The Court was informed that Mr. Clarke had resigned from the Board of Directors of the Company, and from the Boards of a number of subsidiary Companies holding liquor licences in the Parish of St. Helier. He had however retained his directorship of some twenty-four subsidiary Companies holding liquor licences outside St. Helier, and the Attorney General expressed the view that incompatibility continued. The matter was accordingly again referred to this Court.

Advocate Hamon contended that the Court's only duty was to consider whether the requirements of our previous judgment had been complied with; and that Mr. Clarke had in fact gone further than required, in that he had resigned not only from the Board of the parent Company but also from that of subsidiary Companies holding licences in St. Helier. The Court was not entitled, in his submission, to consider the matter afresh, nor to take new facts into consideration.

The Attorney General agreed that the judgment had been complied with, but submitted that new facts were now before the Court, namely that Mr. Clarke was Managing Director of subsidiary Companies holding licences in different parts of the Island; and that unless Mr. Clarke resigned from all offices of a functional or managerial nature within the Company, it could not be said that there was no incompatibility, or that it was clearly seen by all that there was no incompatibility.

The Court is of the opinion that the requirements specified in its judgment have been satisfied, but has considered the information now before us, namely, that although Mr. Clarke has resigned from the Board of the holding Company, and from the Board of the subsidiary Companies holding licences in the Parish of St. Helier, he remains as Managing Director of Companies with licences in other Parishes.

The Court is unanimous in its view that the fact that Mr. Clarke holds offices in Companies holding licences in other Parishes is not incompatible with the position of Constable of St. Helier.

The Court therefore finds that his swearing-in may proceed.

Mr. Clarke will be refunded his costs in connection with this hearing as in the former.

The Court also wishes me to say that it quite understands the Attorney General's action in placing this matter for further consideration as he did. The Court has found that swearing-in may proceed and it could proceed now or as Mr. Clarke would prefer could be deferred until the next sitting of the Inferior Number, next Friday.