

ROYAL COURT  
(Héritage Division)

84.

3rd May, 1995

Before: The Deputy Bailiff and Jurats  
Blampied & Herbert

Voyeurs: Mrs. S. O'Connor; Mr. A.W. de Louche;  
Mr. R.S. Cox; Mr. M.N. Le Maistre;  
Mr. D. Leybourne; Mr. E.R.F. Salaun;  
Miss J.F. Arthur; Mr. M.R. Sullivan;  
Mr. N.P. Cabot; Mr. B.J. Dauny;  
Mr. G. D. Renault; Mr. P. Cornic.

Arpenteur: Mr. C.N. Aubin.

Between	Reginald Edmund George Romeril	Appellant
And	Marguerite Annie Rogers	Respondent

Judgment on Costs of *Vue de Justice* and of  
*Vue de Vicomte*.

Advocate J.D. Kelleher for the Appellant.  
Advocate M.St.J. O'Connell for the Respondent.

JUDGMENT

5 THE DEPUTY BAILIFF: This is an application for costs by Miss Marguerite Annie Rogers following a decision of the Experts convened on a *Vue de Justice*. A *Vue de Vicomte* was held on 15th September, 1992, and on 19th December, 1992. The defendant, Mr. Reginald Edmund George Romeril, was summoned to appear before the Royal Court on 4th November, 1994, to witness confirmation of the Viscount's record.

10 He opposed the registration of the record and requested a *Vue de Justice*. Twelve voyeurs were duly empanelled; they visited the site, heard argument on the contractual rights of the parties; reconsidered the verbal evidence given at the *Vue de Vicomte* and re-visited the site.

15 It has to be recalled that the record of the *Vicomte* says in part:

5 "Que les limites des propriétés respectives de l'actrice  
et du défendeur ne sont pas contigues et que, par  
conséquent, lesdits Experts ne peuvent pas tirer une ligne  
de démarcation entre ces deux propriétés."

10 The Voyeurs were at pains to point out when they retired to  
consider their decision, and at a very early stage, that however  
long they were to sit they were firmly of the view that the  
properties in dispute were not contiguous. As there was such a  
fount of conveyancing knowledge gathered together the Court asked  
if they could give some guidance to the parties on this point but  
without in any way obliging them to do so.

15 The voyeurs on their return to Court this morning were  
unanimous in their opinion. They reiterated the words used above  
in the record of the Vicomte.

20 They went on to give a helpful indication to the Court (and  
they gave this information, I must stress, voluntarily) that they  
believed from the evidence presented that there were two areas of  
land belonging to third parties which separated the plaintiff's  
and defendant's properties. From the evidence provided it  
appeared to them that the likely owners were the Parish of St.  
25 Helier and the heirs of Thomas Rose.

30 The Respondent, in our view, is entitled to her costs. The  
only point at issue is the form that those costs should take.  
Advocate O'Connell asked for indemnity costs, Advocate Kelleher  
submits that the costs should be taxed in the normal way.

35 Firstly, although not cited to us by Counsel, we feel bound  
to include in this judgment a passage from Le Gros, page 13 of his  
work, "Traité du Droit Coutumier de l'Ile de Jersey" (Jersey,  
1943) which reads:

40 "*Le bornage opéré par les six experts se fait à frais  
communs. La raison c'est que le bornage profite  
également aux propriétaires des terrains contigus. Les  
frais occasionés par une Vue de Justice ou une Grande vue  
de Justice peuvent être à dire de Justice, à la charge de  
la partie qui a blâmé à tort le record du Vicomte ou le  
Ressort de Vue.*"

45  
50 I do not feel that that passage binds us today. Clearly the  
commentator envisages a decision being made in normal  
circumstances where the boundary is clear and unambiguous to the  
experts which benefits the parties and which it is therefore at  
the peril of the person opposing the record if he goes on to a *Vue  
de Justice* and does not succeed. But, this is not the case here.  
In this case, in my view, Mr. Romeril had clear indication that  
there might well be land between his property and that of Miss

Roger Yet, he proceeded apace with a *Vue de Justice* and at no time did his counsel avert to this possibility in argument.

5 I was taken through the *inter partes* correspondence in detail.

10 With regard to the letter of 28th February, 1988, written by Mr. Romeril before he took legal advice, I regard that as unfortunately couched. It certainly leads to the conclusion after the carefully detailed letter written to him by Advocate Gould, that it gave Miss Rogers no alternative but to take the action that she did. Her interim injunctions still stand and although we did not confirm them today, Mr. Romeril, in the light of the findings of the Voyeurs, will now no doubt proceed with caution and only with the advice of his lawyer.

20 After some anxious consideration I do not feel that this case warrants costs on an indemnity basis. I therefore award costs on a taxed basis with costs against Mr. Romeril of the *Vue de Vicomte* and the *Vue de Justice*. He must also pay the disbursements in full, that is the expenses of the Voyeurs and the Arpenteur, their luncheon and travelling expenses and, should there be any, the costs of the Viscount.

Authorities

C.S. Le Gros: "Traité du Droit Coûtumier de l'Ile de Jersey  
(Jersey, 1943): p.13.