ROYAL COURT
(Samedi Division) 50.

Before: The Deputy Bailiff, sitting alone.

13th March, 1996

Between:	Lesquende Limited	Plaintiff
And:	Planning and Environment Committee (formerly known as The Island Development Committee) of The States of Jersey	Defendant

Application by the Plaintiff for an Order that its costs, in relation to arbitration proceedings, be paid by the Defendant, pursuant to the provisions of Article 14(2) of the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1961, or, alternatively, pursuant to Article 9(1)(g) of the said Law.

Advocate M.M.G. Voisin for the Plaintiff.
Crown Advocate W.J. Bailhache for the Defendant.

JUDGMENT

THE DEPUTY BAILIFF: In this case, at the request of Counsel, I am sitting alone as the questions that have to be answered turn entirely on points of law.

The plaintiff in this action is a limited liability company "Lesquende" which owned land known as the Belle Vue Pleasure Park. Lesquende made an offer to sell on 19th September 1991 for £6.75M. The States of Jersey wished to acquire the land for the public. An offer to purchase of £5M was made by the States on 14th November, 1991. The twain did not meet and accordingly on 12th December, 1992, the Greffier of the States made a representation to the Royal Court that the land be vested in the public, and that a board of arbitration be appointed pursuant to Article 8 of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961.

On 11th December, 1992, (corrected on 29th July, 1994), the Royal Court made an order vesting the land in the IDC for the States and Public of the Island and also ordered that the purchase price be determined by arbitration. The Act gives the Board as its terms of reference the determination of the "compensation payable for the land" and does not say (as Mr. Voisin says it might have

said) "and any other matter not directly based on the value of the land". This point becomes important if I am to decide this matter under Article 9(1)(g) of the 1961 Compulsory Purchase Law.

The hearing occupied 46 days. Lesquende was represented by Mr. Matthew Horton Q.C. assisted and instructed by Advocate Voisin. The IDC was represented by Mr. Roger ter Haar Q.C. assisted by Mr. George Gadney of the English Bar and instructed by H. M. Solicitor General. The value of all the land expropriated by the States and formerly belonging to Lesquende was valued at £4,900,000. This was less than the offer made by the States on 14th November, 1991.

The last words of the award are these:- *"The Law does not empower us to make any ruling as to the costs of either party".*

Before considering the question of law that I have to decide it is necessary to say that on 23rd November, 1993, there was lodged au Greffe by the Legislation Committee a draft law. This was passed before the States on 7th December, 1993, (some two weeks later) and registered on 22nd April, 1994. It came into force on 8th June 1994.

That law made an addition to Article 14. The amendment does not affect Article 14(2) for the purposes of this judgment because Article 5 of the amendment reads:

> ***"Where the Board has been constituted under Article 8 of the Principal Law to determine any question as to compensation and immediately before the coming into force of Article 4 of this Law that question is pending, the Board shall deal with it or otherwise complete its determination of that question in all respects as if the said Article 4 had not come into force".***

While the matter that I have to interpret is Article 14(2) of the Principal Law, it may be useful if I set out the amended law with the amendment in capital letters as follows:

> ***"Compulsory Purchase of Land (Procedure)(Amendment No. 5) (Jersey) Law 1994.***
>
> ***14(2) The fees of the Board and all expenses incurred in proceedings under this Law shall be paid by the acquiring authority SUBJECT TO REIMBURSEMENT BY ANY OTHER PARTY IN ACCORDANCE WITH AN ORDER OF THE BOARD UNDER ARTICLE 14(A) OF THIS LAW.***
>
> ***ARTICLE 14A***
> ***COSTS***

(1) SUBJECT TO THE FOLLOWING PROVISIONS OF THIS ARTICLE, THE BOARD MAY ORDER THAT THE COSTS OR ANY PART OF THE COSTS OF ANY PROCEEDINGS BEFORE IT INCURRED BY ANY PARTY SHALL BE PAID BY ANY OTHER PARTY AND MAY TAX OR SETTLE THE AMOUNT OF ANY COSTS TO BE PAID UNDER ANY SUCH ORDER OR DIRECT IN WHAT MANNER THEY ARE TO BE TAXED.

(2) IN CONSIDERING THE EXERCISE OF ITS POWER UNDER PARAGRAPH (1) OF THIS ARTICLE THE BOARD SHALL HAVE PARTICULAR REGARD TO ANY OFFER OF A SUM IN COMPENSATION OR ANY NOTICE OF PREPAREDNESS TO ACCEPT A SUM IN COMPENSATION MADE BY A PARTY TO THE PROCEEDINGS BEFORE IT.

(3) WHERE THE BOARD ORDERS THE CLAIMANT TO PAY THE COSTS, OR ANY PART OF THE COSTS, OF THE ACQUIRING AUTHORITY, THE AUTHORITY MAY DEDUCT THE AMOUNT SO PAYABLE BY THE CLAIMANT FROM THE AMOUNT OF THE COMPENSATION PAYABLE TO HIM.

(4) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS ARTICLE, THE BOARD SHALL NOT ORDER A CLAIMANT IN PROCEEDINGS WHICH ARE BEFORE THE BOARD BY VIRTUE OF ARTICLE 5 OF THIS LAW TO PAY THE COSTS OF THE ACQUIRING AUTHORITY.

(5) IN THIS ARTICLE "COSTS" INCLUDES ANY FEES, CHARGES AND EXPENSES OF THE ARBITRATION OR AWARD."

The explanatory note presented to the States by the Legislation Committee when the draft law was lodged says this:-

"Article 3 substitutes a new paragraph (2) of Article 14 of the 1961 Law which relates to the payment of the expenses of the arbitration, to take account of the new Article 14A of the 1961 Law which is inserted by Article 4 and makes specific provision in relation to the power of the Board of Arbitrators to order the payment of costs. This provision is necessary in order to clarify the Board's power in the light of the decision of the Royal Court in the case of Baker v. The Public Works Committee (1968) JJ 965."

As we shall see, the statement that the amendment was necessary to "clarify" the Baker case is, in itself, surprising.

The question of law in the Baker case was whether in a case stated the claimant whose land was being acquired had a right to compensation for injurious affection. In holding that she had no such right, the Court said:

"There is no need to make any order as to costs as Article 14(2) of the Procedure Law of 1961 provides that all expenses incurred in proceedings under the Law shall be paid by the acquiring authority, in this case the Public Works Committee".

That expression might not have been unduly surprising to those who practised in Jersey at the time. The previous law, the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1953, stated this at Article 13:-

"The costs of all proceedings under this Law shall be paid by the acquiring authority".

The Court in the Baker case clearly took the view, rightly or wrongly, that the intention of the law had remained unchanged since the 1961 Law was passed.

This Court has to determine whether the costs and expenses of Lesquende are payable by the Committee pursuant to article 14(2). The question of quantum is not raised (other than in a submission by Article Voisin that the amount of the claim is a spectre that caused the Committee, in some trepidation, to dig in its heels).

There is one matter that I must lay to rest here, in passing.

It is pleaded by the Committee that, *"at the conclusion of the proceedings, the plaintiff's advocate, Advocate Voisin, expressly disavowed any claim for costs pursuant to any award from the Board."* I consider that Advocate Voisin was at the time merely agreeing with the correctness of the Board's approach as expressed in the final words of its award. Certainly, Advocate Voisin was not cutting himself off from making his alternative claim under Article 9(1)(g) as his request for payment of his costs made on 7th March, 1995, was only refused by letter dated 24th March, 1995. The award of the Board of Arbitrators was made on 2nd February, 1995.

Also in passing, it must be noted that the appellant in the Baker case lost her appeal and, in the normal course of events, would have paid her own costs and perhaps those of the respondent Committee. The Court in the Baker case appears to consider that the "expenses incurred in proceedings under this law" were to be met by the Acquiring Authority and logically appear to include not only the costs of the arbitration but also the costs of the appeal (which the appellant lost) which were subsequent to the arbitration proceedings but which arose out of a reference to the Court by the Board.

This Court has a matter of construction before it which is not, in my view, as straightforward as Counsel would perhaps have had me believe.

At one point, early in his interesting address, Mr. Voisin referred me to the case of The Lord Advocate and others v. The Walker Trustees (1912) A.C. 95. That case gives us a clear indication that while a particular interpretation of a provision in a Statute (and I have no evidence other than the Baker case) has been acted upon over a long period, a Court will be cautious to depart from that long usage unless it is clear to the Court that the previous interpretation was wrong. I must say at this early stage that it seems unlikely that the States could, in the use of the word "all", have contemplated a totally open-ended commitment without any restraint and however unreasonable the expenses (whatever they are) could be shown to be. There is, of course, no issue on the pleadings that the acquiring authority has in the past paid or refused to pay expenses in decided arbitrations. I agree with Mr. Bailhache that, however difficult it makes the case, in the absence of evidence, I cannot speculate on what has happened in the past. The pleadings are singularly unhelpful to the Court on this point which may, or may not, be important. I have the Baker case and then, nothing in the *Table des Décisions* that shows that it has been followed or contested.

It is quite clear to me that the purpose of this sitting is only to discover what the legal meaning of Article 14(2) is. The intention of the States is to be ascertained from the text. The legal meaning must be what the States intended. Although not cited to me the words of Donaldson M.R. in Corocraft v. Pan-Am (1969) 1 QB 616 at 638 are always in point:-

> ***"The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments."***

Mr. Bailhache took me through the provisions of previous compulsory purchase laws. The first "Expropriation", a law of 1847, (Loi [1847] touchant l'expropriation forcée de terres, etc. par le Gouvernement de Sa Majesté pour la Construction de Fortifications) speaks in its preamble in this way:

> ***"Que si, d'un côté, il est juste que les propriétaires de terres et autres propriétés requises pour le Service de Sa Majesté et la défense de l'Ile soient convenablement indemnisés à cause d'une expropriation forcée; de l'autre, il convient d'empêcher qu'ils profitent de l'occasion pour en exiger des prix hors de toute proportion à la valeur de la propriété dont la cession leur est demandée".***

There is, in Article 6, an example of the way the States dealt with the "equivalence" factor. It reads:

> ***"Si le prix, auquel la terre ou autre propriété requise pour le Service de Sa Majesté est évaluée en vertu de cette présente Loi, excède le prix offert au propriétaire***

par lesdits Officiers de Sa Majesté, en conformité à l'Article 3, les frais de l'expertise seront à la charge desdits Officiers de Sa Majesté, ou de celui ou de ceux qu'ils représentent.

Si le montant de l'évaluation n'excède pas le prix offert au propriétaire par lesdits Officiers de Sa Majesté pour telle terre ou autre propriété, les frais de l'expertise seront à la charge dudit propriétaire."

and again at Article 10 we read these words:

"Les frais de l'appel seront à la charge de la partie appellante, si la décision des premiers experts est maintenue; si elle est changée ou modifiée, la Cour règlera le paiement des frais, d'après les dispositions de l'article 6."

Those provisions are to some extent similar to the provisions of the Compulsory Purchase of Land (Procedure) (Amendment No. 5) (Jersey) Law, 1994, except, of course, that in these perhaps more sophisticated times the discretion is placed within the discretion of the Board rather than left as in the 1847 law to a concept which appears to be "winner takes all".

In 1948, the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1948 was promulgated. It is, perhaps, interesting to compare the provisions of this law with its predecessor. The owner of the land can now be represented at the valuation of the land by an advocate or an écrivain. An assessor who fails to appear can be liable to pay costs and expenses (the words are treated separately)but more importantly, under article 8(1):

"The costs of the valuation shall be borne by the States."

However a dissatisfied owner had a right of appeal to a Vue de Justice and at Article 9(4):

"If the original valuation is maintained, the costs of the "Vue de Justice" shall be borne by the appellant, but if it is varied in any manner whatsoever the Court may make such order as to the payment of costs as it thinks fit."

Surprisingly, there is no provision in the 1961 law that a lawyer can represent an owner. This provision is also absent from the Compulsory Purchase of Land (Procedure) (Jersey) Law, 1952. That may have a bearing on the fact that the States wished to exclude lawyers; it may have been mentioned for the first time in 1948 only to establish that an écrivain (who of course has no right of audience in the Royal Court) had the same right of audience as an advocate before this particular tribunal.

The 1953 Law revised the procedure. There are now official arbitrators appointed as a panel by the Superior Number and an official arbitrator selected from that panel.

Article 13 reads:

"The costs of all proceedings under this law shall be paid by the Acquiring Authority".

Mr. Bailhache accepted that in 1953 the Acquiring Authority was bound to meet the costs, and that this was a change (I would say a significant change) from the provisions of the previous laws.

Between 1953 and 1961 (a period of eight years) the position remained unchanged.

In 1961, according to Mr. Bailhache, there was a comprehensive alteration to the thinking of the legislature.

The wording of Article 14(2) is new. It does not appear to follow any wording found in similar English enactments.

Mr. Bailhache referred me to the Heading but as the learned Court of Appeal said in Burt v. The States of Jersey (14th July 1994) Jersey Unreported CofA at page 6:

> ***"The Article itself being unambiguous, it is unnecessary to consider the heading. Indeed, for the purpose of interpretation it would be improper to do so. A heading may give very limited help in the interpretation of an ambiguous provision, but a heading can never be used to change the meaning of an article which without the heading is clear and unambiguous."***

What is unclear and ambiguous about the words "all expenses incurred in proceedings under this law shall be paid by the acquiring authority"? On the face of them, nothing at all.

There are however two matters that are of concern within the phrase.

What are meant by "expenses"? And, what are "the proceedings" in which all those expenses are to be paid?

Article 14(1) is clear. It relates solely to requiring the Board to be paid a fee in accordance with a scale which the States determine by regulation. It may (or may not) be important that the scale is to be determined by the States. That may be important if Article 3 were drafted with that Article in mind. I do not conceive that Article 3 (which makes it a prerequisite to

compulsory purchase that a plan of the land to be acquired by the States be approved and that a vote of credit be voted) was contemplating the provisions of Article 14(1). It may have included some estimate of the fees based on an estimate of the time that the arbitration would take but it is really concerned with the amount of monies that will be needed to fortify the award that will in due course be made.

Mr. Bailhache argued that the "fees of the Board" does not include, because it does not mention, other fees such as those of Counsel and of experts but there are many ways that words could have been added to make the article crystal clear. The paramount rule of construction is that the article is to be interpreted according to its expressed and manifest intention.

Let me say at once that I cannot see that the use of the word "all" limits the expenses to expenses of the Board.

Before I progress the matter of interpretation on this point further, I need to be clear as to what is meant by the words "the proceedings under this law".

Mr. Voisin relied strongly on the case of Pajama Limited v. Ferpet Investments Limited (1982) JJ 137 where at 138 the Court said:

> ***"This is an appeal by Ferpet Investments Limited from an order of the Greffier taxing a number of accounts as a result of the award by an arbitrator who was appointed to settle the differences between the parties out of Court. There are three matters to which I wish to refer. First, in deciding how to approach the question of costs, the award of costs before an arbitrator is subject to the same principles as the award of costs by this Court. Secondly, the expression "legal costs" used by the arbitrator in his award should be interpreted broadly so as to not leave the plaintiff in a disadvantageous position having regard to the award itself and to the fact that the plaintiff had to take action for the recovery of the amounts due as found by the arbitrator. Therefore, we think Mr. Michel is right when he says that "legal costs" means nothing more than those costs which are recoverable in law. They are more than just the costs incurred by the legal profession".***

If, Mr. Voisin submitted, the decision in that case meant that a broad definition was adopted, that only followed the principle of equivalence. If you limit the costs incurred by a landowner in establishing the true value of his land (and at the material time this means whether he wins, or loses before the Board) then a fundamental principle of compulsory purchase is displaced. The Acquiring Authority is no longer compensating the owner for the true value of his land.

In the well known case of Horn v. Sunderland Corporation (1941) 1 All ER 480 Scott L.J. said at page 496.

> *"On a compulsory sale, however, the principle of compensation will include in the price of the land, not only its market value, but also personal loss imposed on the owner by the forced sale, whether it be the cost of preparing the land for the best market then available or incidental loss in connection with the business he has been carrying on, or the cost of reinstatement. Otherwise, he will not be fully compensated. Here we come to the other side of the picture. The statutory compensation cannot and must not exceed the owner's total loss, for, if it does, it will put an unfair burden upon the public authority or other promoters, who on public grounds have been given the power of compulsory acquisition, and it will transgress the principle of equivalence which is at the root of statutory compensation, which lays it down that the owner shall be paid neither less nor more than his loss. The enunciation of this principle - the most fundamental of all - is easy enough. Its justice is self-evident, but its application to varying facts is apt to be difficult."*

Mr. Bailhache suggests that "legal proceedings" could be only those proceedings envisaged by Article 8 of the Law (where, for example, it is necessary to determine any question as to compensation). It could be those proceedings and the proceedings before the Board or it could mean all work in the compulsory purchase part of the Law. If it meant legal proceeding under the Law, that might explain the decision in the Baker case. It is a nettle which I shall grasp. I have no doubt that proceedings means proceedings for the acquisition of the land and any legal proceedings that arise from it. I am bolstered in my view by reading Article 19 of the law which reads:

> *"Repeal and Transitional Provision*
>
> *The Compulsory Purchase of Land (Procedure)(Jersey) Law, 1953, is hereby repealed:*
>
> *Provided that where before the commencement of this Law the States have resolved to acquire any land by compulsory purchase in accordance with the provisions of the said Law of 1953 and the proceedings for the acquisition of the land have not been completed, the proceedings may be completed as if this Law had not been passed."*

I do not need to examine any further authorities. I do not (because Mr. Bailhache mentioned it) subscribe to the view that proceedings can be stretched in some vast bunjee jump to include

the expenses of third parties if the States decided to sell the land acquired under the provisions of Article 17. This Court may, I have no doubt, presume that the States intended that common sense should be used in construing a statute. As Bailiff Le Masurier said in James Barker v. Jersey Electricity Company Limited (1973) JJ 2491 at 2501:

> ***"Having considered this case in the light of all the legal authorities known to us and having come to the conclusion to which they led, we next consulted the book of common sense which is also an authority in this Court, and in less time than it takes to say it we were led to the same conclusion".***

Mr. Bailhache says that "the proceedings" must stop at some point and that point should be the registration of the Award under Article 13. He says that this is important because the Board, once the award is registered, becomes defunct.

That may explain the distinction between the Baker case (which was a reference by the Board under the law) and the two Le Gros cases (Le Gros v. The Housing Committee JJ (1974) 77 and JJ (1977) 59). In the first Le Gros action, the Court ordered the Housing Committee to pay the costs of the appeal; in the second Le Gros action, no order was made as to costs pending the raising of other matters which were referred back to the Board.

I agree with Advocate Bailhache that the distinction is that the Le Gros case was essentially a judicial review concerned with compulsory purchase; the Baker case was a direct reference to the Court by the Board. It seems to me that in proceedings which are in the "Le Gros Form", the Court has the usual discretion as to the destiny of the costs. I see no reason to distinguish these proceedings so as to bring them within 14(2). The "start" date seems at first blush to be the date upon which proceedings were set in train under Article 4. But what would happen if under Article 4(1) a notice were served and the Acquiring Authority accepted the compensation that the owner required? Would the authority be bound to pay his expenses under Article 14(2) as a "proceeding" under this law, even though a Board had not yet been appointed? In my view (and here I agree with Mr. Voisin) if a price were agreed, the costs unless they were exorbitantly high would always be taken into account in agreeing a price for the land otherwise the purchaser would be receiving less for his land than its true worth. In my view the proceedings start when the provisions of the law concerning the assessment of compensation are invoked by the Acquiring Authority. They clearly end (unless there is a reference) once the award has been delivered by the Board.

As a parenthesis, I recall that Mr. Bailhache asked that I examine the words "shall be paid" in Article 14(2).

In Maunsell v. Olins (1975) A.C. 635 where, on its facts, the House of Lords divided three to two on a somewhat strained construction of the word "premises", Lord Simon of Glaisdale said at page 391:

> ***"It is sometimes put that, in statutes dealing with ordinary people in their everyday lives, the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction, in which case some secondary ordinary sense may be preferred, so as to obviate the injustice, absurdity, anomaly or contradiction, or fulfil the purpose of the statute: while, in statutes dealing with technical matters, words which are capable of both bearing an ordinary meaning and being terms of art in the technical matter of the legislation will presumptively bear their primary meaning as such terms of art (or, if they must necessarily be modified, some secondary meaning as terms of art)."***

I have no doubt, in considering the matter, that "shall" is mandatory.

We turn to "all expenses" In my view, the words "all expenses" mean that, giving the words their ordinary and usual grammatical meaning, the States intended that they should pay all the expenses incurred by the parties involved in the arbitration hearing. But what are "expenses". The 1953 law which this law replaced said the "costs" of all proceedings under the law were to be paid by the Acquiring Authority. Why should the States have moved from "costs" to "expenses"? Are they synonymous or is one more or less restricted in its compass than the other?

Mr. Bailhache gave us a helpful example of absurdity. A landowner wishing to get the best possible price for his land went to see a very large number of estate agents (say twenty) all of whom valued his land at £1,000. The twenty-first valued his land at £1,500. If he went to arbitration and his chosen expert (number twenty-one) lost the argument and the Board awarded not £1500 but £1000 would he be entitled to put in the fees of the expert and the twenty other experts that he had consulted and rejected? That, although an absurd example, is in my view, capable of answer. If the Acquiring Authority were to be met with a totally unacceptable form of account for expenses (whatever they are) they would refer the matter to Court and, I presume, the Court could refer the matter to the Greffier under Rule 9/7(1)(b). Mr. Voisin, to be fair, did, throughout his submission, argue that the expenses should be reasonably and properly incurred. He went on to say that if reasonableness could be shown there was no limit on the amount that could be claimed.

In any event, both Counsel have agreed before me that, in the circumstances of this case, if the argument goes against the Committee, the expenses (whatever they are) will be referred on taxation.

I again draw consolation in accepting that all expenses means "all expenses reasonably incurred" from the speed at which the States passed its Amendment Number 5 which must have been prepared to cover the effect of an owner who had made a frivolous and unjustifiable claim being precluded from claiming his expenses. Mr. Bailhache says that "all expenses" if Mr. Voisin is right means "all expenses" without any restraint. That cannot be so. Let me give an example where a Statute says that a Committee "shall" bring in regulations which will clarify a particular Article. The Committee cannot delay indefinitely. It must perforce perform its duty within a reasonable time. Any other interpretation would allow an unscrupulous Committee to frustrate the intentions of the States.

This part of the argument is not difficult. If this Court orders an unsuccessful litigant to pay his opponent's costs on an "indemnity" or even a "full indemnity" basis no one would be surprised that at some point the Judicial Greffier would be asked to tax those costs. Are "expenses" the same?

Do expenses mean "taxed or indemnity costs"? Mr. Bailhache asks how the Court or the Greffier can mediate on matters where neither the Court nor the Greffier had any part to play in the proceedings and where there is no power under the law for the Board to award costs. That I regard as something of a bogeyman argument. If there were a dispute then the matter could, in my view, easily come to the Greffier under Rule 9/7(1)(b): ***"The Greffier shall have power to tax any other costs the taxation of which is directed by order of the Court".*** Of course at this part of my judgment I am still not certain as to what is meant by "expenses".

The question that the Greffier or the Court will have to face is not to penalise what may well be frivolous or unjustifiable claims or even where a reasonable offer had been refused putting the Board to unnecessary time and effort, but to decide whether the expenses (whatever they may be) are reasonable. So, in my view, the fees of the ninety estate agents who valued the land at £1,000 would not be a reasonable expense.

The only alternative interpretation (and it is an interpretation that I have already rejected) is to read in words to make the article read the "fees and expenses <u>of the Board"</u>. If that were intended it seems to me that it would have been drafted in those words. There is no absurdity in allowing the words as

drafted to stand. Indeed, they are consistent with the clear intention of Article 13 of the 1953 Law.

Mr. Bailhache asks me to distinguish clearly the distinction between "costs and expenses". Mr Voisin argues that "costs" are to some extent analogous to "expenses".

It is necessary to look at some English authorities. This requires a cautious approach. Much of the legislation and the procedures from which those authorities arise are alien to this jurisdiction. I have found the thickets of law at this point sometimes verging on the impenetrable.

A helpful case was that of Simpson v. The Commissioners of Inland Revenue (1914) 2 KB 842 where at 845 Scrutton J said:

> *"So far as I know the term "expenses" is not, as the term "costs" is, a term of art in English law. If a taxing Master were directed to tax "expenses" he would not understand what he was to do. In Scotland, it is otherwise. There "expenses" means what we mean by "costs". By s.42, sub-s. 2, of this Act, in the application of the Act to Scotland, "any order of a referee as to expenses shall be enforceable as a recorded decree arbitral". Therefore if this order in its terms were made in Scotland no difficulty would arise. The matter would go before the official equivalent of a taxing Master who would know what he had to deal with. A difficulty does arise in England because in England "expenses" is not a term of art; it is a vague and general term. It may be that the Legislature deliberately used an informal term because it was anticipated that this procedure before a referee would be much less formal than it has in fact become. This difficulty would have been avoided if the referee in the present case had used the word "costs" instead of "expenses", because an award of an arbitrator awarding costs is not bad merely because he does not fix the amount."*

He went on to say at 846:

> *"I have before me an order of a referee ordering payment of expenses of unascertained amount. I cannot make the amount certain through the taxing officers of this Court. Therefore the decision of the referee is bad on this point because it does not assess the amount of the expenses, and the amount of expenses cannot be assessed by a taxing Master taxing costs."*

The problem that I face, as in all matters of interpretation, is that many of these cases turn on their particular facts. The motion before the Court in Simpson was based on the specific

provisions of Section 33, subsection 1 of the Finance (1909-1910) Act 1910. The Court was interpreting the words of a referee appointed under the statute who ordered (in the words of the Statute) "that any expenses incurred by the Commissioners be paid by the appellant". I am not certain that the matter helps us. The Court, after all, did not interpret what "expenses" meant.

The Oxford English Dictionary defines "costs" as being *"the expenses of litigation, prosecution or other legal transaction, especially those allowed in favour of the winning party or against the losing party"*. It defines "expenses" as being *"the action or an act of expending something; the state of being expended, disbursement, consumption, loss"* and *"the amount paid in reimbursement."*

Scrutton J. developed his decision in Simpson's case some four years later in Matthews v. Commissioners Inland Revenue (1914) KB 192 where he said at 194:

> ***"...in Simpson's Case (1) I decided that the word "expenses," - which is not known as a term in English law - if used by the referee in his order, made it necessary that he should fix the amount of expenses, there being no means by which a taxing master can settle what are expenses. I hinted in that judgment - and I now have to give my decision on the matter - that, supposing the referee does not fix the amount of expenses but makes an order for costs, the order would be valid although he does not fix the amount of the costs which he awards. Costs can, under a rule of Court, be taxed by the taxing officer of the Court, and a person who is authorized to give costs may delegate the ministerial function of taxing them to an officer of the Court. While I think that a referee, if he gives "expenses," must settle the amount of those expenses, I am of opinion that he may, if gives "costs," make a valid award, although he does not fix the amount of the costs, and when his order as to costs has been made a rule of Court the taxing master of the Court will assess the amount of costs, not as a judicial but as a ministerial officer."***

All those two cases mean is that the arbitrator may delegate, to the proper office of the Court, the ascertainment of the amount of costs but not expenses, because the word "expenses" is not a term of art.

I find that there is little in the English authorities that gives me any real help or consolation, despite the most helpful trawling of the authorities by Counsel.

It was interesting to note that in her letter of 24th March, 1995 (the Committee having been met with a bill for expenses of

£658,010.16p) Her Majesty's Solicitor General wrote to Advocate Voisin in these terms:-

> *"The Committee has been advised that its liability under Article 14(2) of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 to pay the fees of the Board and all expenses incurred in proceedings under this Law does not extend to the payment of any part of the claimant's costs."*

That is not a quibble about the use of the word "expenses"; it is a straight denial that any part of the claimant's costs are payable by the Acquiring Authority.

Let me explain my difficulty on the many English authorities helpfully brought to my attention by both Counsel. In R. v. Swabey (No. 2) (1973) All ER 711 the Court-Martial (Appeals) Act 1968 required the Court to order the Secretary of State to pay ***"such sums as appear to them reasonably sufficient to compensate the applicant for any expenses properly incurred by him for the purposes of his appearance."***

What I find helpful in a case such as this is not the way that Mr. Voisin held it up as a clear mirror of interpretation and Mr. Bailhache breathed upon the mirror until it showed nothing clearly at all, but the short passage at page 714 which reads:

> ***"It seems to us to be a clear and deliberate choice exercised by the draftsman not to use any of the three or four conventional phrases about which no dispute would arise at all."***

I will concentrate on that point, and with great deference to Counsel refer in no great detail to the English judgments, which will only make, from this viewpoint, confusion worst confounded.

In 1961 the States passed the Costs in Criminal Cases (Jersey) Law, 1961. That Law, according to its Headnote, "is a law to empower Courts of Justice to order the payment of costs in criminal and quasi-criminal cases and for purposes incidental thereto".

Article 2(4) reads:

> ***"The costs of the defence payable under sub-paragraph (c) of paragraph (1) of this Article shall be such sums as appear to the court reasonably sufficient to compensate the accused for the expenses properly incurred by him in carrying on the defence and to compensate any witness for the defence for the expense, trouble or loss of time properly incurred in or incidental to this attendance and giving evidence."***

And Article 3(2) reads:

"The Court of Appeal may, when it allows an appeal against a conviction, order the payment out of public funds of such sums as appear to the court reasonably sufficient to compensate the appellant for any expenses properly incurred in the prosecution of his appeal, including any proceedings preliminary or incidental thereto, or in carrying on his defence.

The amount of costs that the court has ordered to be paid under this paragraph shall as soon as practicable be ascertained by the Judicial Greffier."

Here, in 1961, (the same year as the Compulsory Purchase Law), we have what appears to me to be an interchangeable use of the words "costs" and "expense". In Article 2 we have "expense, trouble or loss of time", "the fees and expenses of the advocate" and "the expenses" of other persons attending. There is no point in wishing that in 1961 these two laws might have been compared by the legislature.

The word "expenses" must be construed in the terms of the Statute in which it is used.

In interpreting a Statute we start with the "grammatical" or "ordinary" meaning of the words.

In my view "all expenses" means, and can only mean, all expenses incurred by any party involved in the proceedings. Mr. Bailhache argued that that would lead to an inherent nonsense because the States would have legislated for its own expenses to be paid as well as those of the claimant. That is not, in my view, leading to the sort of absurdity or repugnance or inconsistency which might allow me to apply some secondary meaning. The ordinary meaning of the words does not produce a wholly unreasonable result. The situation may well arise where one Committee becomes the Acquiring Authority because another does not have powers under its own law, for example, to acquire a third party's right of way over the land in question.

I need only to return to Pajama Limited v. Ferpet (1982) JJ 137 and to remember that ***"the landowner should not be placed in a disadvantageous position having regard to the award itself"*** to believe that the wide interpretation is correct and that there is no other meaning in "all expenses" than everything that the landowner whose land has been taken from him, has properly paid out whether that be legal costs or disbursements. As Mr. Voisin has argued most strongly, it is not the landowner who invited the compulsory purchase proceedings. Nor is there agreement between the parties. The landowner is an unwilling seller at the price

offered by the Acquiring Authority. It really would have been a cool wind of change for Article 14(2)to have meant "the expenses of the Board". The States would have moved at a stroke and for no logically apparent reason from the 1953 position to an opposite and contradictory position. That would have meant that the Baker case decided seven years later and undisturbed until now was, on the questions of costs wrongly decided.

What of the 1994 Amendment which does not apply to this case but which was examined in detail? The purpose of the law, which specifically excludes Lesquende but apparently includes the large and later "Springfield" arbitration, was to give the Board the power to require any party to the proceedings to pay that part of the fees of the Board and all expenses as "costs". Article 14A deals specifically with "costs" which includes "fees, charges and expenses". That extends further the meaning of the word "costs" and it leads me to the ineluctable conclusion that expenses in article 14(2) includes the "costs" referred to in Article 14(A).

If that is so the explanatory note which refers to the amendment being necessary to "clarify the Board's powers in the light of the Baker case" is disingenuous. The amendment does not clarify the Baker case; if anything it confirms the authority of the Baker case in that it now gives the Board the power to award costs against any party, a power which it did not have before. This may mean, of course, the Acquiring Authority. So it is that if an award were not made under 14(A) then (because its discretion was not exercised) there would still be a liability under 14(2) of the law for the Acquiring Authority to pay "all the expenses".

The Baker case supports that contention. I do not need to consider, in that connection, the doctrine of stare decisis (the judgment has stood for thirty years). Had I needed to do so, I would have placed much reliance on A.G. v. McKinney, (3rd January 1992) Jersey Unreported where the then Deputy Bailiff said at page 9 of the judgment:

> ***"I cannot say that the decision in Attorney General v. Bouchard arose out of a complicated and difficult enactment. However, I believe that I should follow the modern practice and, as a matter of judicial comity follow the decision of the learned Bailiff unless I am convinced that the judgment was wrong. Miss Fitz has failed to convince me that the judgment of the learned Bailiff was wrong. It has stood since 1983 and has been applied in other cases. If it is to be overruled now it is a matter for the court of Appeal."***

In my judgment the Acquiring Authority is liable to pay the legal and other costs incurred by the owner. "All expenses" means the legitimate costs and other disbursements which have been incurred in accordance with the provisions of the law.

I have no doubt that the legal costs of Advocate Voisin and of English Counsel can be easily dealt with by the learned Greffier following recommendation 10.22 of the Legal Practice Committee Report presented to the States on 30th November, 1993, (the "Le Quesne Report"). I feel that the Judicial Greffier is well practised in dealing with a bill of costs (or expenses) of this nature. The Greffier will, as he always does, tax the costs and if the expenses include disbursements for unnecessary experts' reports or wasted witnesses, he can again deal with these matters in my view without difficulty.

I am aware that Mr. Bailhache made it very clear that either party will be likely to appeal this judgment and that it may be thought that I have ignored the dicta in Simpson v. I.R.C. *(supra)* and Matthews v. Commissioners of Inland Revenue *(supra)*. I have these cases very much in mind. In this judgment I am able to conclude that the expenses that the Acquiring Authority has to pay are the legal and other costs properly incurred by Lesquende. The other costs (or expenses) are those disbursements which have also been properly incurred, interpreting the matter broadly and so as "not to leave Lesquende in a disadvantageous position in having regard to the award itself."

I feel that the matters raised in paragraph 5 of the Committee's Answer will have to be examined and adjudicated upon by the Judicial Greffier. At the present time I cannot see that there is anything in these complaints which are more than the complaint of any unsuccessful litigant faced with a substantial bill of costs. If these are matters that the Greffier is prepared to admit he will no doubt have experienced such arguments before.

I do not need to deal with the arguments raised on Article 9(1)(g) of the Law.

Authorities

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Le Gros -v- The Housing Committee (1974) JJ 77.

Le Gros -v- The Housing Committee (1977) JJ 59.

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R. -v- Greater Manchester Coroner (1984) 3 All ER 240.

Young -v- Bristol Aeroplane Co. Ltd. (1944) 2 All ER 293.

Simpson -v- IRC (1914) 2 KB 842.

Matthews -v- Commissioners of Inland Revenue (1914) KB 192.

R. -v- Governor & Guardian of the Poor of Kingston-upon-Hull (1853) QB 324.

R. -v- Swabey (No. 2) (1973) All ER 711 (1953) 1 WLR 1481.

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Compulsory Purchase of Land (Procedure) (Jersey) Law, 1953.

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Arbitration Act 1950 sec. 18.

Land Compensation Act 1961 sec. 2-4.

4 Halsbury 26: paras. 580-581.

Russell on Arbitration (19th Ed'n) (1979) pp.364-377.

Encyclopaedia of Compulsory Purchase para. 2-1055 and p.4094.

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