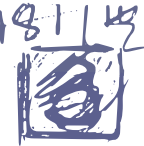


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Bailiff: The proper body, if I can put it that way, or forum, if you like, to decide this issue of autrefois acquit is the Royal Court, and not a Jury. The Attorney General has put forward a number of considerations, all of which are relevant; but we think the most relevant consideration is the terms of the 1864 law, which created the modern Jury. We think that the rôle of the Jury is defined and limited and confined by the terms of the 1864 law. And when one looks at that law, it appears to us to be absolutely clear that the rôle of the Jury is confined to deciding the guilt or innocence of the person whose case they are trying. And not only Article 44, to which the Attorney General referred: "The Jury shall declare the accused innocent or guilty," but the oath which a Jury takes under Article 40, which is enshrined in the law itself, where it says: "You swear that well and faithfully you will report to the Court what you believe in your conscience as to the crime of which so-and-so is accused, namely, whether he be guilty or innocent." I do not see how one could put that sort of oath to a Jury who was trying the question of whether or not the accused had been previously acquitted of the offence with which he was being charged again, so as to make him not liable to be recharged, which is basically the question before us. I do not see how that could be done. There are other matters as well, but it seems to me that basically this is the main reason why we feel that the proper body to decide this cannot be the Jury; it must be the Royal Court.

And therefore the question is whether you now wish to address us, Mr. Jeune, on the situation which arises. The Attorney General has said that it would have been open to you, and I am sure it still is open to you, to take the view that you would wish this matter to be tried by the Superior Number, and that being so to withdraw your plea in bar now and submit it again at the opening day of the Assizes, which would certainly ensure that the Superior Number dealt with the matter. It has appeared to us that of course in the case of a person who wished to be, as is presumably not the case with your client, in the case of a person

who wished to be tried by the Inferior Number, presumably it would not be necessary for him to go to the Superior Number to have his plea in bar adjudicated upon. Presumably he would be satisfied with the Inferior Number. I must say our feeling is that a plea in bar and a demurrer are in essence the same. I know they are different in the sense that a question of fact is involved in a plea in bar, certainly in the plea in bar that we are concerned with here. But in both cases they are preliminary matters which have to be settled before a trial can start, before the question of innocence or guilt can come before a Jury. They are preliminary matters: in one case, in the case of demurrer, for example, the defendant is saying: "I'm not liable to be tried because this offence 'oan't exist." In the case of autrefois acquit he is saying: "I'm not liable to be tried because I've already been acquitted of a similar charge." In both cases the results are the same, the person is saying: "I'm not liable to be tried for one reason or another." Now, in the case of a demurrer, and we have had a number of these cases, as we know, in Jersey, the Inferior Number has often dealt with the matter, in the case of this particular plea, of course, it is accepted, a matter of fact is involved: whether it is a difficult matter of fact I have no idea. But certainly the Attorney General is quite right in saying that you must be given the option now, if you wish, of ensuring that the matter goes before the Superior Number, which of course you can do. That is a situation which you can achieve, if you prefer.

: The position is that this Court does not think that in all the circumstances - we think that it would not be proper to refer the matter to the Superior Number if in fact we were now to be seised of the application. I think I must tell you that in fairness. So now it comes to this, then, that if you want the matter to be decided by the Full Court I think you have no option but to withdraw your plea in bar, and submit it again on the opening day of the Assizes. It is accepted that you have a right to do that. And it would be a matter then for the Full Court to decide.