

ROYAL COURT
(Superior Number)

8TH MAY 1989

Before: R. Vibert, Esq., D.B.E., Commissioner

Assisted by: Jurats Coutanche, Vint, Lucas, Blampied,
Myles, Le Boutillier, Bonn, Hamon and Le Ruez

Referral by the Inferior Number to the Superior Number, in accordance
with the Attorney General's conclusions, of the question of the
compatibility of the business activities of Fred Philip Webber Clarke with his
holding the office of "Connétable" of the Parish of St. Helier

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

JUDGEMENT

Mr. Fred Philip Webber Clarke was re-elected as Constable of St. Helier on the 26th April, 1989. He has not yet been sworn in as Constable because the Inferior Number has referred to the Full Court the question whether the relationship between Mr. Fred Philip Webber Clarke and C. Le Masurier Limited is incompatible with the position of Constable of St. Helier.

It is not disputed that the Company is the owner of a great number of on-license and off-license establishments in St. Helier and throughout the Island. Mr. Clarke, is a Director and Chairman of the Board, takes the Chair at its meetings, amounting to about eight annually, opens the mail and signs the cheques. He is otherwise not concerned with the day to day running of the Company, though he may very occasionally be consulted.

The duties of a Constable include the enforcement of the Licensing (Jersey) Law, 1974.

The Court is unanimously of the opinion that there is incompatibility between these two positions.

This is not, however, the end of the matter. Mr. Clarke has been Constable for six years, having been sworn in by the Royal Court on two previous occasions. Moreover his father Mr. Fred Clarke, who was Managing Director of Le Masuriers, was Constable of St. Helier from 1956 until his death in 1958.

It is most unfortunate, and unfair to Mr. Clarke, that this issue should have been raised now and not earlier. The position was queried by the Solicitor General in December, but it was not until the very day of the nomination meeting, the 29th March, that he was informed that the Attorney General had come to the conclusion that, in his view, there was incompatibility. This, we feel, was highly unfair not only to Mr. Clarke but to the electors of St. Helier.

The Court has given deep consideration to the question whether, as submitted by Advocate Hamon for Mr. Clarke, these facts - in particular the fact that Mr. Clarke has been permitted to fulfill the duties of Constable for so long, makes it undesirable for the Court now to hold that he cannot continue. The Court has also noted the statements of both Counsel that there is no instance, over this long period, in which it can be said that Mr. Clarke has in any way allowed his position with Le Masuriers to affect his duties as Constable.

For these reasons a minority of the Court is of the opinion that Mr. Clarke should be permitted again to take the oath of office.

The Court unanimously considers Mr. Clarke to have carried out his duties with complete propriety, but the majority are of the opinion that, as the Court has found that the two positions are incompatible, it would be wrong to allow the incompatibility to continue.

We consider that Mr. Clarke must choose between his position of Director and Chairman of Le Masuriers, on the one hand, and of Constable on the other. If Mr. Clarke is 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 will be asked to reconsider the position on Friday the 19th May. If by that time Mr. Clarke has resigned these positions, and holds no office in the Company, his swearing in may proceed. If not, the Inferior Number will order a new election.

The costs of Mr. Clarke are to be paid from public funds.

In the Royal Court of Jersey

In the year one thousand nine hundred and eighty-nine, the twenty-eighth day of April.

EX:

Pursuant to an Act of Court dated the 17th March, 1989, whereby it was ordered that an election be held in the Parish of St. Helier on the 26th April, 1989, to fill the office of "Connétable" (the term of office of Fred Philip Webber Clarke having expired), Her Majesty's Attorney General presented to the Court the record of the Returning Officer, Jurat John Harold Vint, of the proceedings relating to the said election, which record showed that the said Fred Philip Webber Clarke had been re-elected to the said office.

Whereupon, the Attorney General having informed the Court that the said Fred Philip Webber Clarke is both a director and chairman of the board of directors of C. Le Masurier Limited, a company having direct interests in the liquor licensing trade in the island generally and in the said Parish in particular and that, in the Attorney General's opinion, his business activities are incompatible with the said office of "Connétable", the Court, in accordance with the Attorney General's conclusions, referred the question of compatibility to the Superior Number of the Court for its determination.

And the Court deferred the swearing-in of the said Fred Philip Webber Clarke as "Connétable" of the said Parish until after the Superior Number shall have reached a decision on the matter.

Judicial Greffier.

AUTHORITIES

Re Lindsey. Representation of Acting Attorney General (1969) J.J. 1163
Procureur Général du Roi -c- W.J. Scott, Officier du Connétable (1932) 12 C.R.341
Re Herbert (1949) 244 Ex377
Licensing (Jersey) Law, 1974.
John-v-Rees & Ors. (1969) 2 All ER 274
Binet--v-Island Development Committee (31 May '88) Jersey as yet unreported.
John Glasson Plumbing & Heating Engineers, Ltd -v-Select Hotels (Jersey) Ltd.
(23 FEB '88) Jersey, as yet unreported.