

10th June, 1980

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IN THE ROYAL COURT OF THE ISLAND OF JERSEY

COUR D'HERITAGE

Before

Sir Frank Ercaut, Bailiff  
Jurat the Hon. J. A. G. Coutanche  
Jurat G. A. Le Breton

Between

Wilfred Le Brun Pipon and Lorna Violet Marsden, his wife

And

Gerald Hubert Cottignies and Margaret Alice Reid, his wife

Whatever may have been the position at common law, we have no hesitation in taking the view, as indeed the Rules of the Royal Court obviously envisage the Court might wish to do, that it is right to exercise our discretion in a matter of this sort approximately in accordance with the result. We can quite understand perhaps in the old days where land was a central issue in everybody's mind, that the importance of getting boundaries certain was such that one would regard the achievement of certainty as the most important thing and therefore, both sides having benefited from the certainty, both sides should bear the costs equally. But we feel that today, the position in which Mr. and Mrs. Cottignies were placed was the same sort of position as they would have been placed in had somebody actioned them, let us say, for a thousand pounds, which they denied owing. We think that Mr. and Mrs. Cottignies were in the position of having to defend as alleged encroachment on their property rights and we see no difference in principle between, on the one hand, Mr. and Mrs. Cottignies being actioned for a thousand pounds which they claim they did not owe, and, on the other hand, being actioned to appear before a Vue du Vicomte on an allegation that part of their garden belonged to the plaintiff, which they denied. We think that in the case of their having been sued for a thousand pounds which it was found they did not owe, they would have been entitled to their costs. In this particular case, they did not win everything, but they won to a considerable extent. We think, therefore, that the result should be reflected in the costs awarded.

And so what we have to decide is to what extent should their claim for the whole of their costs be reduced by the fact that they did in fact lose to a small extent, in that one boundary stone was moved one foot into their property, giving a very slight triangle on either side. If one was to apportion the damages strictly on the basis, firstly of the amount of land which was claimed against them and which was found not to be due by them, and secondly, the amount of land which they

actually had to give up to Mr. and Mrs. Pipon, then one would reduce the costs by very little indeed as the actual proportion of land which they had to give up is very, very small compared to the two perches or so which had been claimed against them, but which claim failed. However, we do not think that it is right to calculate it strictly in that way. We do take into account that Mr. and Mrs. Cottignies have had some benefit from the Vue du Vicomte, inasmuch as the boundary is now clear. It is always an advantage to have your boundaries certain.

Our view is that Mr. and Mrs. Pipon should pay four-fifths of whatever costs are found to be due after taxation by the Greffier.