**IN THE ROYAL COURT OF JERSEY**

(Samedi Division)

12th August 1985

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BEFORE: Mr. T.A. Dorey, Commissioner
Jurat P.G. Blampied
Jurat Mrs. B. Myles

Between: **Gordon Philip Pirouet** PLAINTIFF

And: **Leslie John Le Moignan Pirouet, Margaret Marie Guegan, his wife, Leslie James Pirouet and Carol Margaret Pirouet, formerly wife of Barry Le Quesne** FIRST DEFENDANTS

**Donald Edward Le Boutillier, executor of the Will of James Francis Pirouet** SECOND DEFENDANT

ADVOCATE D.F. LE QUESNE, for the Plaintiff,

ADVOCATE S.C.K. PALLOT, for the Defendants.

At the end of 1944, during the Occupation, James Pirouet, the Plaintiff's father, bought a property in St. Saviour called Hambye, which he began to farm. Thanks to the hand work of Pirouet, his wife and his three sons, working together as a single unit on little more than subsistence wages, within the next few years he was able to buy two other properties, Hambury and Brookfield. As each of his sons married he was given a property to live in and farm on his own behalf, though there was also a certain amount of mutual help and, in particular, potato-planting was carried out by the whole family working as a team.

Pirouet was very proud of what he had done and was heard to say that he had three sons and three farms - a farm for each son. This sentiment was repeated by Mrs. Pirouet, and the Court is satisfied that the three sons were led to believe that on their father's death they would each inherit a farm outright.

The Plaintiff, Gordon Pirouet, married in 1952, and was given the occupation of Hambury. In 1962 he wanted to build glass-houses. He asked his father for permission and his father replied, in Jersey-French "Ch'est pouvor té - fais tch'est qu'tu veurs", which means "It's for you. Do what you like". These words, which were repeated on subsequent occasions, Gordon took as a definite promise that on his father's death he was to receive Hambury as an outright gift.

With his father's consent and co-operation he built the glass-houses. To pay for them he borrowed money from the bank, giving the bank as security a registered charge on a four vergee field that he owned and, in addition, his life assurance policy. On this assurance policy the bank later foreclosed. To satisfy the needs of the bank, he signed a nine year lease, but he struck out the clause requiring him to give up possession at the end of the lease. Subsequent to

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this Gordon built a well and water-storage tanks at Hambury, all with his father's consent and with the assistance of members of the family. He had built stables and a milking-parlour and, being assured by the repeated reply to his requests for permission, "It's for you. Do what you like", that he would, after his father's death, become full owner of Hambury, he ploughed back all the profits from the farm and most of his savings into the property, installing central-heating in the house, enlarging the kitchen and building a wall alongside the road. In addition he kept the glass-houses in very good shape, going to the expense of repainting them every three or four years.

In 1975 the Plaintiff's mother died. For some years a coldness had developed between Gordon Pirouet, his wife and daughters and the rest of the family because Gordon, his wife and his children had become Jehovah's Witnesses. At first there had been an attitude of 'live and let live', but when Gordon's wife stood aside in his mother's final illness and two of his daughters did not attend her funeral - though coming over a fortnight later from Belgium to attend the funeral of a fellow Witness, old Mr. Pirouet was beside himself with distress and rage. He was determined to make Gordon pay for it. In 1977 he gave him notice to quit the "two fields" which he had leased to Gordon ten years before when he himself had given up farming. Then in 1979 he threatened to increase Gordon's rent from £210 per annum to £1,000 per annum. Gordon protested, and eventually got the rent reduced to £500 per annum on a nine year lease. Gordon, very anxious, asked his father if he was going any further. The old man replied "No. I am going no further". Gordon was re-assured. He trusted his father. He did not realise his father had already changed his Will excluding him from the disposable third of the Personalty and giving him only a life interest in Hambury in the Will of Realty, although in the earlier Wills of Realty he had left him Hambury outright. Had Gordon known this, he could have taken some steps, however belatedly, to salvage his position, either by cutting his losses and striking out on his own or by trying to get a rapprochement with his father, but he was left to rest on false hopes.

The main part of the prayer of the Plaintiff's Order of Justice calls for the cancellation of the Will of Realty, a declaration that the Plaintiff is owner in fee simple of Hambury and the "two fields" and/or the conveyance to the Plaintiff of Hanbury and the "two fields", and/or damages.

The Plaintiff has based his argument on:-

(i) breach of contract by the Testator; and

(ii) estoppel.

The Court is satisifed on all the evidence that there was never any intention in the minds of either the father or the son to create any legal relationship about the future of Hambury, and that no contractual relationship was ever entered into. There was only an agreement that Gordon would pay rent for the land that he occupied. That leaves the argument based on equitable estoppel.

In several recent Jersey cases the Court has applied equitable principles. In York Street Pharmacy Limited -v- Leon Rault et au. (1974) 2 JJ 65, the Court held (p.69) "We believe that equitable remedies have always been available to the Royal Court" and proceeded to grant specific performance, in part, of an agreement for a lease. In the later case of John Henry Arnold Symes -v- John Couch et au. 1978 JJ 119, on p.142, after referring to a statement of Mr. Bailiff Hammond to

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the Commissioners of 1859 (No. 103): "There are many matters which may be brought before Court by means of a special writ instead of a Remonstrance which has very much the character of an equity case. An action may be in the form of a special writ for matters of equity as well as law", the Court commented "We think he meant that in appropriate cases the Royal Court would apply equitable principles". Finally, (p.149) the Court stated "To leave the Plaintiff without a remedy would be to set at naught the equitable jurisdiction which is inherent in the Royal Court".

We turn now to the development of equitable principles by the English Courts. Advocate D.F. Le Quesne for the Plaintiff set before the Court a number of cases dealing with equitable estoppel, some relating to part performance as a means of giving effect to a contract that would otherwise be rendered unenforceable by the Statute of Frauds, and others dealing with a promise where the promisee had acted to his own detriment by relying on the words of the promisor. It is this latter group of cases that is most relevant to the present action.

In Dillwyn -v- Llewelyn (1862, 4 DE G. F & J.517) the Plaintiff's father had given him a farm. A Memorandum to this effect was signed by father and son. The Plaintiff obtained vacant possession,. built a residence there and laid out and planted the grounds at a cost of £14,000, all with the father's knowledge and approbation. The farm was never formally conveyed to the Plaintiff and on his father's death it passed with his estate. Westbury L.C. ruled "I propose therefore ..... to declare, by virtue of the original gift made by the Testator and of the subsequent expenditure by the Plaintiff with the approbation of the Testator and of the right and obligation resulting therefrom, the Plaintiff is entitled to have a conveyance from the Trustee of the Testator's Will".

In Ramsden -v- Dyson (1866 Law Rep. 1 HL 129) Lord Kingsdon said (p.170): "The rule of law applicable to the case appears to me to be this: If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of the land with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord and without any objection by him, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in Gregory -v- Mighell (1811)18. Ves.328, and, as I conceive,is open to no doubt".

This principle was approved in Plimmer -v- Mayor of Wellington (1884) 9 A.C. 699 at p.710. It was more recently followed in Inwards -v- Baker [1965] 1 All E.R. 446. In this case a son was encouraged and assisted by his father to expend money on building a bungalow on land owned by the father. He did so under the expectation that he would be able to stay on there as long as he wished it to remain his home. His father, however, never made the necessary alterations to his Will to give effect to that expectation. In an action brought by the Trustees of the father's Will, judgement was given for the son, who was held to be entitled to remain in occupation of the bungalow. Denning M.R. said on p.445: "Even though there is no binding contract to grant any particular interest to the licensee, nevertheless the Court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the Court will not allow that expectation to be defeated where it would be inequitable to do so". Dankwerts L.J.

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said on p.449: "It seems to me that this is one of the cases of an equity created by estoppel, or equitable estoppel as it is sometimes called, by which the person who has made the expenditure is induced by the expectation of obtaining protection, and equity protects him so that an injustice may not be perpetrated".

This principle was applied in Jones -v- Jones [1977] 2 All E.R. 231, a case involving similar facts. As Denning M.R. said at p.235: "Old Mr. Jones' conduct was such as to leave the son Frederick reasonably to believe that he could stay there and regard 'Philmona' as his home for the rest of his life. On the basis of that reasonable expectation, the son gave up his work at Kingston Upon Thames and moved to Blunderton. He paid the £1,000, too, in the same expectation. He did work on the house as well. It was all because he had been led to believe that his father would never turn him out of the house. It would be his family's home for the rest of his life. He and the rest of the family thought that the father would alter his Will or make over the house to the son. The father did not do it, but nevertheless he led the son to believe that he could stay there for the rest of his life. It is clear that old Mr. Jones would be estopped from turning the son out. After his death, his widow, the step-mother, is equally estopped from turning the son out".

The principle was re-stated by Oliver J. in Taylor Fashions -v- Liverpool Victoria Trustees Co. [1981] 1 All E.R. 897 at p.909: "If A., under an expectation created or encouraged by B. that A. shall have a certain interest in land, thereafter, on the faith of such expectation and with the knowledge of B. and without objection by him, acts to his detriment in connection with such land, a Court of Equity will compel B. to give effect to such representation". In this case, and also in the almost contemporaneous Almagamated Investment & Property Co.Ltd. -v- Texas Commerce International Bank Ltd. [1981] 1 All E.R. 923, emphasis was placed on the flexibility of equitable estoppel. Although the distinction between proprietary estoppel or estoppel by acquiescence and promissory estoppel or estoppel by representation was noticed, it was accepted that they were facets of the same principle. The necessity of satisfying all the "probanda" of Fry J. in Willmott -v- Barber (1880) 15 Ch.D. 96, was questioned and the view was approved that the real test was whether it would be unconscionable in any particular case for a person to enforce his legal right.

In Taylor Fashions -v- Liverpool Victoria Trustees Co., Oliver J. in commenting on Shaw -v- Applegate [1978] 1 All E.R. 1233, says at p.918: "So here, once again is the Court of Appeal asserting the broad test of whether in the circumstances the conduct complained of is unconscionable without the necessity of forcing those incumbrances into a procrustean bed constructed from some unalterable criteria", and quotes with approval the words of Denning M.R. in Moorgate Mercantile Credit Co. Ltd. -v- Twitchings [1975] 3 All E.R. 314 at 323, who is cited as saying: "Estoppel is not a rule of evidence. It is not a cause of action. It is a principle of justice and equity. It comes to this: When a man by his words or conduct has led another to believe in a particular state of affairs, he will not be allowed to go back on it when it would be unjust or inequitable for him to do so".

In Amalgamated Investment and Property Co. Ltd. -v- Texas Commerce International Bank Ltd., Goff J. says at p.235: "Of all doctrines, equitable estoppel is one of the most flexible ..... It is no doubt helpful to establish, in broad terms, the criteria which, in certain situations, must be fulfilled before an equitable estoppel can be established; but it cannot be right to restrict equitable estoppel

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to certain defined categories". He goes on to approve Oliver J.'s rejection of rigid categorisation and his conclusion that recent authorities supported a much wider jurisdiction to interfere in cases where the assertion of strict legal rights is found to be unconscionable. Later, at p.936, Goff J. says: "It is in my judgement not of itself a bar to an estoppel that its effect may be to enforce a cause of action, which, without estoppel, would not exist. It is sometimes said that an estoppel cannot create a cause of action. In a sense this is true, in the sense that estoppel is not, as a contract is, a source of legal obligation. But ..... an estoppel may have the effect that a party can enforce a cause of action which without the estoppel, he would not be able to do".

We must now consider the effect of these developments of the principle of equitable estoppel on the present case.

The two recent Jersey cases, Rault -v- York Street Pharmacy and Symes -v- Couch, make it clear that the Royal Court will apply equitable principles and award equitable remedies in appropriate cases. Although in Felard Investments Limited -v- the Trustees of the Church of Our Lady (1978) J.J. 1 at p.10, the Royal Court, in dealing with the extinction of a servitude, declared that the doctrine of proprietary estoppel is not part of the law of Jersey, we cannot avoid coming to the conclusion that the doctrine of equitable estoppel, and in particular that facet of it known as promissory estoppel, or estoppel by representation, is part of the law of Jersey and can be applied in appropriate cases. We consider this an appropriate case. There was a promise. There was a part performance.

The Plaintiff, with the consent and encouragement of his father, had spent considerable money on Hambury in the expectation that on the death of his father Hambury would pass to him outright. The Court has no doubt, on the evidence, that such was the expectation that had been created, and the Court, following the equitable principles set out above, will not allow that expectation to be defeated, as it would be inequitable to do so. It remains to determine the remedy that the Court should adopt. As Advocate S.C.K. Pallot submitted for the Defendants, it has long been an established principle of Jersey Real Property Law that real property can only be transferred by the voluntary act of the transferor, carried out with due formality before the Royal Court.

In his evidence before the Commissioners in 1859 Mr. J.W. Dupré, the Attorney General, stated (10,801): "No man is obliged to sell. You cannot compel a man to come before the Royal Court and take his oath that he is willing to give you his property, or make over his property". And later, (10,803) in reply to the question: "Then there is no mode of enforcing the specific performance of a contract as to real property?" he gave the answer: "No. He declares upon oath that he does it of his own free will and consent". And almost immediately after this (10,804) came the unequivocal statement of Mr. Marett: "A man cannot be compelled to part with his freehold except of his own free will". And in answer to the objection: "But he has agreed to do it?" Mr. Marett replied (10,805): "There is no mode of enforcing such an agreement as to real property". That this is still the law was made clear by the Court of Appeal in Taylor -v- Fitzpatrick [1979] JJ 1 at p.15: "Had the subject matter of the contract been the land itself, it is clear that no order for specific performance could have been made .... Even in a case where both parties have duly signed a contract for the sale and purchase

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of land, the Royal Court cannot order specific performance, because the contract is not perfected until it has been passed by the Court, for which purposes the parties must attend personally and take an oath. The Court will neither force an unwilling party to do this, nor will it appoint its officer to act on his behalf. There is one exception to this rule, namely in matrimonial proceedings, but there the position is governed by statute". There are a few other exceptions, though more apparent than real. In Corbin -v- Lee [1934], the Defendant's house and foundations encroached slightly on the Plaintiff's property. The Defendant offered to pay compensation but the Plaintiff demanded removal of the encroachment. The Court, in a judgement that anticipated what was sought, without success, by the encroaching party in Felard Investments -v- Trustees of "The Church of Our Lady", dismissed the Plaintiff's application for a removal of the encroachment, ordered that what was in those days a sizable sum of compensation be paid by the Defendant, together with costs, and also ordered that the parties proceed to pass a Contract of Rectification whereby the encroachment was permitted to remain. The contract was passed later in the year. What the Court could have done had the Plaintiff refused to pass contract is uncertain, but since his application for removal of the encroachment had been dismissed it was to the Plaintiff's manifest advantage to accept the situation, proceed to contract, and take his compensation and costs.

Another most notable exception was Ritson -v- Slous 1 JJ 2341. In this case a licitation had taken place and the Court had ordered the Defendants to pass contract at the price approved by the Housing Committee. The Defendants refused, on the grounds that the approved price was too low. The Court, therefore, appointed the Viscount to pass contract on their behalf. Such a measure, quite unprecedented outside the Matrimonial Causes Division, was resorted to because the Court was enforcing not a promise or an agreement between the parties, but the long established legal right to terminate an "indivision". Neither of these cases seriously affect the firmly based legal principle that specific performance will not be ordered for the transfer of Jersey Realty.

Finally, there was the very recent case of Eileen Margaret Lane -v- Ruth Rose Lane, née Coverdale [5th August 1985] in which there was a comprehensive examination of the concept of equity and the application of equitable principles in Jersey. The Court first referred to Ex parte Wimborne [19th May 1983], where it had reviewed the concept of equity as known in Jersey and had accepted that it should, wherever possible, provide a remedy for wrongs, although not necessarily accepting that its equitable jurisdiction was the equivalent to the rules of equity as practised in the English jurisdiction.

Later, in a second case, Trollope -v- Jackson [22nd June 1983], the Court had said: "In our view the word equity in Jersey corresponds mainly to the French 'équité' - in other words, a question of fairness". In Lane -v- Lane the Court developed this idea of 'fairness': "It offends this court's sense of fairness that whereas Mr. Lane completed what he had undertaken to do in November, 1977, and to some extent Mrs. Lane also, except for the formal passing of the appropriate contract, she should now be able to keep 'Cramond' ". It is clear that what offended the Court's sense of fairness in the above case was what Lord Denning and other English judges would stigmatize as unconscionable, unjust or inequitable.

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In Lane -v- Lane the Court took a step further than it had been prepared to do in Symes -v- Couch, and authorised the Viscount to pass contract in the name of the Defendant should she fail to do so within a specified time. In that case the Court was following the Comity rule and was enforcing an Order made by a Court of competant jurisdiction in England. No such considerations apply in the present case, and we feel it appropriate to restrict our remedy to that provided by Symes -v- Couch.

The reversionary owners of Hambury, the First Defendants, will, within three months, transfer the nue propriété to the Plaintiff. Should they fail to do so, we shall award damages to the Plaintiff based on the difference between the value of the life-interest in Hambury that was devised to him and the value of the full ownership that he had been led to believe he would inherit. We would therefore have to hear argument on quantum.

As regards the "two fields", the Plaintiff had only occupied them for a comparatively short time and had not spent any capital on them to any great extent. We therefore make no order in respect of these fields.

We order the Plaintiff's costs to be paid out of the disposable third of the deceased's Personal Estate.