JUDGMENT 16, 1973

No. 29 of 1970

IN THE PRIVY COUNCIL

ON APPEAL

FROM THE COURT OF APPEAL (CIVIL DIVISION)
GUERNSEY

BETWEEN:

ADOLPHUS HENRY VAUDIN — Appellant

AND

ADOLPHUS JOHN HAMON and
ALAN JAMES MESNEY and
DOROTHY LUCIEN MESNEY (nee Price)
his Wife — Respondents

CASE FOR THE APPELLANT

RECORD

1. This is an Appeal from a Judgment dated 11th day of March, 1970, of the Guernsey Court of Appeal (Civil Division) which reversed a Judgment dated the 21st day of January, 1969 of the Royal Court of Guernsey (Ordinary Division) and which confirmed a Judgment dated the 23rd day of November 1968 of the Court of the Seneschal of Sark in an action in which the Appellant was Plaintiff and the Respondents were Defendants.

pp.136 to 160

pp.52 to 60

p.1

2. Section 1 of the Loi Relative à la Prescription Immobilière 1909 provides as follows:

p.66 ll.24-30 and p.69 l.30-p.70 l.12

"A partir du ler avril 1909 toutes choses
"immobilières et actions réelles ou
"dépendantes de la réalité, qui se prescrivent
"maintenant par le laps de trente ans seront
"préscrites par le laps de vingt ans; et
"suffira la tenue de vingt ans bien entendu
"qu 'elle soit de bonne foi pour titre
"compétant en matière héréditale."

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The issue in this Appeal is as to whether the effect of this provision interpreted in the light of the prior law is to bar absolutely any action by the Appellant to recover land situate in the Island of Sark which the Appellant claims had vested in him at the death on the 19th September 1938 of his cousin Marie Elizabeth
pp. 1 to 2 Vaudin, but of which one John Vaudin Hamon the father of the first Respondent and subsequently the Respondents are alleged to have successively been in possession from an unascertained date subsequent to the said death, because the present action was not commenced by the 18th
p.5 ll. 12-24 September 1958. Owing to the Courts below having decided the case as a preliminary point of law, no evidence has been given, and there are no facts which have been judicially determined.

3. The grounds on which it is contended that the Appellant is not barried from bringing his action are :-

(a) That as the owner of land which had vested in him, the Appellant could not be prevented from asserting his title merely by the passage of time.

p.143 l.37 - p.154 l.12 (b) That the ~~Royal~~ Court of Appeal misinterpreted Section 1 of the Loi of 1909 in holding that extinctive prescription could be set up against the Appellant's action independently of whether the Respondents were in a position to rely on acquisitive prescription as a basis for their own possession.

(c) That in any event it was wholly impossible for the question of prescription to be dealt with as a preliminary point without any inquiry into the facts of the case, in that :-

(i) Time could not run against the Appellant until possession adverse to him had been taken and thenceforth maintained continuously for a period of 20 years prior to action brought. Neither the date of the original possession being taken nor the continuity thereof have been established

(ii) Good faith throughout the possession is always required in the adverse possessor in relation to real property: alternatively, in relation to real property claimed by pretended succession. No such evidence was received.

(d) That unless the said John Vaudin Hamon had acquired a title to the said property by prescription prior to his death, none of the Respondents are entitled to add any period during which he possessed the property to any period during which they possessed the property for the purposes of prescription.

(e) That in any event time never ran against the Appellant prior to 1962 (or alternatively 1954) in that he was until such date prevented by absence beyond the seas, the nature of his calling, and absence of information which should rightly have been given to him, from suing. No evidence on these matters was received.

4. The Appellant and the first Respondent in this case may be related. The Appellant is the grandson through the male branch of one Thomas Vaudin who at the time of his death in 1872 was the owner of a house on the Island of Sark known as Le Port à la Jument. The first Respondent also claims to be a grandson of Thomas Vaudin through a female branch On the death of Thomas Vaudin the property passed to his eldest son Thomas, and on his death, to his only daughter Marie Élizabeth Vaudin, who died childless in 1938. p.136 11.27-34

By the law of Sark there is no testamentary power over immovable property. It passes on the death of the Owner to the nearest relative in the male line. p.136 11. 35-40

5. It has at all times been the Appellant's contention that upon the death of Marie Elizabeth Vaudin, ownership of "Le Port à la Jument" vested automatically by the Law of Sark in the nearest male descent in the male line in preference to a male descendant through a female line, and that he, the Appellant was the male heir in whom the property had vested. It was p.67 11. 16-34 pp.64 1.21-28

the First Respondent's case that his father, John Vaudin Hamon was the heir in whom the property had vested.

p.126 l.2-
p.127 l.25

6. At the time of the death of Marie Elizabeth Vaudin the Appellant was a resident of Mauritius, where he had been born and where he was in the Service of the Crown. He first came to Sark in 1954 where he met the First Respondent and learnt of the circumstances of Marie Elizabeth Vaudin's death and the manner in which the "Port à la Jument" had been attributed.

It is the Appellant's case that the father of the First Respondent Jean Vaudin Hamon, in his capacity as curator of Marie Elizabeth Vaudin during her lifetime, knew at the time of her death of the existence of the Appellant's branch of the family, and that having such knowledge he was under a duty to investigate the title of the Appellant to the ancestral domain of the "Port à la Jument". Evidence to determine whether the First Respondent or his father Jean Vaudin Hamon had knowledge of the existence of the Appellant's branch of the family is of vital importance in determining the issue of good faith in relation to prescription.

7. It was only in 1962 that the Appellant was able to return to Sark from Service abroad to continue investigations to establish his own claim to be the lawful direct male heir of Marie Elizabeth Vaudin. At that time, however, some of the documents necessary for the proof of his title such as birth and marriage certificates were missing, and the missing documents only came to light in Sark at the end of 1965.

Jean Vaudin Hamon died in August 1964 and his son, who claims to have entered into possession of "Le Port à la Jument" then, sold the property two months later to the Second Respondents, Mr. and Mrs. Mesney, who were in possession when this action was commenced.

p.1

8. The Appellant instituted the present proceedings in the Court of the Seneschal of Sark on the 23rd August, 1968, in which the Appellant claimed that he was the legal heir to

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the estate of Marie Elizabeth Vaudin. By paragraph 1 of his Petition, the Appellant alleged that the "Maison Ancestrale" known as the "Port à la Jument" had, because of a lack of information relating to the Appellant, wrongfully been attributed to Jean Hamon. By the "remontrance" in his petition which is set out fully in the printed Record, the Appellant prayed the Court to declare himself to be the person entitled to possession of the property, to declare the sale by the First Respondent to the Second Respondents to be null and void, and for other similar relief. p.1 l.37- p.2 l.3 p.1 l.27 - p.2 l.19

9. In accordance with the practice in the Court of the Seneschal, no further written pleadings were delivered and in particular no answers were filed by the First Respondent or the Second Respondents. The case was heard on the 23rd November 1968, and in the course of the oral pleadings Counsel for the Respondents raised the preliminary plea that the Appellant's action was barred by prescription. The point was argued before the Seneschal, who, without hearing any evidence, gave judgment upholding the plea of prescription and dismissed the Appellant's action. The Seneschal made a formal order which read as follows :- p.138 ll. 16-19 p.138 ll. 19-27

"And upon hearing the Plaintiff and the "advocates for the Defendants the Court adjudged "that, by virtue of Section 1 of the "Loi "relative a la Prèscription Immobilière 1909" "registered on the records of the said Island "of Sark in the month of April, 1909 the action "of the Plaintiff was prescribed by reason of "the lapse of at least twenty years from the "date on which the Plaintiff's cause of action "arose, which the Court found to be on the 19th "day of September 1938 the date of death of "Mary Elizabeth Vaudin, whom all parties to the "action accepted to be the rightful owner of the "tenement known as "Le Port à la Jument" in the "Island of Sark." p.2 ll.20-32

10. From this Judgment the Appellant appealed to the Royal Court of Guernsey, and the Appeal was heard by the Bailiff on the 14th January, 1969. pp. 3-5

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pp. 5-52

After hearing the arguments for both sides, which are set out fully in the printed Record, the Bailiff gave judgment on the 21st January, 1969 allowing the appeal on the preliminary plea of prescription. He held that :-

p.57 ll. 5-20

"The decision of the court of the Seneschal was "wrong in establishing that the Plaintiff's cause "of action arose on the death of Mary Elizabeth "Vaudin (on the 19th September, 1938) without "establishing also that the Plaintiff in that "action was the lawful heir. And it was wrong "in deciding without hearing more, that the "Defendants were entitled to judgment merely on "a mathematical calculation and without being "satisfied that in law the first Defendant had "lawfully inherited this property by valid "prescriptive title through his father or that "he held it by representation of his father as "the lawful heir. The Court of the Seneschal "thus failed to establish, as the basis of its "decision, the essential facts which warranted "the application of the law in the sense "indicated in its judgment.

.....

p.57 ll. 37-46

"There is evidently therefore an unexplained gap "between the date of the death of Mary Elizabeth "Vaudin in 1938 and the death of John Vaudin "Hamon in 1964 in which the Court of the Seneschal "should have satisfied itself that John Vaudin "Hamon was the lawful heir or, if not, that in "good faith he believed himself so to be; that "he entered into possession on a date at least "20 years previous to the date of his death; "that after his entry into possession he "maintained it without lawful interruption and "in continuing good faith.

.....

p.50 ll. 32-38

"In my view therefore it is not possible to "ascertain the date when the cause of action "arose without first ascertaining that the "Plaintiff in the action had a right to assert "and there is nothing before me to show that that "received the attention of the Court of the "Seneschal or, if it did, what was decided about "it."

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11. On the 14th February, 1969 the First and and Second Respondents appealed to the Court of Appeal (Civil Division) of Guernsey from the judgment of the Royal Court dated 21st January 1969. pp.61-63

In their notice of appeal dated 14th February, and in their Statement of Contentions, which are reproduced in full in the Record, the Respondents alleged that the Royal Court was in error in deciding that the Court of the Seneschal should examine all points at issue between the parties before applying Section 1 of the "Loi relative à la Prescription Immobilière 1909" and reiterated their contention that the action of the Appellant in the Seneschal's Court was prescribed by reason of the lapse of at least 20 years from the date on which the cause of action arose. pp. 64-66

The Appellant in his Statement of Contentions which is reproduced in full in the Record, claimed that in his capacité of "aisné" in whom the property of "Le Port à la Jument" had vested automatically, his right of ownership and his right of action to defend his title could not be lost by extinctive prescription unless the Respondents could show that they had acquired better title by acquisitive prescription. The Appellant also contended that prescription under the "Loi Relative à la Prescription Immobilière of 1909" did not run automatically, and was subject to the condition of good faith. He further contended that prescription would not run against a person who was prevented from acting to defend his title ("empeché d'agir") or who had been kept in ignorance of his right of action by means of misrepresentation or deception. pp. 67-71

12. The Hearing of the Appeal took place on the 13th November 1969.

After Counsel for the First and Second Respondents had been heard, and the Appellant had stated his case, the President of the Court put a number of questions to the Appellant on the manner in which he became aware of his interest in the property at Le Port à la Jument pp. 72-107 pp.107-125 pp.125-128

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The Appellant had no opportunity to call witnesses in support of his allegation that the First Respondent had concealed from him facts relating to his right of inheritance, and he was at no time able to give formal evidence himself since the Respondents have at all times successfully resisted the adduction of any evidence of facts on the grounds that the issue of prescription was a preliminary point which should be dealt with before "contestation de cause."

pp.136-154

13. The Judgment of the Court of Appeal was delivered on the 11th March 1970. As no evidence had been called the Court did not review the evidence, but gave instead an outline of the proceedings in the Court of the Seneschal of Sark, and in the Royal Court. At the same time the Court observed that in the Court below, the Seneschal "proceeded to hear argument on that point (of prescription) and then without taking any evidence, gave judgment upholding the plea of prescription and dismissing the Action."

pp.137 l.30 to p.140 l. 23

p.138 ll. 21-24

p.141 l.18 to p.144 l.29

p.104 l.30 to p.152 l.9

14. The Court did however go on to consider in some length the wording of the Law of 1909, and the origins of the Norman Custom relating to prescription. It accepted that the 1909 Statute refers back to the earlier Statute of 1852, which in turn reduced the customary law prescription period from 40 to 30 years.

p.142 l.36 to p.143 l.9

However the Court went on to interpret Section 1 of the 1909 Law as follows :-

"S.1. of the Law of 1909 appears, as it is "printed, to fall into two parts. The first "part deals with prescription operating as a bar "to a right of action, or, as the French writers "call it, <u>prescription exinctive</u>. The section "provides that such prescription is to arise upon ""the lapse of twenty years." The second part "of the section deals with prescription "operating as a source of title, or <u>prescription "acquisitive</u>. The section provides that twenty "years is to suffice for this also, but with an "important qualification -"provided that it be in "good faith"" The Appellants submit that the "section is indeed to be interpreted as falling

"into these two parts. It deals separately,
"they say, with extinctive and acquisitive
"prescription, and the proviso requiring good
"faith applies only to the latter."

"The form of S.1. appears to us to support the "Appellant's contention rather than that of the "Respondent. If, as the Respondent argues, "the essential feature of all prescription were "the acquisition of title by the occupier, and "the barring of rights of action in other people "were only a consequence of that acquisition of "title, one would have expected the two parts "of the section to appear in the reverse order. "It is hardly logical or natural to state the "consequence first and the cause second. "Furthermore, if what really defeats the "Plaintiff's claim is not merely the passage of "time, but the creation of title by that passage "of time in the Defendant, it is at least "imprecise draughtsmanship to say that the action "is to be prescribed by the lapse of twenty "years; and the fault is aggravated when the "draughtsman goes on to refer to the acquisition "of title, using different language and not "inserting any word to indicate that what is "stated in the first part of the section is "essentially dependent upon what is stated in "the second" p.143 l.37 to p.144 l.9

PLEASE SEE AMENDMENT INSERTED OVERLEAF

~~In interpreting S.1 of the Law of 1909, the~~ p.150 l.38
Court of Appeal appeared to adopt entirely the contention of the Respondents, namely that the section deals separately in two parts with extinctive prescription and acquisitive prescription. It is respectfully submitted that such an interpretation would appear to ignore the fundamental and traditional distinction which the section makes, and which is constantly encountered in Guernsey Land Law, between "les choses immobilieres et actions réelles dépendant de la réalité" which are property purchased or occupied on the one hand, and "matière héréditale" which is inherited property on the other. Moreover, it is submitted that it does not follow from the ordinary and natural meaning of section 1 that the first part deals with extinctive prescription and the second part with acquisitive prescription.

In the first place the French word "prescrire", which is used in the first part of the section can mean either to lose or to acquire by prescription, and consequently would cover the case both of extinctive or acquisitive prescription and not merely extinctive prescription as the Court of Appeal held.

In the second place, if it is only the second part of the section which deals with acquisitive prescription, the Court failed to explain why such prescription should have been limited in that section to "matière héréditale", and not specifically extended to the other categories of ownership.

15. It is the Appellant's case that S.1 of the Law of 1909 draws no clear cut distinction between extinctive prescription and acquisitive prescription, but that it follows the traditional Guernsey distinction between "Les Immeubles fictifs, acquêts et conquêts" and actions relating thereto on the one hand, and "Les immeubles propres" or "biens héréditaires" on the other. The purpose of the first part of S.1 of the Law of 1909 was to reduce the prescription period of 30 years to 20 years, whether acquisitive or extinctive, in all actions concerning realty; the object of the second part of S.1 was to apply the same period of acquisitive prescription to "matières héréditales". If no provision was made for extinctive prescription in the second part of the section it was because in "matière héréditale" where possession and ownership vest in the heir immediately on the death of his predecessor in title by reason of the rule "le mort saisit le vif", the right of ownership so acquired cannot be lost by prescription unless an occupier can displace the true owner's title by acquisitive prescription.

It is moreover respectfully submitted that the interpretation placed by the Court of Appeal on the words "bien entendu qu'elle soit de bonne foi" was understood in the sense of "provided that it be in good faith". This proviso, the Court found, was not contained in the previous enactment of 1852, and was an innovation or change relating "only to the second consequence

p.151 ll. 3-4

p.151. ll. 7-9

of prescription mentioned in the second viz, the acquisition of title". In this the Court can not have appreciated the exact meaning of "bien entendu". The meaning of this expression is not strictly "provided", or even "provided always", but rather - even though in translation the term may not sound very juridicial - "provided of course", or even "on condition, of course". This expression "of course" presupposed that the condition of good faith was a matter which (as is submitted is the case) had always been required in questions of acquisitive prescription.

It is true that the Law of 1852 does not mention good faith in connection with prescription, but as the law merely relates back to the pre-existing law or custom, and that by that law or custom, it was a matter of course that acquisitive prescription must be in good faith, there was no particular need to make explicit mention of the condition. In the Law of 1909, the rule was mentioned by way of reminder only, as being a matter of course. p.142 ll. 9-14. p.114 l.31 to p.115 l.22

The point is of importance insofar as it is submitted that no new rule relating to good faith in acquisitive prescription was created by the Law of 1909 but that the statute merely referred to a well established pre-existing rule, namely that there could be no acquisitive prescription in the absence of good faith.

16. In support of its interpretation of the Statute of 1909, the Court of Appeal referred to a number of sources, none of which with the exception of Gallienne and Carey had any direct bearing on Guernsey Law. In particular reference was made by way of analogy to a treatise by Jean Poingdestre on the "Loix et Coutûmes de l'Ile de Jersey", and to a passage in which the author insisted that "prescription quadragenaire" was subject to all the rules of Canon Law relating to good faith, and criticised the practice of the Courts of Jersey which neglected to examine whether or not good faith existed in the party relying on prescription. p.144 l.30 to p.150 l.29 p.148 l.42 to p.149 l.38

Whatever the practice of the Jersey Court which was at variance with the custom of that

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Island as propounded by both Poingdestre and Le Geyt, this cannot be considered as an authority in Guernsey since by Anglo-Norman Law "Jamais les Cours royales n'ont pu par ordonnance, modifier le droit coutumier ou déroger à des règles établies par autorité royale" (Havet, Les Cours Royales des Iles Anglo-Normandes 154ff). Moreover, the practice of the Jersey Courts, to which the Court of Appeal attached considerable weight, whereby no plea even of bad faith might be raised after forty years, is specifically rejected elsewhere in the same judgment which held specifically that "If the occupier was guilty of fraud, neither the Ancienne coutume, nor the law of Guernsey - nor we might add, any other civilised system of law - would allow prescription to run in his favour."

p.148 l.42 to p.149 l.47

p.150 ll. 2-5

p.147 l.13-17

17. Neither is the interpretation placed by the Court of Appeal on Gallienne who, it was held, "regards prescription as no more and no less than a matter of time" compatible with the unquestioned rule in Carey's "Institutes" that "Prescription ou la terme paisible par quarante ans ... ne court pas contre qui est empeché d'agir ou qui est ignorant de son droit au moyen de fiction ou de déception ou aurait use envers lui". If prescription is purely a matter of time as the Court of Appeal held it was before the Law of 1909, there is a clear conflict with the rule in Terrien and Carey who both held that the "contra non valentem agere non occurrit prescriptio" rule applied in Guernsey.

p.150 ll. 27-29

p.154 ll. 1-4

In the passage of Gallienne to which the Court of Appeal made reference however, that author, who in the eyes of the Court of Appeal was "a significant authority, for Gallienne was a Guernsey lawyer and his book was published in 1845", specifically approved Pothier on Prescription and quoted from him in extenso.

p.150 ll. 14-21

In relying on other arguments by analogy the Court of Appeal, whilst rejecting the authority of Pothier on prescription, which had been cited with approval in the Royal Court, and by Gallienne himself, cited the rule of Art.2262 of the French Civil Code which enjoys no authority in Guernsey.

p.147 l.35 to p.148 l.29

p.148 ll.30-35

Even so the Court of Appeal failed to mention that this rule is not strictly applied by the French Count of Cassation which once again has adopted the "contra non valentem agere" rule propounded by Pothier.

It was argued on behalf of the Appellant that if he was the rightful heir of Marie Elizabeth Vaudin, on her death the property vested in him immediately and absolutely both under the rule "Le mort saisit le vif", and by virtue of the Letters Patent of 1612 which provided that "Toute terre, tenement ou heritage situés dans ladite ile de Serk doivent écheoir et succeder et à l'avenir descendront et iront entièrement et directement au fils aîné et à ses héritiers." It was further argued that since the Appellant became the owner of the property known as "Le Port à la Jument" at the very moment Marie Elizabeth Vaudin died, his right of ownership and indeed his right to assert his ownership by means of an "action en revendication" could not be extinguished by non-user. Such right would only be extinguished if an occupier could set up prescription acquisitive against him; in other words, there could be no extinctive prescription without acquisitive prescription.

p.69 ll.2-10

p.68 ll.34-41

p.110 l.31 to p.113 l.16

It is submitted that the Court of Appeal was wrong in taking the view, that a usurper in bad faith could in effect acquire the title against the true owner, not because he had been in occupation peaceably and in good faith for the prescription period, but merely because the true owner was timebarred from asserting his title.

In the light of the construction placed on the wording of S.1. of the Law of 1909, it is submitted that the Court of Appeal should have considered this point. If that provision required that an occupier, must be in good faith in order to raise the plea of acquisitive prescription, the clause defeats its purpose. An usurper in bad faith can, in effect by asserting extinctive prescription against the true owner, acquire a title which by the same provision he can only acquire if he is in good

faith. Alternatively, if the usurper is in bad faith and therefore cannot plead acquisitive prescription and if the true owner is unable to assert his title because he is timebarred, then an anomalous situation arises in which nobody is the owner of the property.

19. At no stage of the proceedings since the
p.152 ll. 14-16 original hearing before the Seneschal was any evidence taken either as to the nature of the Appellant's title to bring any action, as to the good faith of the Respondents and their predecessors in title, or as to whether the facts of the case would enable the Appellant to rely on the "contra non valentem agere" rule.
p.152 ll. 25-37 Instead, the Court of Appeal held that "It is regrettable that the Court of the Seneschal did not receive evidence formally on points relevant to the plea of prescription ..... All parties were content to allow the point to be argued upon unsworn statements of facts informally made during the argument, and to some extent, as it appears to us even upon assumptions made more or less tacitly". It is submitted that the Court of Appeal had before it no grounds for assuming that all the parties were content to allow the point of prescription to be argued on
p.64 l.16 to p.65 l. 18 unsworn statements of facts. On the contrary, the Respondents vigorously argued, and this was accepted by the Seneschal - that the question of extinctive prescription barred any "contestation de cause". It is submitted on behalf of the Appellant that because of this he was prevented from adducing his evidence, and that he never had a proper opportunity of establishing the nature of his claim at any stage of the proceedings.

p.160 From the Judgment of the Court of Appeal dated the 11th day of March 1970, the Appellant was, on the same day granted by the Court of Appeal conditional leave to appeal to the Privy
p.161 Council, the leave being made final on the 15th day of June 1970.

20. The Appellant humbly submits that the Judgment of the Court of Appeal dated 11th day of March 1970 reversing the Judgment of the Royal Court of Guernsey on appeal from the Court of the Seneschal of Sark dated 21st January, 1969

was wrong and ought to be set aside for the following amongst other :

R E A S O N S

1. BECAUSE it is impossible to apply the law relating to prescription without any enquiry into the facts relating to the acquisition and retention of possession by those who are said to have acquired and retained possession adverse to the claimant.

2. BECAUSE the distinction between acquisitive and extinctive prescription drawn by the Court of Appeal is a false distinction

3. BECAUSE good faith on the part of the possessor is an element in every kind of prescription affecting real property and this must accordingly be investigated as a question of fact in each case.

4. BECAUSE alternatively good faith on the part of the possessor is an element in prescription affecting inherited property and this must accordingly be investigated as a question of fact in each case.

5. BECAUSE in any event in order to bar a claimant any possession adverse to him must be shown to have run continuously from the date of such possession being taken and this should accordingly have been investigated as a question of fact.

6. BECAUSE the Respondents ALAN JAMES MESNEY and DOROTHY LUCIEN MESNEY are not entitled to add any period of adverse possession which did not confer a good title upon the said JOHN VAUDIN HAMON to their own period of possession for the purposes of prescription.

7. BECAUSE time does not run against a person such as the Appellant who was at all times prior to the year 1962 or alternatively the year 1954 prevented from suing.

8. BECAUSE the finding of the Seneschal's Court and the Court of Appeal were vitiated by reason of the Appellant having had no opportunity of putting forward his basic case and producing evidence in support thereof, both Courts holding that the Appellant was time barred without investigating the nature of his claim or of his action.

9. BECAUSE the Judgment of the Court of the Seneschal of Sark and the Judgment of the Court of Appeal affirming it were wrong and ought to be set aside.

10. BECAUSE for the reasons therein given the Judgment of the Royal Court of Guernsey (Ordinary Division) was right and ought to be restored.

RAYMOND WALTON

G. PICARDA

No. 29 of 1970.

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CASE FOR THE APPELLANT

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