

JERSEY / JUDGMENT

Re Flint [2000] JRC 206A (26 October 2000)

[2000] JRC 206A

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE COMMISSIONER: 1. This matter arises from an attempt by Mr Charles Flint to raise the Clameur de Haro when some moveables housed in a shed (which itself is moveable) near Rozel Harbour were being removed by Mr Des Hinault, on the instructions of "the respondent" as Mr Flint describes Mrs Gwenda Mary Burdon Sarre in his affidavit. 2. The background to the Clameur is as follows: Mrs Sarre is the owner of "The White House" and of land attaching to it backing onto Rozel Pier and also onto a number of small properties which themselves give onto the pier. 3. About two thirds of the way to the north-east of Mrs Sarre's property is a construction which everyone in this case has been calling "her pad". Not far from the pad, some 17 feet, there was a small garden shed in which (as I have already said) Mr Flint had kept some of his belongings which were in the course of being removed by Mr Hinault when Mr Flint raised the Clameur. 4. Mr Flint had previously attempted to raise the Clameur following a judgment given against him at the instance of Mrs Sarre for failure to pay rent in respect of the pad. Mr Flint attempted to prevent the Viscount's Officers from enforcing the Court's Order to put Mrs Sarre in possession by raising the Clameur. In the judgment of the Court of the 7th April this year, the Court considered that the Clameur had been wrongly raised, and with that we respectfully agree. The Court went on to say this: "As to the future we make it clear that the Viscount is entitled to put this eviction order into effect, and it is not open to you, Mr Flint, to raise the Clameur in that respect." 5. The first point which has to be dealt with is whether the chalet (or garden shed - call it what one will) forms part of the pad which Mrs Sarre was entitled to reclaim through the Viscount's Office following the Order of the Court. Normally a garden shed is part of what may be called the curteledge of the property, and we see no reason to suppose that it was otherwise in this case, and accordingly, on this basis of the Judgment of the Court of the 7th April, 2000, which I have mentioned, Mr Flint was attempting to raise the Clameur on the second occasion in respect of a property on which the Court had already adjudicated. 6. However, it is only fair to Mr Flint to express, as best I can, what his defence is to the claim by Mrs Sarre that the Clameur had been wrongly raised on the second occasion, with which we are concerned today. I should add, for tidiness' sake, that the proper procedure was not followed by Mr Flint: after the Clameur was raised, a subsequent representation was made to the Court which was not proceeded with. This was not the fault of Mr Flint. He consulted a firm of lawyers and an employee of that firm who, we understand, is an English Barrister, either did not know about, or if he did, chose to disregard the Clameur itself. We attach no blame to Mr Flint for following the advice - wrong advice - of his

lawyer in that case. 7. As regards the position of the chalet - on the assumption that it was separate from the pad, and that indeed is what Mr Flint wanted - we have to look at his line of defence. It is quite simply this: a Mr Bee who owned "Villa Hermosa" to the east of the Sarre's land had stated as follows in a letter dated 21 st September 2000, designed to allow Mr Flint to keep that bit of land on which the chalet was placed: "To whom it may concern. This is to confirm that I am aware that Mr Charles Flint, has over a period of years encroached on land owned by Villa Hermosa Limited. He has today taken several feet of land from our garden. I can confirm that we have no objection to Mr Flint claiming the pilfered land as his own, assuming that he does not look to us for maintenance or other claims arising from the land, or to claim any rights of access to our remaining land." 8. We do not understand how Mr Bee came to write that letter, because from the evidence of Mr Paul de Vaux it is quite clear to us that the land on which the chalet was placed never formed part of the land owned by "Villa Hermosa" or Villa Hermosa Limited. The boundary stones make it quite clear that Mr Bee's land and that of the company, is clearly to the east of the land on which the chalet was erected and that there is some other land belonging to Mrs Sarre between Villa Hermosa and the chalet land, and that being so, we think that the purported gift is a nullity. However, we do not go so far as to say that Mr Flint did not genuinely believe that some sort of title was being conferred upon him. 9. Even if that purported transfer, or winking at the pilfering of the chalet land had had any effect, there are a number of other hurdles which Mr Flint would have to get over before he could properly raise the Clameur. 10. First of all, he would have had to have possession for a year and a day before he raised it, and Miss Benest has already said that the Act of Court put Mrs Sarre in a de jure possession, thereby putting a de facto possession into effect. 11. Secondly, there would have to have been an "appert péril" , a well-known requirement, but in our view, there could not have been an "appert péril" . 12. Thirdly, the Clameur is to be raised " pour conserver et non pour recouvrer" land. 13. Fourthly, it has to be raised in respect of real property or héritage , and not personal effects, and it is quite clear that the hut is not an immovable. 14. Lastly, Mrs Sarre herself was not present and therefore the Clameur de Haro should have been brought only against Mr Hinault who was actually carrying out the removal of Mr Flint's goods from the garden hut. The authority for saying that the Clameur must be raised against the person carrying the act out but not against the person who instigated it is A G and Bailhache (Ajointe) -v- Williams

(1968) JJ at page 991. 15. Finally, I refer to a letter from Ogier & Le Masurier, who were then Mr Flint's legal advisers, to Mr Syvret instructing Miss Benest, dated 12 th October, where, in paragraph 1, Mr Andrew Moustras, on behalf of Ogier & Le Masurier, unequivocally confirms Mr Flint's instructions to retract the Clameur de Haro which he had raised on the 25 th August, and therefore, under all the circumstances, both as regards fact and the law involved in this case, we find that Mr Flint wrongly raised the Clameur. Authorities AG -v- Bailhache (Ajointe) -v- Williams

(1968) JJ 991 . AG -v- de Carteret (1987-88) JLR 626. Le Gros: "Droit Coûtumier de Jersey (1944): de la Clameur de Haro: pp.28-35. Page Last Updated: 02 Nov 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2000/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/re-flint-2000-jrc-206a-26-october-2000>

Prepared on 25 October 2026 · Esheria