A Father v HM Greffier
Royal Court
31st March, 2015

JUDGMENT
18/2015

Application for the birth of a child to be registered as legitimate in the Guernsey Register of Births.

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between: **A Father** **("the Applicant")**

and

HM GREFFIER **("the Respondent")**

Before: Sir Richard John Collas, Esq., Bailiff

Judgment handed down: 31 March 2015

The Applicant appeared in person

Advocate for the Respondent: **Advocate K E Hill-Tout**
Partie Publique/Amicus Curiae: **Advocate R Gist**

1. The Applicant father ("the Father") is domiciled in a foreign jurisdiction as is his partner ("the Mother") who gave birth to a child ("C") in Guernsey. The birth of the child must be registered in Guernsey pursuant to La Loi relative à l'Enregistrement des Naissances et Dècés dans le Baillage de l'Ile de Guernesey 1935, as amended ("the 1935 Law"). The Father and Mother are not married and it is common ground between the parties that if both parents were domiciled in Guernsey, C would be considered to be illegitimate and would be described in the Register of Births as "the natural child" of his parents. However the Father and Mother claim that the child is domiciled in the foreign jurisdiction and that the child's status is determined by the law of that jurisdiction under which, they claim, C is legitimate. They wish that the birth be registered as for a legitimate child.

2. The Registrar-General of Births and Deaths in the Bailiwick of Guernsey is Her Majesty's Greffier who declined to register the birth of C as a legitimate child. The Father did not want C to be registered as an illegitimate child so he brought the present application ("the Application") in which he applies:

> *"(b) for a declaration of the Royal Court that a child whose parents are domiciled in [the foreign jurisdiction] and whose paternity has been acknowledged by the father with consent of the mother in accordance with [the a provision of the statutory law of the foreign jurisdiction] is legitimate or to be treated as legitimate for all purposes under the laws of the Bailiwick of Guernsey; and*
> *(c) for an order that H M Greffier as Registrar-General of Births shall be directed to register the birth and to issue a birth certificate for [C] as for any other legitimate*

> *child (i.e. without any expressed or ambiguous wording describing [C] (or his parents) as "natural" or "biological" "illegitimate" to distinguish the status of [C] from that of any other legitimate child".*

3. The Father represented himself in the proceedings, the Mother did not appear but advised the Court that she supported the Application; Advocate Hill-Tout appeared on behalf of the Respondent, H M Greffier; and at the request of the Court, H M Procureur appointed Advocate Gist to act as Amicus Curiae/Partie Publique. In paragraph (a) of the application for relief, the Father sought an order that the Application be heard in private as it concerned a minor child. I agreed that the hearing be in private, in accordance with the Court's normal policy when hearing applications concerning minors. However, the decision of the Court will be a matter of public record as will the entry in the Register of Births. I intend that this judgment may be published but without reference to any information that could lead to the identification of C.

4. Advocates Hill-Tout and Gist opposed paragraphs (b) and (c) of the prayer for relief. They submitted: (i) that the Royal Court had no power to grant the declaration sought as there is no statutory or other basis in law for the Court to entertain the Application; and (ii) that C is to be registered as an illegitimate child.

5. Counsel conferred with the Father to agree the issues they wanted me to consider and the order in which those issues were to be addressed, with the expectation that it might not be necessary to address them all, depending on what decision I came to on each issue.

The Court's Power to Grant the Declaration Sought

6. The first issue I was asked to consider was whether the Royal Court has the power or jurisdiction to grant the declaration sought.

7. In the absence of any statutory jurisdiction to entertain applications for a declaration of legitimacy in Guernsey, the Father relied upon the Royal Court's inherent jurisdiction acting as, what he called, a Superior Court. In support thereof, he referred me to an extract from Halsbury's Laws of England/Civil Procedure (Volume 11 (2009) 5th Edition, para 15

> *"Unlike all other branches of law, except perhaps criminal procedure, there is a source of law which is peculiar and special to civil procedural law and is commonly called the 'inherent jurisdiction of the court'. In the ordinary way the Supreme Court, as a superior court of record, exercises the full plenitude of judicial power in all matters concerning the general administration of justice within its territorial limits, and enjoys unrestricted and unlimited powers in all matters of substantive law, both civil and criminal, except in so far as that has been taken away in unequivocal terms by statutory enactment. The term 'inherent jurisdiction' is not used in contradistinction to the jurisdiction of the court exercisable at common law or conferred on it by statute or rules of court. The jurisdiction of the court which is comprised within the term 'inherent' is that which enables it to fulfil, properly and effectively, its role as a court of law. It has been said that the overriding feature of the inherent jurisdiction of the court is that it is a part of procedural law, both civil and criminal, and not a part of substantive law; it is exercisable by summary process, without a plenary trial; it may be invoked not only in relation to parties in pending proceedings, but in relation to any one, whether a party or not, and in relation to matters not raised in the litigation between the parties; it must be distinguished from the exercise of judicial discretion; and it may be exercised even in circumstances governed by rules of court. Note, however, that a recent decision has held that, while the court continues to have the inherent jurisdiction to regulate the conduct of civil litigation, a claim should be dealt with in accordance with the rules of court and not by exercising the court's inherent jurisdiction where the subject matter of the claim is governed by those rules.*

> *In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent vexation or oppression, to do justice between the parties and to secure a fair trial between them."*

8. The Father placed great emphasis on the importance of determining C's status. He encouraged me to follow the approach of Lord Hope of Craighead in In re D [2005] UKHL 33:

> *"5. There is no doubt that the widening of the frontiers of human existence by the use of assisted reproduction technologies has raised new questions about how the legal relationships that result from their use are to be identified. The law has always attached a special significance to a person's status. In The Ampthill Peerage [1977] AC 547, 568 G-H, Lord Wilberforce said:*
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> > *"There can hardly be anything of greater concern to a person than his status as the legitimate child of his parents: denial of it, or doubts as to it, may affect his reputation, his standing in the world, his admission into a vocation, or a profession, or into social organisations, his succession to property, his succession to a title. It is vitally necessary that the law should provide a means for any doubts which may be raised to be resolved, and resolved at a time when witnesses and records are available. It is vitally necessary that any such doubts once disposed of should be resolved once and for all and that they should not be capable of being reopened whenever, allegedly, some new material is brought to light which might have borne upon the question.""*

9. Lord Hope was clearly referring to establishing legitimacy in a different context than we are concerned with in the present case. There is in my view a significant difference between determining the factual question of paternity and the legal issue of legitimacy. Lord Hope continued at paragraph 6:

> *"The conferring of the status of father on a man who is not related to the child by blood or marriage to the child's mother is a very serious matter, for the reasons which were mentioned by Hale LJ in the Court of Appeal: Re R (a child) (IVF:paternity of child) [2003] Fam 129, 137, para 20. It affects not only the relationship between the father and the child but also the relationships between the child and the whole of the father's family."*

10. Lord Hope was concerned with a factual dispute as to paternity, from which the legal status of legitimacy would flow. In the present case, there is no issue as to who is the father of the child C; the only issue is the legal status in Guernsey of C. The matter raised by Lord Wilberforce as to the importance of obtaining evidence whilst witnesses and records are available is not an issue. The evidence of fatherhood is not disputed. It is the legal consequence of that evidence that is being challenged. However, the Father urged me to take account of the importance of resolving the legitimacy issue as soon as possible. He indicated that the matter was of such importance that the Mother who presently resides in the foreign jurisdiction may choose not to come and live in the Bailiwick if the issue is not resolved. He did not elaborate upon that statement. I consider that if there is a specific concern, the Father (or the Mother) may have to resolve it in another way or with an application that addresses that specific issue.

11. As an alternative argument, the Father claimed that Advocate Hill-Tout was estopped from challenging the Court's jurisdiction on the ground that the Application must be viewed as having been brought jointly by the Father and H M Greffier so that Advocate Hill-Tout, on H M Greffier's behalf, would be estopped from challenging the jurisdiction of the Court. She, in reply, denied there could be any estoppel.

12. The Father relied upon the decision in In Re X [2007-08] GLR 161; an application to rectify the Register of Births following gender re-assignment treatment in the absence of any Guernsey statute similar to the Gender Recognition Act 2004 of the United Kingdom. In that case, the application was made by H M Greffier with the support and encouragement of the individual concerned. In my judgment, there are two significant features that distinguish the present Application from that in In Re X. Firstly, the Application is made by the Father and not by H M Greffier; and secondly, the application in In Re X was brought under Article 20 of the 1935 Law which expressly provides that an application for rectification shall be made by the Registrar-General. Thus there is no comparison with the earlier case and I am satisfied that H M Greffier is not estopped from challenging the jurisdiction of the Royal Court to entertain the Application.

13. I return to the Court's power under its inherent jurisdiction to grant declarations. The leading decision in this jurisdiction as to the Court's discretionary power to grant declaratory relief is that of Hancox LB in In the matter of The Westbury Property Fund Limited [2005-06] GLR 176 (an application for a declaration that a special resolution of the company was deemed to have been received by the Registrar of Companies). He had regard to the English court's jurisdiction and to the power of the High Court to grant similar relief. He said (beginning at para 12) (emphasis added):

> *"Although claims for declarations alone are unusual, it is perfectly clear that the High Court has a discretionary power to grant such relief if it regards this as a proper course: see the commentary in 1 Supreme Court Practice 1999, para. 15/16/2, at 267-268.* ***The power to exercise this discretion stems from the paramount duty of the court to do the fullest justice to the plaintiff, or applicant, as the case may be***.
> *13. This aspect of the English court's jurisdiction is exemplified by the decision of Neuberger J. in Financial Servs. Auth. v Rourke [English Ch. D., October 19th, 2001, unreported] in which the Financial Services Authority sought, inter alia, declaratory relief against the defendant, who had been carrying on an unauthorized deposit business for some years. Neuberger J. said: "...[**O]f course the court has to be particularly careful before it grants a remedy which is discretionary and which can [here I interpolate 'could'] have a wide-ranging effect, at a summary stage**."*
> *14. In the Jersey case of Hanby (Victor) Associates Ltd v Oliver [1990 JLR 337], the Court of Appeal said in relation to a discovery application that unless there was something in the language of the relevant rule which compelled a contrary conclusion, it was open to the Royal Court to develop its own practice as to the circumstances in which it allowed a party to challenge his opponent's list of documents. Again in News Intl. PLC v Clinger [Royal Court May 10th, 1996], in the following passage, Carey, Deputy Bailiff, as he then was, said:*
> *"...I find nothing incompatible with adopting English principles of equity and affording relief to plaintiffs who claim their money has got into a bank account in another person's name as a result of 'fraud or other wrong doing'..."*
> *15. In the present case, as the Procureur has said, the only other possible party to the application is the Registrar of Companies, that is H.M.Greffier.* ***There is no suggestion that there is a risk of prejudice to persons not before the court***."

14. The Father referred me to decisions of the Royal Court in which the Court had applied the principles enunciated by Hancox LB when granting declaratory relief including In the matter of the Registrar-General of Electors [2007-08 GLR 304] (an application for a declaration that the names of electors who had wrongly been removed by administrative error be restored to the Electoral Roll). In that decision, Finch LB (as he then was) emphasised it is important to ensure that when exercising its discretionary jurisdiction to grant declaratory relief, the court does not cause prejudice to persons not before the court.

15. As *amicus,* Advocate Gist referred me to the statutory jurisdiction of the English courts to grant a declaration of legitimacy; a jurisdiction now set out in The Family Law Reform Act 1987 and which derived originally from the Legitimacy Declaration Act 1858. Despite the fact that such English statutes have existed for more than 150 years, the States of Guernsey

has not seen it fit, or necessary, to bestow a similar statutory power on the Royal Court. Hence the Father's recourse to the Royal Court's inherent jurisdiction.

16. The 1987 Act is discussed in Dicey, Morris and Collins on The Conflict of Laws, 15th edition, chapter 20. The statutory jurisdiction is only exercisable where the applicant is domiciled in England on the date of the application and was habitually resident in England throughout the period of one year ending in that date. Hence, in the present case, if C had been born in England rather than Guernsey and the facts were otherwise all the same, the English court would not have the statutory jurisdiction to entertain an application that a new-born child is domiciled in the foreign jurisdiction.

17. Regarding the English court's inherent jurisdiction to grant a declaration of legitimacy, the text book says the following, at para 20-006:

> *"Long before 1858, and also since, the courts have decided such questions [as to parentage or legitimacy] whenever they have arisen as between the parties to a cause, whether the person whose legitimacy was in question was alive or dead and whether or not he was a party to the proceedings. But such decisions do not amount to decrees in rem: they do not bind anyone except the parties or those claiming under them, and they do not declare that the person in question is or was legitimate for all purposes, but only for the particular purpose in question."*

18. Thus, under the English court's inherent jurisdiction, there would be no power to grant a declaration of legitimacy **for all purposes** as is sought in this Application. I respectfully agree with Carey DB that there is nothing incompatible with adopting English principles of equity when affording relief to plaintiffs in certain circumstances (as he said in News Intl Plc v Clinger quoted above). However, extreme care must be taken when this court is being urged to follow some parts of some English decisions in order to justify the grant of relief which in other circumstances the English courts would not grant.

19. The Application must be considered in the light of the Royal Court's (limited) inherent jurisdiction to grant declaratory relief.

20. The Application seeks a declaration that C is legitimate under the law of the foreign jurisdiction being C's country of domicile *"for all purposes under the laws of the Bailiwick of Guernsey"*. The first point to note is that there are parts of the Bailiwick where the laws relating to legitimacy/illegitimacy may be different from other parts of the Bailiwick. I was not addressed separately on the legal position in each of the three jurisdictions (Guernsey, Alderney and Sark) that make up the Bailiwick. I venture to suggest that if, in Guernsey, the status of legitimacy/illegitimacy of a child is determined by the country of domicile of the child, the same is likely to be so in each of Alderney and Sark. However the legal consequences of illegitimacy may well be different in other islands.

21. I asked the Father and counsel to tell me the significance of illegitimacy in the islands. They were all agreed that the differences between legitimacy and illegitimacy are less significant than they once were but no one was able to say in what areas of the law there remains a distinction between them. That was the decisive factor in my decision. As Hancox LB said in Westbury and Finch LB confirmed in The Registrar-General of Electors, when exercising its discretionary jurisdiction, the court must not cause prejudice to those who are not before the court.

22. As the consequences of making a declaration that C is legitimate for all purposes under the laws of the Bailiwick are unknown, I cannot know who might be affected by the decision. If a court cannot be told who might be affected by the making of such a declaration, it cannot be satisfied that no one would be prejudiced by it. If there is a risk of prejudicing a person or persons not before the court, the court must refuse to entertain the Application.

23. For the reasons I have given, I am persuaded that I should not make a declaration of legitimacy/illegitimacy in respect of C in the terms sought. I am also of the view that, even if the Father had sought a declaration in more limited terms, I could not grant a declaration without a full understanding of the consequences of it so as to be satisfied that it would not cause prejudice to persons who are not before the court. Furthermore, it appears to me from the passages cited from Dicey & Morris that where a declaration of legitimacy is sought, it is the courts of the country of domicile to which application should first be made.

For the purposes of the 1935 Law, is the status of illegitimacy determined solely by Guernsey law?

24. The second issue I was asked to consider was originally formulated as: "whether the status of legitimacy/illegitimacy is to be determined by Guernsey law either for all general purposes or simply for the purposes of the 1935 Law?" In the course of submissions, the issue became one of whether the status of legitimacy/illegitimacy for the purposes of the 1935 Law is to be determined by Guernsey law or by the law of the country of domicile of origin of the child.

25. The Father submitted a general proposition that the status of legitimacy of a child is determined by the law of the child's country of domicile. That is the well-established position under the law of England and Wales and I can see no reason why the general position under Guernsey law should be different. The issue was considered most recently in the Chancery Division In the Matter of the Duchy of Manchester Settled Estates [2011] EWHC 1856 (Ch), a case concerning whether, under the terms of the 10th Duke of Manchester's English and Irish settlements, two named children of the 13th Duke were entitled to benefit in circumstances where they were the children of a bigamous marriage. At paragraph 11 of the judgment, Floyd J cited a passage from the judgment of Romer J in In re Bischoffsheim [1948] 1 Ch 1979, a case that also involved a marriage considered void under English law but which was valid under the law of New York where the marriage took place and where the child concerned was domiciled by virtue of his parents' domicile of choice. He said:

> *"11. Romer J summarised the argument advanced for the legitimacy of Richard in the following way:*
>
> > *"Admitting that only a legitimate child could take under the gift to Nesta …'s children, legitimacy is a question of status. That status is conferred or withheld, as the case may be, by the law of the domicile of origin, which is the law of the domicile of the parents at the time when the person whose legitimacy is in question was born. The status, once confirmed, remains with the person concerned throughout his or her life and will be recognized and given effect to by our courts, save only in cases where the person claims to succeed to real estate in England. It is established by the evidence that Richard Wellesley received at birth the status of legitimacy by the law of New York and, accordingly, it was contended, his claim, as a child of his parents, to a fund of English personalty will be recognised by the courts of this country."*
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> *12. Romer J held that those arguments "must prevail". He did so principally on the basis of a decision of the Court of Appeal in re Goodman's Trusts (1881) 17 Ch D 266. That was a decision about statutory legitimation, as opposed to deemed legitimacy, but Cotton LJ expressed his views in very general terms. He said this at page 291:*
>
> > *"It was urged … that the law of England recognises as legitimate those children only who are born in wedlock. This is correct as regards the children of persons who were at the time of the children's birth domiciled in England. But the question as to legitimacy is one of status and in my opinion by the law of England questions of status depend on the law of the domicil."*

13. Later at page 292, Cotton LJ said:

> *"If, as in my opinion is the case, the question whether a person is legitimate depends on the low level place where his parents were domiciled at his birth, that is, on his domicil of origin, I cannot understand on what principle, if he be by that law legitimate, he is not legitimate everywhere, and I am of opinion that if a child is legitimate by the law of the country where at the time of its birth its parents were domiciled, the law of England, except in the case of succession to real estate in England, recognises and acts on these status thus declared by the law of the domicil."*

14. James LJ was forthright on this question as well. At page 296 he said:

> *"But the question is, what is the Rule which the English law adopts and applies to a non-English child? This is a question of international comity and international law. According to that law as recognised, and that comity as practised, in all other civilized communities, the status of a person, his legitimacy or illegitimacy, is to be determined everywhere by the lawyer of the country of his origin - the law under which he was born. It appears to me that it would require great force of argument to arrive from legal principles, or great weight of authority clear and distinct, to justify us in holding that our country stands in this respect aloof in barbarous insularity from the rest of the civilized world. On principle, it appears to me that every consideration goes strongly to shew, at least, that we ought not so to stand. The family relation is at the foundation of all society, and it would appear almost an axiom that country, should be respected and acknowledged by every other member of the great community of nations."*

15. For my part I would hold that those underlying principles should apply as much to legitimacy as legitimation. Whilst it is true that there are differences between the concepts of legitimacy and legitimation, I cannot see why the resulting status should be treated differently in the two cases".

26. The learned authors of Dicey, Morris and Collins on The Conflict of Laws, 15th edition have formulated the following rule:

> *"RULE 113 – (1) A child born anywhere in lawful wedlock is (or may be presumed to be) legitimate in England.*
>
> *(2) A child not born in lawful wedlock is (semble) legitimate in England if, and only if, he is legitimate by the law of the domicile of each of his parents at the date of his birth."*

27. Starting at paragraph 20-015, they explain why the second clause of that rule has been formulated in that way. At paragraph 20-017 they state that it reflects the decision in In re Bischoffsheim. They explain the decision in subsequent paragraphs and they also explain why it is that the decision may be open to criticism especially as it is difficult to reconcile with an earlier decision of the House of Lords in Shaw v Gould (1887) L.R. 3 H.L. 55. They identify the difficulties that arise when the parents of an illegitimate child are not both domiciled in the same jurisdiction. If the status of legitimacy is determined by the law of a child's domicile of origin, it can involve a circular argument because if the child is legitimate, its domicile of origin is that of his father whereas if he is illegitimate, his domicile of origin is that of his mother. Fortunately for me, no such difficulty arises when both parents are domiciled in the same jurisdiction, as in the present case. The Father and Mother are both domiciled in the foreign jurisdiction and, consequently, C also has a domicile of origin in that country, whether he is legitimate or illegitimate.

28. In presenting the Application, the Father produced a number of other authorities that support and confirm that principle that the status of legitimacy is determined, for all purposes, by the

laws of the country of domicile. He also cited a number of authorities that are of no assistance because they deal with different legal situations. An example of the latter is the decision of Peter Jackson J sitting in the Family Division of the High Court in M v F and H [2013] EWHC 1901 (Fam) which makes reference to the terms "biological father" and "legal parent" and to the need to re-register a birth. The case involved a child conceived following sexual intercourse between the mother and the father to whom she had been introduced as a sperm donor but with whom she developed a sexual relationship. The central issue was whether the conception resulted from sexual intercourse (known as natural intercourse) as alleged by the mother or from artificial insemination as asserted by the father. Having heard evidence, the judge rejected the father's submission that the child was born as a result of artificial insemination. Had he not done so the question of parentage would have depended upon the effect of the Human Fertilisation and Embryology Act 2008. The facts of that case and the terms of the legislation are so far removed from the present that they are of no assistance to me.

29. The Father also quoted from The Assisted Reproduction (Guernsey and Alderney) Ordinance, 2009 which provides for the parentage of children born as a result of assisted reproduction in certain circumstances. He sought to rely upon section 6 which specifies who is required to be treated as the father of a child *"for all purposes".* However, the section is only concerned with a child born from donated sperm in the circumstances set out in section 2 and 3 of the Ordinance and so it is also of no assistance in the present matter.

30. Advocates Hill-Tout and Gist agreed with each other but not with the Father. On this issue their submission was, in summary, that when registering the birth HM Greffier, as Registrar, performs a purely administrative act. He makes no determination as to the status of the infant and is in no position to do so. If he is aware that the parents are unmarried, he must record the birth as being that of an illegitimate child and in doing so, he determines the question of the child's status in accordance with the law of Guernsey.

31. Advocate Hill-Tout neatly summarised the statutory duties of H M Greffier as Registrar-General of Births and Deaths. In paragraph 14 of her written Skeleton Argument, she wrote:

> *"The statutory duty of the Registrar-General of Births does not extend into enquiring into the validity of declarations made to him. There is no burden of proof upon him as is suggested by the Applicant. Declarations are assumed to be truthful as false statements by Declarants with intent are punishable in the same way as perjury (Article 27). If it comes to the Registrar-General's attention that there is an error, other than an insignificant error, in the Register of Births he is obliged to apply to the Court to rectify it (Article 20). However it is submitted that the Registrar-General can only accept declarations which are in accordance with the Law. Article 2(2) specifically provides who shall make the declaration in the case of an illegitimate child."*

32. I agree with those statements except that the final sentence, whilst it is undoubtedly correct, does not assist in determining under which system of law the legitimacy of a child is to be determined.

33. In my view, it is highly significant that the first duty of the Registrar-General is to record the information declared to him. He does not have the staff or the resources to investigate the veracity of what he is told; in many cases, it would be highly intrusive if he were to do so. I am satisfied that the 1935 Law does not impose on H M Greffier an obligation to enquire into the truth of declarations made to him. For that reason I reject the Father's submission that there is a burden of proof on the Registrar-General to establish the status of a child if the parents have declared the infant to be legitimate and the Registrar-General wishes to challenge such declaration.

34. The Registrar-General has to accept the truth of the factual information relating to the birth of the infant and its parentage that is contained in the declaration and he duly records it. If he

saw something which, on the face of the declaration form, appeared to be incorrect or which might be untrue, I have no doubt that he would draw it to the attention of the declarant and that he would remind the declarant of the legal consequences of making a false declaration if he considers it appropriate to do so. If, having done so, the declarant maintains that the declaration is true and correct, H M Greffier may accept the declaration and enter the information on the Register of Births. If later it were to come to light that some information contained in the declaration were false, H M Greffier will apply to the Royal Court to rectify the register and the parents may face prosecution under Article 27 of the 1935 Law for having made a false declaration.

35. The point I am making is that H M Greffier is not responsible for the veracity of the information declared to him and thereafter recorded in the Register of Births. His primary duties are to ensure that the Register accurately records the information contained in the declaration, to maintain the Register and to rectify the records as and when the Court directs that the Register must be rectified.

36. Where the child is illegitimate, Advocate Hill-Tout submits that the declaration must be completed in accordance with Article 2(2) of the Law and, if not, H M Greffier cannot accept the declaration and cannot register the birth.

37. The 1935 Law does not define the words "legitimate" or "legitimacy" or "illegitimate" or "illegitimacy". It also makes no mention of domicile or of the possibility that children with a domicile other than in Guernsey might be regarded as legitimate even though they would be illegitimate under Guernsey law. In 1935 it may not have been considered necessary to do so. Legitimacy was acquired by a child whose parents were married to each other at the date of birth. Most of the children born in the island in 1935 would have been the children of Guernsey parents but there would have been many whose parents were not both domiciled here. The island has always welcomed strangers to its shores. In the 19th century and the first part of the 20th century, most of the strangers who came to the island would have been from countries such as England and France which had the same definition of illegitimacy as this Bailiwick. Thus the situation that has arisen in the present case is unlikely to have been within the contemplation of the States when the 1935 Law and its predecessor Laws of 1925 and 1840 were enacted.

38. The Legitimacy (Guernsey) Law, 1966 does not assist me. It provides for the legitimation of adulterine children by the subsequent marriage of their parents (section 1) and for the children of certain void marriages to be treated as legitimate (section 2). Neither of those circumstances has any relevance to the present case.

39. The Father sought to obtain support for his submissions from a document produced by the United Kingdom Government to assist any person dealing with enquiries for the issuing of passports. It is intended to assist as a matter of practice when dealing with practical situations. It does not purport to be a statement of the law; it is not binding on the courts and does not help in the present situation.

40. In the absence of a statutory definition, it can be useful to look at the dictionary definition as Advocate Gist suggested. The Shorter Oxford English Dictionary defines "illegitimate" as -

"Born to persons who are not lawfully married, not entitled to full filial right".

41. Clearly that is the legal definition under the laws of England and Wales, and the meaning as most English people would understand it. That definition does not allow for the fact that, if the Father is correct, the word has a different meaning under the laws of the foreign jurisdiction. Unfortunately the definition does not assist me in the present matter where I am asked to decide whether in the 1935 Law, "illegitimate" is to be taken to mean "illegitimate if the child were domiciled in the Bailiwick of Guernsey", which is how Advocates Hill-Tout and Gist submit that it is to be interpreted.

42. In looking at Article 2 of the 1935 Law, I have looked both at the original French text in the Order in Council and at the English translation published in the Ordres en Conseil, Volume X starting at page 35. The translation appears to me, to my non-expert eye, to be accurate. Quotations below are taken from the English text.

43. I have found some aspects of Article 2 of the 1935 Law difficult to interpret. I have no doubt that a twenty-first century legislation draftsman would draft the law differently. It is not only that the Law is nearly 80 years old and that there have been many changes in the meantime (including in relation to medically assisted conceptions) but also in the fact that Article 2 provides for a number of different matters and circumstances. It legislates as to a) who has the obligation to make a declaration of birth in the case of i) a legitimate child and ii) an illegitimate; b) the information to be disclosed in the declaration; and c) what the Registrar-General is required to record in the Register of Births i) if the child is legitimate, ii) if the child is illegitimate and both parents consent to the father being recorded and iii) if the child is illegitimate and the father does not consent. Despite those many different situations, the Law provides for the declaration to be in the terms of Form A (appended in a schedule to the Law) and Form A does not expressly provide for all the different situations envisaged by Article 2. For example, the Form requires the declarant always to disclose the name of the father of the child. Certainly he will do so if the child is legitimate or if the father has acknowledged paternity of an illegitimate but in other circumstances, the father of an illegitimate does not normally sign the declaration, the father of an illegitimate is not required to disclose any information and his name does not appear on the Register except with his consent (Article 2(3)). Thus there appears to be a contradiction between the requirement to complete all the information required by Form A and the right of the father of an illegitimate not to disclose his name. Fortunately, I am not asked to opine upon the broader issues of the correct interpretation of Article 2 in each of the many different situations and circumstances that may appertain.

44. I am concerned principally with Article 2(2) which reads:

> *"If the child is illegitimate, it must be described as such, and the person assisting at the confinement, and failing such person, the mother, shall make the said declaration as to the birth. In all cases the declaration of the mother shall be admissible."*

45. The Article does not specify when or where the illegitimate child is to be *"described as such"*. The intention of the legislature must have been that the child would be declared as illegitimate in Form A (even though the Form makes no express provision for such a declaration) otherwise the Registrar would not know that the child is illegitimate. The entry in the Register of Births also records the child's status which in recent times has been expressed as *"The natural child of…"*.

46. I therefore interpret Article 2(2) as imposing an obligation on the declarant of the birth of an illegitimate child to include in the declaration a statement that the child is illegitimate. If the declarant fails to do so, he may be liable to prosecution under Article 27 of the 1935 Law for having made a false declaration or report of any detail necessary to be known and registered with intent to cause the same to be inserted in the Register and if the declarant is found guilty he would face the same *"pains and penalties"* as if guilty of perjury.

47. I therefore conclude that the 1935 Law imposes an obligation on the declarant of the birth to declare the child's status if the infant is illegitimate. In my view, the obligation on the declarant to declare that a child is illegitimate is similar to the obligation on the declarant to declare truthfully the other information required to be given. As I have said, H M Greffier, as Registrar-General of Births and Deaths is entitled to accept at face value the other information declared to him and to record it in the Register. In my view, there is nothing on the face of the 1935 Law that suggests the declaration as to illegitimacy should be treated differently. In other words, if a declaration does not declare a child to be illegitimate, the Registrar is entitled to accept the information and to record the child as legitimate. As with other facts that may be declared to him, he may remind the declarant of the obligation to make a truthful

declaration and of the consequences of not doing so but if the declarant persists with the declaration, he may accept it and record it as such.

48. The Registrar is not required to make a determination as to the legitimate or illegitimate status of the child; he may accept the declaration that is delivered to him. The onus is placed firmly on the declarant to declare that a child is illegitimate if that is so; there is no burden on the Registrar.

49. There is no need, in my view, to interpret Article 2(2) as if it said *"if the child* ***would be*** *illegitimate* ***if he were domiciled in the Bailiwick of Guernsey"***. The words of the statute are to be given their ordinary and natural meaning. Where the domicile of the child is in a jurisdiction other than Guernsey, his status is determined by the laws of that other jurisdiction by virtue of the general principles set out above; he will be illegitimate only if he is illegitimate under the laws of the country of his domicile.

50. If a new-born child is legitimate under the domicile of origin of the child but would be illegitimate if he were domiciled in Guernsey (and I make no finding as to whether that is so in the present case), I can see no difficulty in the father declaring the birth under Article 2(1) and providing the details required under that Article, without engaging Article 2(2). The Registrar will enter the details of the birth on the Register without describing the child as illegitimate. In doing so, he will make no finding as to whether it is correct to do so. Any party affected could apply to the court of an appropriate jurisdiction for a declaration of legitimacy or illegitimacy. Subject to the outcome of such application, the Register may have to be rectified and the declarant of the birth may face prosecution for having made a false declaration. A prudent Registrar would draw those issues to the attention of the declarant at the time of submission to him of the declaration of birth in Form A but, in my view, he can accept the declaration in the same way as he accepts the remainder of the information declared to him on Form A. As Advocate Hill-Tout correctly submitted, H M Greffier in his capacity of Registrar of Births is merely performing administrative functions when he receives the particulars required to be disclosed to him in the declaration of birth and when he records those details in the Register of Births.

51. For the reasons I have given, I agree with the general proposition that the status of legitimacy of a child as determined by the country of its domicile applies for all general purposes, including for the purposes of the 1935 Law.

52. There remains the question of whether C, the child concerned in the present Application, is considered to be legitimate under the Law of the foreign jurisdiction and I have made no finding in relation to that as I have not yet heard full submissions on the issue.