



## In the Royal Court of the Island of Guernsey

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**The** 13th day of September, 2001 before Rosalyn Le Couteur Brelsford, Lieutenant Bailiff, sitting alone.

In the matter of:

an application by the Executor of ROY WILLIAM ACKRILL, deceased

WHEREAS on the 12th day of September, 2001, THE COURT having heard Advocate A.D. Laws for Mrs. HELEN ACKRILL and Miss FREDERIKA ACKRILL, Advocate G.T.A. Bainbridge for Mrs. JANE MASTERS and Mr. JUSTIN ACKRILL and Advocate J.B. Green for the Executor;

Judgment was this day handed down in the terms attached hereto, and THE COURT FOUND that Mr. Roy William Ackrill, deceased was domiciled in Alderney at the date of his death, and;

ORDERED that the beneficiaries' recoverable costs. to this date, should be paid out of the estate.

Her Majesty's Deputy Greffier.

**IN THE ROYAL COURT OF GUERNSEY**

**IN THE MATTER OF AN APPLICATION BY THE EXECUTOR OF  
ROY WILLIAM ACKRILL, DECEASED**

Judgment on a preliminary point of law concerning domicile

Date of Hearing: 12<sup>th</sup> September, 2001

Date judgment handed down: 13<sup>th</sup> September, 2001

Advocate for Mrs. Helen Ackrill and Frederika Ackrill:- A. D. Laws

Advocate for Jayne Masters and Justin Ackrill:- G. T. A. Bainbridge

Advocate Green appeared for the Executor on the matter of Costs.

The matter now before the Court arises out of an application brought by Richard John Collas, Executor of the estate of Roy William Ackrill ("the Deceased") who died in England on the 2<sup>nd</sup> May, 2000.

The last Wills of the deceased were those prepared by the Executor's firm whilst the deceased was resident in Alderney and dated the 2<sup>nd</sup> May, 1986. The deceased made a Will disposing of his Alderney real property (which is now the subject of an application to the Court of Alderney which at the moment stands adjourned) and a Will dealing with all his other assets.

On the 22<sup>nd</sup> September, 2000, in the Ecclesiastical Court of the Bailiwick of Guernsey, the latter Will was proved and probate granted to the Executor, the other two named executors Peter John Granville Atkinson and Geoffrey Robert Rowland Q.C. having reserved and renounced respectively.

The Deceased died leaving the following:-

- (a) A divorced wife, namely Valerie Ackrill (Valerie) who resides in England
- (b) Two children from the deceased's marriage to Valerie, namely Jayne Masters and Justin Ackrill.
- (c) The second wife named Helen Ackrill (Helen) who resides in Guernsey from whom the Deceased was judicially separated by an Order of the Royal Court of Guernsey dated the 19<sup>th</sup> May, 1998.

- (d) A daughter Frederika Ackrill from the Deceased's second marriage to Helen.
- (e) A partner with whom he was co-habiting at the date of his death in England called Lesley Chesterfield (Lesley).

The Deceased left the following assets:-

- (a) A commercial property comprising a shop and residential flat above, situate at 14 Victoria Street, St. Anne's, Alderney, which he owned in his sole name.
- (b) An undivided one half share in a dwelling-house known as 44 Greenfield Street, Waltham Abbey, England
- (c) Approximately £58,000

The preliminary point of law on which the Court has been asked to decide is as to where the deceased was domiciled at the date of his death. The facts which are for the most part agreed by both Advocate Laws and Advocate Bainbridge on behalf of their clients and as contained in their affidavits are as follows:-

The deceased was born on the 20<sup>th</sup> April, 1938, at Waltham Abbey, Essex and at the time of his birth both of his parents were normally resident in England. His father was a builder and the deceased himself at first went into the building trade. He subsequently married his first wife Valerie by whom he had two children Jayne Masters, née Ackrill and Justin Ackrill. In 1977 having left his first wife he met Helen who was to become his second wife. They ran various businesses together and in December 1979 their daughter Frederika was born.

By 1984 the deceased and Helen had decided that the U.K. was not the right environment in which to bring up Frederika and decided to move. The deceased had previously stated that Alderney, to which he had sailed on previous occasions, was the only place where he could live.

The deceased, with Helen, then bought a property at Crabby called Saltwinds and moved to Alderney in or about August 1985. He continued to carry on his building business in England through a manager and by commuting 2-3 days a week. In 1986, however, the building business was disposed of and the deceased and Helen then bought a shop in Ollivier Court and set up a bakery business. The couple then bought two further units in Ollivier Court. The deceased then went into a delicatessen business in one of these units and then

eventually moved this business to 14 Victoria Street which he had bought. Saltwinds was sold and Chez Nous was purchased which Helen ran as a guesthouse.

At that time the only connection the deceased had with England was a property which he and Valerie, his first wife had owned and which had "sitting tenants". In Helen's opinion the deceased had no intention at that time of returning to England: " Roy loved Alderney" nor did he "even like going to Guernsey for a day trip". However, problems arose with Frederika's education both in Jersey and Alderney and as her parents did not want Frederika to live with a family in Guernsey they decided to move to Guernsey as a family to enable her to be educated there although previously they had invested £10,000 in the then new Ormer House School in Alderney. The deceased was also encouraged to move by the fact that he had gone into business in Guernsey with a John Charnley. In 1991 therefore Chez Nous was sold (although the Alderney shop was kept on) and Bordeaux Guest House in Guernsey was purchased. The deceased did go back to Alderney from time to time and indeed in 1994 ran the shop personally in Alderney for a time. As Helen states in paragraph 19 of her affidavit

"It was always our view that Guernsey was a short term arrangement to see out Freddie's schooling days. Our intention was to buy a flat at the Arsenal in Alderney which we regarded as perfect for our later years. Roy and I regularly spoke about his hopes and wishes. He clearly intended to return to Alderney. He never really settled in Guernsey and indeed hardly met people."

In 1994 because of financial concerns the deceased agreed to act as a contracts manager for Brittain Hadley in the United Kingdom. The shop in Alderney was tenanted and the deceased commuted between Guernsey and England, spending four to five weeks in England and then a week or two in Guernsey. Bordeaux Guest House was sold in 1997 and The Shieling, Ville au Roi was purchased. At the time Helen suggested buying a small house in the United Kingdom which the deceased resisted.

By Christmas 1997 the deceased had met Lesley Chesterfield while working in England and on the 18<sup>th</sup> May, 1998, a Judicial Separation was pronounced between the deceased and Helen by the Royal Court of Guernsey. The former matrimonial home The Shieling was vested in Helen's sole name and the deceased retained 14 Victoria Street, Alderney and his joint interest with Valerie in 44 Greenfield Street, Waltham Abbey as his sole and absolute property. At the time the deceased apparently informed Helen that he wanted to retire to Alderney though he could not see Lesley living there "full time". In Helen's opinion there is no doubt that the deceased intended to "end up back" in Alderney.

According to the deceased's daughter Frederika who states she was very close to her father he did not wish to get divorced and had no intention of remarrying. This is confirmed by Helen's recollection as stated in her affidavit. This is the only matter on which Lesley, Helen and Frederika fundamentally disagree but in matters such as these it is understandable that the deceased might have given differing impressions as to his marital intentions. I do not, however, feel that this discrepancy is of great importance. Frederika also stated that the deceased had opportunities to sell the shop in Alderney but didn't and that when he died "everyone" agreed that Alderney was the place "where he would have wanted to have been buried". "He viewed me as his closest child and I spoke to him three or four times a day every day. I have no doubt that England was viewed as a temporary arrangement until his retirement and me finishing my further education. After that he would have undoubtedly returned to live in Alderney and always viewed it as his real home."

The as yet unsworn evidence of Justin Ackrill ("Justin"), the deceased's son, confirms the deceased's various business interests in Alderney and Guernsey but that by 1998 the deceased was intending to sell the shop in Alderney partly to finance Justin's public house venture. However, in his opinion he would have spent more time in Alderney than the U.K. because "he always said it was the last bastion of sanity on the planet".

The only way in which Lesley Chesterfield's evidence differs is she believes she and the deceased were to be married. She does state however that although the deceased intended to sell the Alderney property to release capital to help his son start a business and fund Frederika through university and also help Jayne, the remainder of the money was earmarked to fund a property with Lesley "initially in England". Long term, however, it was intended to purchase a property in Alderney though in Lesley's opinion they were not intending to move to Alderney immediately as she wished to remain in the U.K. while her children were still dependent on her and being educated. She does state "the deceased found Alderney to be the closest place to "home" as it offered a lifestyle he enjoyed".

There is no doubt on the evidence before me that the deceased's domicile of origin was England. His parents were permanently resident in England at the time of his birth and the legitimate child born during the life time of his father has his domicile of origin in the country in which his father was domiciled at the time of his birth.

Again I believe there is no doubt that the deceased acquired an Alderney domicile of choice in or about 1985 or shortly thereafter. The two requirements for the acquisition of a

domicile of choice are residence and intention and it is clear from the evidence before me that the deceased established residence in Alderney in or about 1985 with the intention of remaining there permanently.

The real issue however is whether the deceased subsequently lost or abandoned his domicile of choice in favour of his domicile of origin. It has not been suggested by Counsel for any of the parties that the deceased ever assumed a Guernsey domicile of choice nor is there any evidence of any wish on behalf of the deceased to lose his Alderney domicile and replace it by a Guernsey one. By the time of his death he had given up his interest in the Guernsey realty and as Helen stated in her affidavit "He never really settled in Guernsey and hardly met people."

I accept his move to Guernsey was to further (a) Frederika's education and (b) his business with Mr.Charnley and was not intended by him to be permanent.

I must therefore consider whether when the deceased moved to England to live with Lesley Chesterfield in her house his domicile of origin revived or did his domicile of choice i.e. Alderney continue. Advocate Laws in paragraph 22 of his submission states that whilst the deceased undoubtedly gave up (but not for good) his residence in Alderney he never had either (a) an intention not to return or (b) the negative absence of any intention to resume residence. In other words he never abandoned his Alderney domicile of choice. Thus, the English domicile of origin never revived. Indeed states Advocate Laws the evidence overwhelmingly points to the fact that the deceased intended to return to Alderney to live. His attachment to the island is evident by both his continued connections with the island (14 Victoria Street for example) and his burial there. Those close to him (Lesley Chesterfield included), recognised that Alderney was (to use Lesley's words) the deceased's "closest place to "home"".

Advocate Bainbridge in paragraph 2.16 of his submission supports Advocate Laws' contention that the deceased had not lost his domicile of choice in Alderney. "Here one has to look at the affidavits that have been submitted to decide whether or not he formed the intention of permanently living in England and permanently wishing to lose his Alderney domicile. Again, no new Will was made. He retained his property in Alderney. It is quite clear, however, that whilst he intended to marry Lesley Chesterfield and to live with her for the time being, his ultimate intention was to return to Alderney even if that meant in the meantime selling the Alderney business property. The reason why he stayed in England was

because of Lesley Chesterfield with whom he wished to be. She was tied to England because necessity required it whilst her children were still dependent on her. She had visited Alderney in 1999 and she was quite clear that this was where his "home" was and this has been confirmed in one form or the other by the children and Helen Ackrill."

I now turn to Cheshire and North's Private International Law 13<sup>th</sup> Edition, page 143 where

"It is impossible to lay down any positive rule with respect to the evidence necessary to prove intention. All that can be said is that every conceivable event and instant in a man's life is irrelevant and an admissible indication of his state of mind. It may be necessary to examine the history of his life with the most scrupulous care, and to resort even to hearsay evidence where the question concerns a domicile that a person, now deceased, possessed in his lifetime. Nothing must be overlooked that might possibly show the place which he regarded as his permanent home at the relevant time. No fact is too trifling to merit consideration."

and *Ross v. Ross* [1930] AC 1 at 6 per Lord Buckmaster: "Declarations of intention are rightly regarded in determining the question of a change of domicile but they must be examined by considering the person to whom, the purposes for which, and the circumstances in which they are made and they must further be fortified and carried into effect by conduct and action consistent with the declared expression".

In other words more reliance is placed on conduct rather than declarations of intention, especially if they are oral. Such oral evidence is however admissible notwithstanding the rule against hearsay. However, evidence given by persons with a vested interest in the outcome should be treated with caution. Advocate Laws and Advocate Bainbridge agreed in Court that the children could be said to have a vested interest but that Helen and Lesley did not although their evidence was similar to the children's.

There is a presumption in favour of the continuance of an existing domicile. The burden of proving a change lies in all cases on those who allege that a change has occurred. This presumption may have a decisive effect for if the evidence is so conflicting or indeterminate that it is impossible to illicit with certainty what the residence intention is the Court will decide in favour of the existing domicile.

Cheshire and North's Private International Law 13<sup>th</sup> Edition page 143

"If, for example, the inquiry relates to the domicile of a deceased person, it must be ascertained whether at some period in his life he had formed and retained a fixed and settled intention of residence in a given country. Once this is established, evidence of

his subsequent fluctuations of opinion as to whether he would or would not move elsewhere will be ignored."

and Cheshire and North at page 151

"there must always be a positive intention not to return before it can be said that a domicile of choice has been lost. Irresolution effects nothing."

From the authorities it would seem that the standard of proof required appears to be somewhat in dispute in that some judges consider that it should be on the balance of probabilities some beyond reasonable doubt. It does seem apparent however that if there is a change of domicile of origin then a higher standard of proof is needed compared with a change of domicile of choice, the latter of which probably requires only proof on the balance of probabilities. Dicey and Morris on The Conflict of Laws page 113 paragraph 6-019

"Conflicting views have been expressed as to the standard of proof required to rebut the presumption. According to Scarman J., the standard is that adopted in civil proceedings, proof on a balance of probabilities, not that adopted in criminal proceedings, proof beyond reasonable doubt. On the other hand, according to Sir Jocelyn Simon P., "the standard of proof goes beyond a mere balance of probabilities"; and there is no doubt that the burden of proving that a domicile of origin has been lost is a very heavy one. Moreover, as Scarman J. himself added, "two things are clear – first, that unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists; and secondly, that the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications or casual words." Perhaps an Australian judge best summarised the result of the English authorities when he said that "the change of a domicile of origin must be proved beyond reasonable doubt, while the change of a domicile of choice may be proved on the balance of probabilities.""

Advocate Laws has asked me to consider that the deceased showed no positive intention not to return. A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently or indefinitely and not otherwise. On the evidence before me I cannot say that I am convinced that the deceased did so cease to intend indeed the evidence is that he did intend to return to Alderney and I therefore find that the deceased was domiciled in Alderney at the date of his death.

#### COSTS

I am also asked to consider whether the legal costs of the parties incurred in respect of clarifying the question of the deceased's domicile should be paid out of the deceased's gross estate. Advocate Bainbridge stated that as the deceased's domicile is not certain and as without that certainty the executors cannot wind up the estate then it is only just that the fees

of all parties incurred in this matter should be met by the estate. It is accepted that the matter of costs is entirely within the discretion of the Court. Guidelines as to what order will be made for the beneficiaries costs in applications to the court were set out in *Re Buckton* [1907] 2 Ch 406. *Re Buckton* divides the cases into three categories

1. Where the applicants are trustees who ask the court to construe the instrument or to have some question decided in the course of administration. In such cases the costs of all parties are regarded as necessarily incurred for the benefit of the estate and are therefore ordered to be paid out of the estate. The trustees are entitled to the fullest possible protection and though there may be cases when the question of construction is too clear for argument, generally the trustees and the other parties they have brought before the court will be awarded their costs.
2. Where the application is made by some of the beneficiaries and the trustees are made defendants but it is admitted or apparent that the application is made by reason of some difficulty of construction or administration which could have justified an application by the trustees, these are treated in the same way as class 1.
3. Where the application is made by a beneficiary who is making a claim adverse to other beneficiaries which is in the nature of hostile litigation. Here the ordinary rule for costs of hostile litigation is applied and the unsuccessful party is normally ordered to pay the costs of the successful party.

It would seem therefore that the present application could be said to fall under (2) as a difficulty of construction or administration and that the beneficiaries should be entitled to some costs out of the Estate.

Advocate Green has asked me to consider that at the moment the net value of the Estate is approximately £46,000 and that both Valerie and Lesley have claims against it for money owing to them. In addition I must consider whether the beneficiaries all have the same interest in the present question of domicile and that therefore only one sets of costs should be ordered out of the estate. In this context Advocates Bainbridge and Laws put to me that some of the evidence is conflicting and the fact that it may or may not be relevant justified the beneficiaries being separately represented. In addition, the finding that the deceased died domiciled in Alderney does mean that the children will receive their *légitime*.

In these circumstances I order that the beneficiaries' recoverable costs so far should be paid out of the estate as while these proceedings are in form adverse litigation in substance they are an "amicable" procedure for determining speedily and inexpensively the question of domicile the solution of which must sooner or later be found for the benefit of all concerned. Any further claim for costs arising out of any future proceedings in this matter will be considered afresh.