Clameur de Haro

*Sir Peter Crill**

The Channel Islands were once part of the Duchy of Normandy and a residual amount of their common law derives from that connection. Among the surviving relics of their Norman past is the action known as the *Clameur de Haro*, which, to a casual observer, may seem to be no more than a tenuous link with the Islands' past. It is in fact a good deal more than that. It is ". . . a very ancient way of instituting legal proceedings and is unique in that it allows a person to obtain an immediate injunction without the assistance or authority of an officer of justice. It is the only instance in civil matters where a person is allowed to take the law into his own hands."[1] It is difficult to be precise about its origin. It was certainly well established in the thirteenth century. Mr C. S. Le Gros, a former Lieutenant Bailiff and sometime *Bâtonnier* of the Jersey Bar, in his *Traité du Droit Coûtumier de L'Ile de Jersey* suggests that it could have been introduced into Normandy by Rollo, otherwise Robert I the First Duke of Normandy 1011-1031 and was a Neustrian institution. Formerly in Normandy its use was limited to cases where the Duke's peace was interrupted by a *crime ou délit*. The *Ancien Coûtumier* of Normandy puts it thus: (haro) "*ne doit estre cryé, fors pour cause criminelle si comme pour feu ou pour larcin ou pour homicide ou aultre évident péril; si comme se aulcun court seure à ung aultre, le cousteau traict.*" As Le Gros points out, several other countries had similar *clameurs*. For example, the English hue and cry mentioned by Blackstone in Book 4 of Public Wrongs: "An hue (from *huer*, to shout, and cry) *hutesium et clamor* is the old common law process of pursuing, with horn and with voice, all felons, and such as have dangerously wounded another." It is still a requirement in Jersey, at least, that those who hear the *clameur* being raised should assist in restraining the offender.

By 1583, the reformed customary law of Normandy only recognised the *clameur* as a remedy for civil wrongs. In Jersey, by the end of the 17th century, the *clameur* was restricted "*pour des faits possessoires en heritage.*" Being a form of a DIY injunction the courts in Guernsey and Jersey are strict in requiring the proper procedures to be followed. The raising of the *clameur* is justified only where a state

* The Bailiff, Jersey, Channel Islands.

1. *Attorney General, plaintiff and Mrs Bailhache, ajointe* v. *Williams* Jersey Judgments [1967-1969] 991, at p. 992.

of "*appert péril*" exists. And the *clameur* must be raised in the hearing of, and against the perpetrator of, a wrongful act.

There have been many instances where the Royal Court in Jersey has considered the meaning of "*appert péril*". There is no need to translate "*péril*" but as "*appert,*" as an adjective, does not feature in modern French dictionaries, we have referred to Godefroy's *Dictionnaire de l'Ancienne Langue Française*[2] where it is defined as "*visible,*" "*évident,*" "*manifeste*". Pissard in *La Clameur de Haro dans le Droit Normand*[3] reports that in 1761, in the course of an appeal heard in Rouen, it was said "*Le haro suppose un péril pressant; il est fair pour conserver et non pour recouvrer.*" The Court reviewed also in that case some earlier authorities. Examples of those were: *Huelin, ajointe* v. *Le Bas,*[4] a case where Mr Huelin, who had raised the *clameur* in the parish of St Brelade on the ground that Mr Le Bas had obstructed a right of way, admitted that he had raised it wrongfully as there was no "*appert péril à ses biens*"; and *Mollet, ajoint* v. *Herivel,*[5] where Mr Herivel was cutting down trees in the common ownership of Mr Mollet and others.

A more unusual case was that of *Le Vesconte, ajoint* v. *De Gruchy and Picot,*[6] where the defendants were engaged in demolishing an entrance door in the eastern gable of Trinity Parish Church to replace it with a window, thus depriving the ajoint of a right of passage to go to his seat in Church. It was held in that case that the *clameur* had been raised properly, although the defendants were not at work at the time because they had been at work a short time before and were still there. This case may be compared with a Guernsey case, *McAllister Livre de Clameur,* 26 August 1976, where the claimant was suffering from coal deposits from a nearby boiler on an agricultural holding. The owner of the holding did not live near his greenhouses but had installed a thermostat to come on automatically when required. Applying the principle that one cannot raise a *clameur* except at the moment that one's right is being violated, the claimant waited until the thermostat had caused the boiler to start!

The origins and the meaning of the *clameur de haro* in Guernsey were reviewed by the Court of Appeal in that Island in 1985 in the case of *re Kirk.*[7] It should be mentioned that although the *clameur de haro* forms part of the common law of Guernsey and Jersey, the procedure differs in each Island. The words invoking the *clameur* are common to both Islands: "*Haro, haro à l'aide, mon Prince! On me fait tort,*" but thereafter in Jersey the person against whom the *clameur* is raised must cease what he is doing and the Attorney General is informed and is joined in the action. As will be seen from the title of the *Williams* case, the Attorney General becomes the plaintiff and the person who raised the *clameur* the ajoint(e). In Guernsey, the claimant applies to the Bailiff within 24 hours of his raising the *clameur* and has to submit an affidavit with his witnesses setting out all the

4. (1939) 240 Ex. 240.
5. (1908) 225 Ex. 274.
6. (1858) 8 C.R. 204.
7. No. 16 (Civil) 1985.

particulars of the *clameur*. The Bailiff then orders the *clameur* to be registered *au greffe, i.e.* in the Court register of actions.

In Guernsey also there appears to be no sanctions available against those who wrongly raise the *clameur* or, indeed, against those against whom it has been properly raised. In Jersey, on the other hand, either the party raising it or the wrong-doer may be fined. In *Bailhache* v. *Williams*, the person raising the *clameur* was deemed to have done so wrongly and was fined £50. In the *Kirk* case, the Appeal Court pointed out that in Normandy there was a distinction between resistance to invasion of possession, for which the *clameur* could be used, and attempts to regain lost possession, for which it could not. The judgment also cited two definitions of the *clameur* at page 11. The first is that of Warburton who wrote at the end of the eighteenth century:

> "*Clameur de Haro* is thus practised. When any man finds another entering upon his possessions to make use thereof without his permission, he goes to the place, taking with him two witnesses, in whose presence he declares against the proceeding of those who invade his possession, and crying out three times, *Haro*, he in the king's name discharges any workmen he finds upon the place from proceeding, or any person from employing them or others . . ."

The second is that of Laurent Carey, who was a Jurat of the Royal Court of Guernsey from 1765 to 1769. In his *Essai sur les Institutions, Lois et Coûtumes de l'Ile de Guernesey*, he writes concerning the *clameur*:

> *"Haro ayant, comme il a été dit, un interdit possessoire, a pris son origine de Rollo, Duc de Normandie, grand prince et très juste, et est come une imploration de son aide et de son assistance contre ceux qui, par voie de fait, se veulent mettre en possession du bien d'autrui; c'est une voie possessoire pour garder sa possession et la défendre contre la violence des plus forts.*
>
> *Celui qui possède, quoiqu' usurpateur, sera maintenu par voie de Haro, pour empêcher les voies de fait sauf au dépossédé à se pourvoir par voie de pétitoire."*[8]

The Court in *Kirk* finally concludes: "In our judgment the *clameur* may properly be used by a person in possession of immovable property to restrain interference with his possession or enjoyment of it . . . It cannot be used to recover possession once lost. For that purpose the law provides other means."

Two questions remain unanswered: (1) can the *clameur* be raised in respect of moveable property; and (2) can it be raised against someone not present at the time of the alleged wrong doing? The Guernsey case of the boiler is perhaps an indication that the Court may entertain the raising of an action in particular

8. At pp. 197–8.

circumstances where it would not be reasonable to expect the wrong-doer himself to be performing the act which is complained about. However, even if these two questions have not yet been decided judicially, it is quite clear that in the Bailiwicks of Guernsey and Jersey the *clameur de haro*, in the words of the *Coutume Reformée*, "*doit être respecté comme un asile inviolable.*"