

CONTROL OF PUBLIC ENTERTAINMENT

**Lodged au Greffe on 26th September 2000
by Senator C.G.P. Lakeman**



STATES OF JERSEY

STATES GREFFE

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PROPOSITION

THE STATES are asked to decide whether they are of opinion -

to charge the Legislation Committee -

- (a) to investigate the current powers exercised by the Bailiff in controlling public entertainment; and
- (b) to consider, in consultation with the Bailiff and other interested parties, the desirability of altering the current position, including providing by statute for a Committee, or Committees, of the States, or some other person, to exercise any or part of such powers;

and to report thereon to the States with recommendations.

SENATOR C.G.P. LAKEMAN

Report

1. On 14th November 1778 the States considered, *inter alia*, the negative effects of gambling, performing plays and fireworks. The States resolved to control each of these activities and a copy of a translation of part of the relevant Act is to be found at Appendix 1.

2. The powers of the Royal Court in respect of the regulation of gambling and fireworks are now largely irrelevant, but the Act either provides quasi-statutory authority for the Bailiff's powers to control plays and entertainment and/or confirmation of an even more ancient common law position.

Further background is to be found in the "Development of the Government of Jersey 1771 to 1772" by R.G. Le Hérisssier (States Greffe 1972), extracts from which are contained in Appendix 2 (with the author's kind permission).

3. What was appropriate for the 18th Century may not necessarily be appropriate for today. The provisions of Jersey law appear not dissimilar to that of England and Wales, where the Lord Chamberlain for many centuries controlled what was or was not suitable for entertainment by way of theatrical presentations.

4. Under modern English law, licensed premises are controlled by the Justices of the Peace, and it is not intended that the present proposition will in any way affect provisions under the Licensing (Jersey) Law 1974 and the powers which remain vested in the Assembly of the Governor, Bailiff and Jurats. It seems to me that the provisions of this Law which necessarily involve the Parish Assembly seem to work well. It remains a political decision for the States what categories of licences exist and the conditions that are attached thereto, but it is for the Licensing Assembly to be satisfied that the criteria set out in the statutory framework are met.

5. Under the English Licensing Act 1985, the local authority in whose area the premises are situated is responsible for licensing premises. Similar provisions exist for the licensing by local authorities of premises for public performance of plays.

6. No tradition should be merely set aside simply because it existed for many hundreds of years; equally, however, no tradition should be immune from examination from time to time to assess its continuing validity. I was greatly encouraged by the comments made by the Bailiff in an interview with Channel Television on Wednesday 9th August, when he indicated that for many reasons, it seemed to him inappropriate that he should retain this responsibility.

7. On 2nd December 1986, the States approved a proposition (P.153/86) to constitute a Committee of Inquiry *inter alia* "into the need for control of public entertainment in Jersey". The Committee reported on 11th August 1987 (P.139/87), which was approved on 13th October 1987. The report contains little reference to the extent of the Bailiff's powers. It also does not account for the fact that the Jurats appear to have lost their powers in this area. A copy of the terms of the resolution is contained at Appendix 3. Members will note that an advisory panel was to be established by virtue of the Act. The Panel was last appointed on 28th April 1992. It would appear that although the panel membership has altered (by invitation of the Bailiff), no further Acts of the States can be traced.

8. On 7th July 1992, the States considered a proposition in the name of the then Deputy S. Syvret (P.68/92) "to approve in principle the transfer of the responsibility for the content of public entertainment from the Bailiff to a Committee of the States", which was rejected.

9. Nevertheless, before any decision is made in this important area, it is necessary to assess -

- (a) the extent of the Bailiff's current powers; and
- (b) to which Committee or Committees this responsibility might be passed.

It will also be necessary for appropriate legislation to be prepared and for that legislation to be included in the Legislation Programme at an appropriate time.

14th November, 1778

The States taking into consideration the ill effects produced in society, allowing the disposal of any kind of goods by raffle or other similar draws or games of chance; For these reasons, it is expressly forbidden to each and everyone without exception, to display for sale whether in public or private, or to sell any kind of goods or effects of whatever nature, by raffle or draw, by cards, dice or by any game of chance whatsoever, on pain equally for those who display such goods, as towards each and everyone who takes part of a thousand pounds fine...

Furthermore, it is found expedient to prevent too much freedom that could be caused, if plays could be performed for reward, which obviously shows to young people who engage in such pursuits, a slackness and idleness which is detrimental to themselves and to society; Considering moreover that similar indolence is controlled in well regulated societies; The States have therefore found it necessary to forbid and it is therefore expressly forbidden to all persons who in future undertake to present for money or other reward any play or farce, unless they have previously obtained permission from the Chief Magistrate and the Royal Court; Such permission may be granted for a reasonably limited time, or refused, according to their judgement; Upon punishment for those contravening this order: two hundred pound fine, for each performance ...

The States has judged it expedient to forbid and it is therefore expressly forbidden to all persons without exception to let off any flare or firework in the towns of St. Helier and St. Aubin or to sell them, upon punishment of a fine of twenty pounds ... it being established that mothers and fathers shall be responsible for the said fine for their children; and masters and mistresses for their apprentices or domestics ...

The Development of the Government of Jersey 1771 – 1972
by R.G. Le Hérissier (States Greffe 1972)
[extracts from pages 80 and 175]

(v) Executive Functions of the Bailiff

As President of the Royal Court and nominee of the Crown the Bailiff performs several executive functions. For example, he was effectively in charge of the ‘Assembly of Governor, Bailiff and Jurats’;...

Although the States began gradually to assume more responsibilities the Bailiff remained on several hybrid bodies which consisted of both States and Crown representatives. Thus, he was a member of the Prison Board and the governing Council of Victoria College. The Bailiff’s position on these two particular bodies was responsible for precipitating two of the important constitutional conflicts of the nineteenth century. The major point at issue in these conflicts was whether this position belonged constitutionally to the Lieutenant-Governor. At stake was the principle supposedly confirmed in 1618 – namely, that the Bailiff was civic head of the Island. The representation of the States in Victoria College controversy summed up the de facto position: -

‘They [the States] view, moreover, in the powers conferred upon his Lieutenant-Governor an attempt to remove that line of demarcation which, for ages, has existed between the Military and the Civil authorities of the Island, and especially as an encroachment on the prerogative of the Bailiff who, in all Assemblies of the States, Administrators of the Impôt, Committees, the Prison Board, and other bodies connected with the administration of the Civil Affairs of Jersey (even though the Lieutenant-Governor be present) has ever been regarded as ‘ex-officio’ entitled to preside, and always has presided, over all meetings of these bodies’.^[1] In effect, by obtaining favourable rulings in these disputes, the States reinforced their position in relation to that of the Crown. The Bailiff was regarded as a representative of the States and, later, most of his executive responsibilities were assumed by the States.

If only for reasons of administrative convenience, he retained certain executive powers. The most important are those exercised in his position as President of the Licensing Assembly and the responsibility which he has for certain aspects of public entertainment.

The Licensing Assembly derives from the ‘Assembly of Governor, Bailiff and Jurats’; although this latter body was deprived, in 1921, of its power to raise and distribute revenue, it retained a responsibility over the licensing of premises for the sale and consumption of alcohol.^[2]

The Bailiff has always been recognised as responsible for the safety of the public at entertainments. The exact origins of this responsibility are unknown, but it derived probably from the position of the Bailiff as President of the Court. It has become widened to cover a responsibility for what may be termed the ‘common good’.^[3]

(page 80 et seq)

Executive Functions of the Bailiff

In addition to his formal and informal contact with the States, the Bailiff still performs certain functions which allow him to exercise influence over matters of public policy. The Bailiff is President of the Licensing Assembly and, as such, plays a full part in the making of decisions guided by the sole criterion that the Assembly must act ‘in the public interest’.^[4] The Assembly deals with controversial areas of public policy and, for example, in 1953 granted certain retail licences on the condition that restrictive practices would be eliminated. This issue has again re-emerged, when the Assembly reiterated its view on resale price maintenance in the face of strong opposition from commercial interests.^[5]

The Bailiff is also responsible for giving permission for certain public entertainments, notably cabarets, cinema and theatre performances. It is the Bailiff’s task to ensure adequate standards of safety and, second, act as a censor over the contest of performances. The first task is delegated to the appropriate States’ departments while the second is often carried out after consultation with the appropriate bodies. Thus, the Bailiff decided, after consultation with the Education Committee,

not to allow child actors to perform.^[6] Control over films is exercised by the automatic acceptance of certificates granted to films by the British Board of Film Censors.

However, the Bailiff has exercised discretion in certain areas by, for example, disallowing exhibitions of public wrestling: -

'because I consider such shows unedifying, and in any case, faked'.

Similarly, he has forbidden striptease shows: -

'because I consider such shows to be, amongst other things, an expression of contempt for women'.^[7]

Sir Robert defines his task, in making such decisions as that of 'drawing the line somewhere'. He usually exercises his discretion over individual performances only when matters are brought to his attention. For example, he objected to a joke on the Last Supper because he considered it to be 'cruelly blasphemous'.^[8] While the Bailiff has no particular wish to retain this power, he has stated that, as long as he does: -

'I intend to exercise it as I see fit'.^[9]

Although the Bailiff clearly formulates policy in these areas, there has been no agitation to change his position.

(page 175 et seq)

Extract from States Minutes of 13th October 1987

Control of public entertainment: proposals of Committee of Inquiry. P.139/87

THE STATES, adopting a proposition of the Committee of Inquiry into controls on public entertainment, agreed that -

1. the Bailiff's permission should continue to be required for the presentation of any form of public entertainment;
2. sanctions should be available for breaches of permit conditions or lack of permission;
3. a Panel should be appointed by the States, the nomination of a Chairman and members being submitted to the States by the Education Committee;
4. the role of the Panel should be to establish initial guidelines, in consultation with the Bailiff, to assist the Bailiff in monitoring the standards of entertainment being presented and, as necessary, to make recommendations to the Bailiff concerning any aspect of entertainment;
5. the Panel should advise the Bailiff and update the standard conditions attached to permits and suggest any specific conditions for particular events;
6. the Education Committee should be charged to take the necessary steps, including the introduction of any legislation, to implement the foregoing proposals.

[1] 'Representation of the States of Jersey, 5.2.1853, with reference to the Order in Council of 4.1.1853.'
Contained in 'Prison Board Case'.
Appendix Vol.III. Pt.III No. 324.

[2] 'Loi (1921) sur l'Assemblée des Gouvernement, Bailli et Jures (Transfert de pouvoirs, etc.)' R. des L. T. IV-VI p.545.

[3] As evidence of the nineteenth century operation of this power is almost non-existent, it will be discussed in relation to the post-war role of the Bailiff. See Chapter 12 p.174.

[4] See 'Licensing (Jersey) Law, 1950.' R. des L. T. 1949-1950 p.441.

[5] J.E.P. Reports of the proceedings of the Licensing Bench 20.3.1953, 22.12.1959.

[6] Interview with Sir Robert Le Masurier, 5.10.1967. This duty has now been assumed by the Education Committee. See 'Children (Jersey) Law, 1969'. R. des L., T. 1968-1969, Art. 5, p.254.

[7] J.E.P. 'The Bailiff talks to Hardbencher'. 28.1.1967. Similar views about striptease were expressed by the Bailiff in the States on 1.4.1965. J.E.P. (S.R.)

[8] Ibid, 'The Bailiff talks to Hardbencher'.

[9] Ibid, 'The Bailiff talks to Hardbencher'.