**Jersey & Guernsey Law Review – February 2012**

# CASE SUMMARIES

The following key indicates the court to which the case reference refers:

JRC Royal Court of Jersey

GRC Royal Court of Guernsey

JCA Jersey Court of Appeal

GCA Guernsey Court of Appeal

JPC Privy Council, on appeal from Jersey

GPC Privy Council, on appeal from Guernsey

## ADMINISTRATIVE LAW

### Judicial review—review of withdrawal of mere recommendation—substantive and procedural legitimate expectation

*Clear Mobitel (Jersey) Limited v Jersey Competition Regulatory Authority* Royal Ct (Birt B and Jurats Fisher and Milner) [2011] JRC 181

OA Blakeley for the applicant; HE Ruelle for the respondent

The applicant company ("Mobitel") sought judicial review of a decision by the Jersey Competition Regulatory Authority ("JCRA") to revoke a recommendation following open advertisement made by it to UK Office of Communications ("Ofcom") that Mobitel be awarded an allocation in the 2600 Mhz spectrum band. The decision whether or not to award a licence was Ofcom's (under the Wireless Telegraphy Act 2006 and the Communications Act 2003 as extended to Jersey) and not the JCRA's, which, although making a recommendation under broad powers of regulatory assistance, had no specific statutory role in the process. The JCRA decided to revoke the recommendation in respect of Mobitel (and in respect of other parties) and re-run the tendering process as a result of Ofcom's concerns about the original process, concerns about evolving technologies, ongoing issues regarding interference with radar, and a desire for a pan-Channel Islands solution. Mobitel had invested substantial sums on the strength of the recommendation. The then director of the JCRA represented to Mobitel that the recommendation would not be withdrawn. Mobitel

had not been consulted or given an opportunity to be heard prior to the JCRA revoking its recommendation. The following issues arose. (i) Given that the revocation was only of a recommendation, was it capable of being judicially reviewed? (ii) Did Mobitel have a substantive legitimate expectation that its recommendation would not be revoked? (iii) Was it procedurally unfair to revoke the recommendation without giving Mobitel an opportunity to comment? (iv) Did JCRA fail to take into account a material consideration when deciding to revoke the recommendation? (v) Was the decision to revoke the recommendation "*Wednesbury* unreasonable"?

**Held,**

**(1) Was the revocation subject to judicial review?** The JCRA argued that the recommendation had no legal consequences and was therefore not a decision capable of being judicially reviewed: *CCSU v Minister for the Civil Service*[1] and, in particular, *Re Kinnegar Residents Action Group*[2] and *Re Kotravenko*.[3] However to the opposite effect was *R v Agricultural Dwelling House Advisory Cttee*[4] in which Hodgson J said—

> "... particularly when one is considering the procedural impropriety or otherwise by which a decision of this nature—that is, one which is not finally determined—can be subject to judicial review, one has to pay great regard to a consideration which appears in a sentence of de Smith at page 234: 'The degree of proximity between the investigation in question and an act or decision directly adverse to the interests of the person claiming entitlement to be heard may be important.'"

See also de Smith *Judicial Review* (6th ed) at para 3–027 and Superstone and Goudie *Judicial Review* (4th ed), para 16.3.2 as to a broader view of the nature of decisions which may be subject to judicial review. The Royal Court did not find the present decision an easy one. Ultimately there was no formulaic or straightforward answer to the question of what matters may be the subject of judicial review and each case turned to an extent on its own facts. Applying the observations of Hodgson J in *Agricultural Dwelling*, the court held that, although the JCRA had no specific statutory role, there was a close proximity between the recommendation and any ultimate decision by Ofcom. It was relevant that any recommendation from the

[1] [1984] 3 All ER 935.
[2] [2007] NIQB 90.
[3] [2008] NIQB 118.
[4] (1987) 19 HLR 367.

JCRA would normally play an extremely significant part in any final decision by Ofcom. It was also relevant that any decision by Ofcom was a long way off, so that there was no immediate remedy by reference to any decision of Ofcom. Furthermore, a revocation of the recommendation meant that a very different recommendation may go to Ofcom which could be to the prejudice of Mobitel in circumstances where Mobitel had had no prior opportunity of making representations to the JCRA. The court was therefore persuaded that this was one of the rare cases where a recommendation (and therefore the revocation of that recommendation) was subject to judicial review.

**(2) Did Mobitel have a substantive legitimate expectation that its recommendation would not be revoked?** Legitimate expectations fall into two main categories. (i) Procedural legitimate expectation arises where there is an expectation that a decision maker will not change his policy or decision without first giving those affected or potentially affected an opportunity of advancing reasons for contending that the policy or decision should not be changed to their detriment. In the case of a procedural legitimate expectation the court is limited to ensuring that the person affected is given the promised opportunity to make submissions seeking to persuade the decision-maker not to change the policy or decision. (ii) Substantive legitimate expectation arises where there is an expectation that the policy or decision will not be changed. In the case of a substantive legitimate expectation the court will (in appropriate circumstances) not allow the decision-maker to frustrate the expectation; instead the decision-maker will be required to fulfil the expectation.

In *Trump Holdings Ltd v Planning & Environment Cttee*[5] the Court of Appeal listed four requirements which must be met if a substantive legitimate expectation is to be established: (i) that a clear and unequivocal representation has been made; (ii) that the expectation is confined to one person or a few people, giving the representation the character of a contract; (iii) that it is reasonable for those who have the expectation to rely upon it and that they do so to their detriment; and (iv) that there is no overriding public interest that entitles the representor (i.e. the decision maker) to frustrate that expectation. Since then, however, the law in England had moved on; it is no longer essential that the person affected should have knowledge of the representation made in order to found a substantive legitimate expectation (*R (Rashid) v Secy of State for the Home Dept*[6]); nor is it necessary for a person to have changed his position or to have acted to

[5] 2004 JLR 232.
[6] [2005] EWCA Civ 744.

his detriment in order to qualify as the holder of a legitimate expectation. However, both of these aspects may still be relevant when the court decides whether to hold the decision-maker to his representation. See generally the judgment of Laws LJ in *Re Bhatt Murphy*.[7] As to the question of public interest, see *Ex P Begbie*.[8] The more a decision lies in the field of pure policy the less likely that an abuse of power will be found: *Rashid*.

In the present case the recommendation carried no clear or unequivocal representation that it would not be revoked but the subsequent statement, averred to have been made by the then director of the JCRA in conversation with Mobitel, did. The question was then whether there were sufficient public policy considerations to justify the change in position of the JCRA. On the facts there were sufficient considerations; the allocation of the spectrum lay very much in the field of pure policy and the importance of modern and adequate telecommunications in the Island could hardly be overestimated. Despite the failings in the JCRA's approach, the JCRA was entitled to conclude that the public interest required it to revoke the recommendation. Accordingly the court declined to quash the revocation on the ground of substantive legitimate expectation.

**(3) Was it procedurally unfair to revoke the recommendation without giving Mobitel an opportunity to comment?** The court was in no doubt, however, that in the light of the nature of the recommendation and the subsequent representation by the then director of the JCRA, it was unfair to revoke the recommendation without giving Mobitel the opportunity of being heard and there was a legitimate expectation that the recommendation would not be revoked without prior consultation with Mobitel. The court will be slow to conclude that a failure to allow prior comment would have made no difference: *Re X Children.*[9] The revocation was therefore quashed on this ground.

**(4) Did JCRA fail to take into account a material consideration when deciding to revoke the recommendation?** The JCRA were aware of the fact that Mobitel had invested substantial sums on the strength of the recommendation. This was a consideration which, whilst not determinative, they should have taken into account in deciding whether to revoke the recommendations. This was therefore another reason to quash the revocation and remit the matter to the JCRA.

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[7] [2008] EWCA Civ 755.
[8] [2000] 1 WLR 115, at 1130.
[9] 2009 JLR 143, at 36.

**(5) Was the decision to revoke *Wednesbury* unreasonable?** The test of unreasonableness in judicial review cases is not the same as in appeals under the Planning and Building (Jersey) Law 2009: *Anchor Trust Co Ltd v Jersey Financial Servs Commn.*[10] The applicant must show that the decision was *Wednesbury* unreasonable or "irrational" ie it was a decision to which no reasonable decision-maker could have come. On the facts, the desire for a pan-Channel Islands solution and Ofcom's position were entirely rational reasons for the JCRA deciding that it wished to revoke the recommendations and re-run the process of consultation so that the decision to revoke was not Wednesbury unreasonable.

**Conclusion**. The JCRA acted in a procedurally unfair manner in revoking the recommendation without giving Mobitel an opportunity of arguing against such a course of action. The decision to revoke was therefore quashed. However, because the decision was quashed only on procedural grounds, it was open to the JCRA, if it so wished, to reconsider whether to revoke its recommendation, *inter alia* indicating to Mobitel its preliminary view in sufficient detail as would enable Mobitel to respond. Mobitel should then be given an opportunity to seek to persuade the JCRA to maintain the recommendation and the JCRA then had to give proper consideration in good faith to any arguments which Mobitel might put forward at that stage.

## ADVOCATES

### Disciplinary proceedings

*An Advocate v Chief Officer of the States of Jersey Police* Royal Ct (Birt B, sitting alone) [2011] JRC 190

The plaintiff appeared in person; MT Jowitt for the Chief Officer.

This case concerned certain dealings by an advocate with an interdict under curatorship. The advocate, who was not the curator, was interviewed under caution by the States of Jersey Police in connection with his assisting the interdict to pay certain payments of her UK pension into his client account. The advocate denied any wrongdoing and the police concluded that the matter would not be taken further. However, as a result of a complaint by the curator as to the conduct and fees charged by the advocate, the Law Society of Jersey commenced disciplinary proceedings. The Law Society sought disclosure of the police interview. The advocate declined to consent and sought an injunction against the police preventing disclosure.

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[10] 2005 JLR 428; CA [2006] JCA 040.

**Held,** declining to grant the injunction sought—

(1) The position regarding the disclosure of police interviews to regulators was set out in *Woolgar v Chief Constable of Sussex.*[11] Although that case concerned the regulation of the nursing profession, the principles were equally applicable to the regulation of lawyers. The public interest in securing the free flow of information to the police, in confidence, had to be balanced against the public interest in a properly regulated legal profession. A properly and efficiently regulated legal profession was necessary in the interests of maintaining the rule of law, in keeping the public safe and protecting the rights and freedoms of individuals, especially the vulnerable who need its protection. A necessary part of such regulation was the ensuring of the free flow of the best available information to those charged by statute with the responsibility to regulate. The court was in no doubt that in this case the public interest in favour of disclosing the interview to the Law Society greatly outweighed the public interest in preserving its confidentiality. The primary decision in such matters will be for the police; but they should, in so far as practical, inform the person affected in advance so that that person may apply to the court if desired. If the police refuse disclosure, the regulatory body may also apply to the court.

(2) The disclosure was necessary for the exercise of the Law Society's disciplinary role, to which it was charged by statute, and therefore complied with the data protection principles for the disclosure of personal data and sensitive personal data under Schedules 1 and 2 of the Data Protection (Jersey) Law 2005. It was also necessary and proportionate for the protection of the rights and freedoms of others and therefore not in breach of art 8 rights under the ECHR.

(3) Accordingly the court declined to grant an injunction; however the disclosure had to be made on the usual terms that the Law Society will use the transcript only for the purposes of its disciplinary investigation and not for any other purpose and that the Society will not disclose the transcript to any person save as may be necessary for the purposes of its investigation.

## COMPANIES

### Capital—reduction of capital account

*In re E,D, & F Management Investments Ltd* Royal Ct (Clyde-Smith Commr and Jurats Clapham and Milner) [2011] JRC 161

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[11] [1999] 1 WLR 25.

AD Robinson for the representor.

The representor sought the court's confirmation of the court under Part 12 of the Companies (Jersey) Law 1991 for a reduction in its share premium account to nil and for the credit of the amount of the reduction to the company's profit and loss account. The purposes of the reduction were (i) to enable the company to make future dividend payments to its shareholders out of profits, and (ii) to eliminate a negative profit and loss reserve in the company's balance sheet. As regards (i), the company wished to fund dividends out of profits notwithstanding the ability to make a distribution out of capital under art 115 of the 1991 Law. The company considered that it would be in its best interests to fund future dividends out of profits because that would be the normal expectation of English shareholder base and paying dividends from a reserve of profits might also entail UK tax benefits for the shareholders. The only creditors consented to the application.

**Held,** confirming the reduction—

(1) As in *Re Wolseley Plc*,[12] the court took the view that the future intention of the company to pay dividends out of the enlarged profit and loss reserve did not result in the procedure for informing creditors under art 62(2)–(5) of the 1991 Law automatically applying and in view of position regarding creditors there was no reason to order that it should apply.

(2) As regards the question of eliminating the negative profit and loss reserve, the court approved a similar application *In re Rangold Resources Ltd.*[13] In that case the court drew assistance from the English case of *In re Jupiter House Investments (Cambridge) Ltd*[14] which held that the loss had to be of a permanent nature to warrant such a reduction. However, the rationale behind *In re Jupiter*, being the need to guard against capital being used to pay dividends, had fallen away in the light of the changes introduced by the 2008 revisions to the 1991 Law which included the art 115 procedure for making distributions out of capital. A reduction of a capital account of a Jersey company may therefore be confirmed where such reduction will reduce accumulated losses on the balance sheet of a company in circumstances where such losses are not of a permanent nature.

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[12] [2011] JRC 007,
[13] [2004] JRC 070
[14] [1985] 1 WLR 975

(3) The court further found that the purpose of the proposed reduction was a discernible purpose justifying confirmation of the reduction.

**Winding up—creditors' winding up**

*Re Roberts & Pirouet* Royal Ct (Birt B and Jurats Fisher and Kerley) [2011] JRC 166

AJ Dessain for the representors.

The joint liquidators of two Jersey companies in a creditors' winding-up under the Companies (Jersey) Law 1991 wished to pool their assets and liabilities in order to treat them as if the companies were a single entity on the ground that the way the companies had operated would make it disproportionately expensive to ascertain the assets and liabilities of each company individually.

**Held,** granting the application—

(1) This was the first occasion on which an order pooling assets and liabilities had been sought by liquidators in a winding-up under the Companies (Jersey) Law 1991 rather than by the Viscount in a *désastre*. Although there was a dearth of reported judgments, there were many previous examples of the court having authorised pooling in *désastres* where this was in the best interests of creditors: see para 5.27.2 of *Jersey Insolvency and Asset Tracking* by Dessain & Wilkins (3rd ed), and the observations of P Bailhache, DB in *Re Royco Investment Co Ltd.*[15]

(2) In England that power to pool assets and liabilities is contained in the statutory powers of liquidators to compromise claims as set out in paras 2 and 3, Part 1, Schedule 4 of the Insolvency Act 1986: *Re Bank of Credit & Commerce International SA (No 3).*[16] In Jersey the power of a liquidator under art 170 of the 1991 Law to compromise claims is in somewhat narrower terms. But the matter was put beyond doubt by Article 186A of the 1991 Law which gives the court the ability, on the application of *inter alios* a liquidator in a creditors' winding up, to—

> "exercise all or any of the powers that would have been exercisable by it or by the Viscount if a declaration had been made in relation to the company under the [Bankruptcy (Désastre) Law 1990] and may make an order terminating the winding up."

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[15] 1994 JLR 236.
[16] [1993] BCLC 1490.

Since there was ample precedent for the court in a *désastre* making a pooling order, it was clear that there was jurisdiction for the court to do so in relation to a creditors' winding up. Pooling was in the interests of creditors in the present case since the costs involved in ascertaining the strict position would be disproportionate and would prejudice the creditors as a body: *Royco*; *Re BCCI (No 3)*.

(3) The liquidators had adequately informed the creditors of the hearing in advance and had given them an opportunity of attending if they wished. No creditor had objected. The court was satisfied that the order was in the interests of creditors and accordingly made the order without requiring the creditors to be convened.

## CRIMINAL LAW

### Bail

*Evans & Evans v Att Gen* Royal Ct (W Bailhache, DB and Jurats Tibbo and Nicolle) [2011] JRC 199

EL Jordan for Morgan Evans; PS Landick for Lloyd Evans; EL Hollywood for the Attorney General.

The applicants sought a judicial review of the decisions by the Relief Magistrate and the Acting Magistrate to refuse to grant them bail on charges of affray and, in the case of one of them, grave and criminal assault. Pleas were reserved. The Relief Magistrate made a provisional decision that the matter was too serious to be dealt with in the Magistrate's Court with a view to holding committal proceedings and, if the evidence was sufficient, committing the matter to the Royal Court. In refusing bail, the justices in the Magistrate's Court expressly took into account the seriousness of the alleged offences, the likely sentence and the strength of the evidence. The cases had not yet been committed to the Royal Court.

**Held,** granting the applications—

(1) As the cases had not yet been committed to the Royal Court, and theoretically, might never be committed, the court was not exercising a *de novo* jurisdiction on the issue of bail but rather was judicially reviewing the decisions below on the classic judicial review grounds of illegality, propriety and irrationality (*Council of Civil Service Unions v Min for the Civil Service*)[17] considered now also in the context of the Human Rights (Jersey) Law 2000.

[17] [1985] AC 374.

(2) Bail in Jersey is not governed by statute, unlike in the UK, but the court noted the presumption in favour of bail in extradition cases under art 97 of the Extradition (Jersey) Law 2004 and, more generally, art 5 of the European Convention of Human Rights. The usual (but not exclusive) grounds for refusing bail are: (i) that the defendant would fail to attend trial; (ii) that the defendant would interfere with evidence or witnesses or otherwise obstruct the course of justice; or (iii) that the defendant would commit further offences whilst on bail. The right to liberty conferred by art 5(1) of the Convention does not prevent the detention of a person pending trial because there is specific qualification of the right to liberty in that context, but the effect is that there is a presumption of bail. It is therefore for the prosecution to establish that one or more of the legitimate objections to bail exists.

(3) Gravity of offence and length of possible sentence are not themselves legitimate objections to bail (*Re Makarios*,[18] not followed); they may, however, be part of a valid refusal of bail if used in support of a legitimate objection. Particularly where there is a not guilty plea or a reserved plea, the likely sentence for the offence is only likely to be relevant to the question of absconding, and would not normally be relevant to the likelihood of committing further offences pending trial. It is only when added to some other factor such as where the charges tend to reveal a pattern of similar offending over a period of time that the court might well find that the nature and seriousness of the offending suggested there was a risk of further offences being committed whilst on bail. The strength of the evidence may support the objections to bail in an appropriate case. However, the mere fact that there is a strong case on the charges brought does not necessarily mean that there is a risk of further offending taking place.

(4) The court below had accordingly misdirected itself as to the relevance of the gravity of the alleged offences, length of sentence and strength of evidence. Accordingly the decisions could not stand and on the facts the court granted the applicants bail.

## SUCCESSION

### Tutelles—dower

*In re Amy Tutelles* CA (Beloff, Montgomery and Nugee JJA) [2011] JCA 144

PC Sinel for the appellant; DA Corbel for the first respondent; CM Fogarty for the second respondent.

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[18] 1978 JJ 215.

The late Mr Amy left his widow Mrs Amy life enjoyment of part of his immovable estate and the life enjoyment of the remainder to his children, with the reversion ownership going to one of the children. *Tutelles* were formed while the children were minors with Mrs Amy acting as *tutrice*. In an earlier judgment, the Royal Court found that Mrs Amy had not complied with her accounting obligations under the Loi (1862) sur les Tuteurs; had not kept sufficient records of expenditure; and, in so far as she had intimated an intention to make a claim for dower, was in a position of conflict of interest. The Viscount was appointed as administrator of the remaining *tutelle* in place of Mrs Amy and authorised to appoint forensic accountants to examine the records of the *tutelles*. The Viscount appointed Grant Thornton ("GT"), who found that Mrs Amy owed substantial sums to the children; however the information available did not permit GT to make allowance for undocumented expenditure made for the benefit of the children. In the case of *In re Amy Tutelles*[19] the Royal Court granted the applicant children summary judgment in respect of the sums found due by GT, subject to a deduction of 25% in respect of undocumented expenditure for the benefit of the children. Mrs Amy appealed to the Court of Appeal against the summary judgment. On appeal by Mrs Amy the following issues *inter alia* were raised: (1) whether Mrs Amy had been entitled to the money by way of dower, without a formal action for dower and in respect of the gross income of the whole of the immovable estate, even though she had been given life enjoyment of part of it under her husband's will; (2) whether Mrs Amy had been entitled to pay a third party, Mr Barnett, to manage the affairs of the tutelle; (3) whether a change of position defence was available to Mrs Amy in respect of monies of the *tutelle* mistakenly taken by her for her own benefit; and (4) what allowance on a summary judgment application should be given against her claim to have spent the money for the benefit of the children.

**Held,** allowing the appeal—

**(1) Need for formal claim and relevance of life enjoyment left by will.** Dower is the customary right of a widow in respect of her husband's immovable property. There were formerly two types of dower known as Norman dower and Jersey dower but Norman dower was abolished by art 6 of the Bankruptcy (Désastre) (Jersey) Law 1990. Jersey customary dower entitled the widow, so long as the marriage had been consummated, in effect to life enjoyment of one third of her husband's immoveable property: there was some lack of clarity as to precisely which immovables dower could be claimed over

[19] [2011] JRC 044A.

(see Matthews & Nicolle, *The Jersey Law of Property* §§8.89–8.91), but these points did not have any bearing on the case. Mrs Amy's rights of dower could be regarded as extending to one-third of the immovables possessed by the husband at the date of his death.

Confirming the judgment of the Royal Court, dower is not due until an application—a *clameur de douaire*—is made to the court: Le Gros, *Droit Coutumier de Jersey*. Mrs Amy had not actioned the heirs for dower until 30 March 2010 and Bailhache Commr had therefore been correct that her customary right of dower could not justify payments which had been made to her prior to that action.

It was therefore unnecessary to consider the further question raised which was whether a widow who is left by will life enjoyment of part of her husband's estate can in addition claim dower in respect of the remainder of the estate. The Court of Appeal expressed the following views, *obiter*. The effect of art 6 of the Wills and Successions (Jersey) Law 1993 is that neither dower nor *viduité* can now arise in an intestate succession: the Law itself makes alternative provision for a surviving spouse (differing in the case where the deceased leaves issue as well as a spouse from the case where he only leaves a spouse). The present position is therefore that dower can only arise in a case of testate succession: see *Jersey Law Commission Consultation Paper No 8 on Security on Immovable Property*, para 12.4. Where the will does make adequate provision for the surviving spouse (ie that leaves her a life enjoyment of at least one third of the immoveable estate), she has no further claim; and where she is left life enjoyment of part of the estate, but less than one-third, her claim is to life enjoyment of such extra part of the estate as would make one third in total: view of Jersey Law Commission followed.

**(2) What sums could Mrs Amy properly charge the tutelles in respect of management?** Mrs Amy had engaged the services of a Mr Barnett to manage the estate and had paid him approximately £10,000 per year. The questions were raised as to whether this had been a proper disbursement and whether Mrs Amy was entitled to 5% of the gross income by way of an allowance for management.

> "*Le tuteur a droit, en règle générale, pour l'entier de ses peines et vacations, outre ses légitimes débours, à une somme de cinq pour cent du revenue du pupille, sans faire déduction de ses dettes, sujet néanmoins à diminution ou augmentation en cas de facilité ou difficulté extraordinarire, à la discretion des électeurs de la tutelle*.": *Tostevin v Piquet*.[20]

[20] (1904) 11 CR 431.

The *tuteur* was therefore entitled to a sum in addition to his "legitimate disbursements" and the *tuteur* can recover a greater fee than 5% with the agreement of the *électeurs* in cases of unusual difficulty. On a summary judgment application, it had not been possible to conclude that the payments to Mr Barnett were incapable of being a legitimate disbursement. A triable issue had therefore been shown. However there was nothing to show that Mrs Amy was ever intended to have 5% as well as the payments to Mr Barnett. The amount due for the purposes of summary judgment was therefore limited to the payments made in respect of dower and did not include the payments to Mr Barnett or her 5% allowance for the period until Mr Barnett was appointed.

**(3) Whether change of position defence available.** Mrs Amy was not an innocent recipient but someone who had received money in breach of her own duty. Although a change of position defence is generally available for the recipient of money in a restitutionary claim (*Lipkin Gorman v Karpnale*[21]), the children's claim in this case was not so much a restitutionary claim as a claim for an account of what had become of their money. Mrs Amy was akin to a trustee and could not rely on a change of position defence to a claim for the mistaken receipt of *tutelle* property.

**(4) Whether defence available to extent that excess money received was spent on children.** Mrs Amy had a good defence to the extent that she could show that she had expended the *tutelle* money on the children which had been paid to her under the rubric of dower. In the absence of detailed evidence from Mrs Amy, the Commissioner, in giving summary judgment, allowed Mrs Amy 25% of the sum claimed, giving summary judgment in respect of the balance of 75%. However taking into account Mrs Amy's contention that she had no other income, and bearing in mind that the court would uphold the Royal Court's summary judgment only to the extent that no triable issue had been shown, the Court of Appeal allowed for 75% of the payments to have been spent on the children, so that the appeal was allowed and judgment was substituted for 25% of the net money received by Mrs Amy under the rubric of dower. As in the court below, leave to defend was granted in respect of the balance of the claim, subject to payment by Mrs Amy of the balance into court.

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[21] [1991] 2 AC 548.