

**Bailiff's speech for the Assise d'Héritage  
Monday 11<sup>th</sup> September 2017**

1. Your Excellency, it is a great pleasure to be able to welcome you and Lady Dalton for the first time to this ceremonial sitting of the Royal Court. Because you are assiduous in wanting to understand the island to which you have been appointed, you will already know much of the history of this particular court. You may be pleased that on this occasion at least you have a speaking role albeit it is a rather brief one!
  
2. I am sure you know that at the sitting of 9<sup>th</sup> May 1900, one of your predecessors chose not to come. He had been informed that the *Cour d'Héritage* had determined in May 1899 that his appearance was unnecessary as the Fief of the Evêques, Abbés et Abbesses had been returned to the possession of the Crown. Subsequently the court rescinded the act and the Governor has since that date answered for a host of Norman bishops and clergy whose fiefs in the island were permanently confiscated by Henry V in 1413. I am sure that I can sense a growing urge amongst at least one of the number of advocates and solicitors in court today to investigate and inform us all further with an article in the Jersey and Guernsey Law Review!

3. I am also very pleased to welcome the Chief Minister, who is, of course, also the Minister with political responsibility for justice policy.
4. The Assise des Chefs Plaids d'Héritage has frequently been described, whether correctly or not, as the oldest surviving land court in Europe. Even if that is correct, I should say immediately that the Court of Chief Pleas in Guernsey is of similar vintage. Until 1771, the Assise d'Héritage was held three times a year. The Seigneurs and the Franc Tenants made suit of court, just as has happened today; and the advocates renewed their oaths of office just as they do today.
5. So it is interesting that despite some changes, the Assise d'Héritage is procedurally very similar today to what it has been for centuries. The Assise has an inter-insular feel this year. I am particularly pleased to welcome Her Majesty's Procureur and Comptroller in Guernsey, the Attorney and Solicitor General from the Isle of Man and the Attorney General from Gibraltar to this formal opening of our legal year. Perhaps with Gibraltar's presence, I should have referred more to a European feel than an inter-insular one. At all events, you are all very welcome.
6. Today we have with the growth in the number of advocates a very full court, indeed with many taking seats in the States

Assembly – and I welcome them specifically to court today and assure them they are still very much part of this court sitting – and perhaps I can take the opportunity of thanking the Electronics Department of the States not only for making this possible today but also for the work its members do for the Court throughout the year, often at the drop of a hat when some particular unforeseen emergency arises.

7. No doubt the new legal year will bring fresh challenges, but the court will endeavour to continue to administer justice to the best of its ability. In that connection I would like to take the opportunity to pay tribute to the work of the Jurats whose commitment, unpaid, to the delivery of justice remains undimmed. In mentioning the Jurats, I also have the opportunity to pay tribute to Jurat Barbara Miles OBE, who died a week or so ago. She would have been 89 tomorrow. She was the first lady Jurat, and served for a period of 22 years. In 1997, she was appointed to the honorary post of Lieutenant Bailiff. Before becoming Jurat she had played a major role in establishing the family welfare centre and later as a member of the juvenile court panel – her devotion over thirty years not only to the legal process but also to the number of charities which she supported vigorously was remarkable and was duly recognised by the award of the OBE in 2001. Her last years have not been easy as

she was afflicted by a stroke, but she bore them with fortitude and great courage and it is right to remember her at this Assise d'Héritage.

8. There is much to contemplate at the opening of this new legal year, as we come together for the renewal of the oath of office by the advocates, a renewal which reflects the high principles by which advocates are expected to practise. The oath of office of advocates and solicitors is an ancient and an important one. I have said previously that although we do not all have to renew our oaths of office, we are all renewed by listening to the oath delivered to the advocates. The renewal of the oath is important because the principles of that oath – those high and sometimes not always easy to maintain principles – remind all of us that we are in a profession and not a business. We are reminded that the business of the court involves the delivery of justice by the performance of a service to the community at large and not only to the litigants before it. The court may not be the essential hub for the majority of lawyers, but it remains a vital structural beam in society at large – a beam which allows the rule of law to carry respect, which prevents a descent into anarchy and which, in passing, provides an essential base for the success of the financial services industry. Our system must enable us to deal with cases fairly and efficiently, whether it is criminal justice, family justice, or, at the back of the queue in terms of getting

court dates, financial services industry cases. In that context, litigants in person have become a feature of litigation which we have had increasingly to consider. With absolutely all respect to litigants in person who do their very best to deal with their cases efficiently despite the obvious emotion which affects them, our legal system simply must provide for adequate representation at affordable cost, and if it does not, everyone will be the loser.

9. I also have the opportunity now of paying tribute to the work of the Access to Justice group which I set up just over two and a half years ago, which has made recommendations resulting in Rule changes and Practice direction changes. therefore I thank Advocates Speck and Anthony Robinson, Advocate Steven Pallot, Malcom Ferey from the Citizens Advice Bureau and in particular the Master Advocate Matthew Thompson.

10. I mentioned earlier that an amount of the courts' time is spent on criminal matters – this category of work accounts for some 40% of the courts' overall workload. Most of the defendants are of course represented on legal aid and this gives me an opportunity once again of paying tribute to those advocates who undertake legal aid work which for the most part currently involves no remuneration. In my experience, the community has been extremely well served by members of the

profession when carrying out their duties under the legal aid scheme, and the court certainly appreciates their hard work and their dedication.

11. I have spoken a little about the delivery of justice but I would like to close by mentioning a decision of the Supreme Court in *R (on the application of UNISON) v Lord Chancellor*, handed down on 26 July this year. The case concerned the lawfulness of fees imposed by the Lord Chancellor in respect of proceedings before employment tribunals. The decision was that they were unlawful. The Lord Chancellor's underlying purpose had been described in a consultation paper as achieving a transfer of part of the cost burden from the taxpayers, the significant majority of whom would never use the tribunals to the users of the service. The whole judgment repays reading carefully, but it is clear that access to justice lay at the heart of their Lordships' decision. The central point made was that access to the courts is not of value only to the particular individuals involved. When, for example, Mrs Donoghue won her appeal to the House of Lords in *Donoghue v Stevenson* in 1932, the decision established that producers of consumer goods are under a duty to take care for the health and safety of the consumers of those goods, one of the most important developments in the law of England and Wales. Lord Reed reminded us of the comments of a previous Lord Chancellor,

Lord Gardiner in 1965 that justice is something in which we all have an interest, whether we use the courts or not, and whether we are looking at criminal or civil justice. The courts exist for the benefit of all, whether the individual resorts to them or not. In civil justice, the citizen benefits from the interpretation of the law by the judges and the resolution of disputes, whether between the state and the individual or between individuals.

12. So at the beginning of the new legal year, I suggest it is worth reflecting on these things, for they are fundamental to the future development of the legal and judicial services we give. They are matters for all of us, judges – and obviously the Bailiff as Chief Justice in particular – advocates, Justice Minister and Assistant Ministers, politicians and indeed the whole community. When changes are considered, they are everybody's business.