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The Jersey Law Review – June 2005 THE LANGUAGE OF THE LAW: THE IMPORTANCE OF FRENCH

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*"I wish life was not so short", he thought, "languages take such a time, and so do all the things one wants to know about."*²

1 During 2004, the Channel Islands celebrated their distinct and unique identities by reason of their eight-hundred-year "separation" from France. To the average visitor arriving in the Channel Islands, however, there will be little to indicate such Norman-French ancestry, save the names of certain families or of particular roads. Despite the historical connection and geographical proximity of the Channel Islands to France, their trade is predominantly with the United Kingdom and the language spoken is overwhelmingly English.³ The Jersey census of 2001 for instance, revealed that only some 15,114 (17.3%) of residents in Jersey can speak French either as a main or secondary language. Those that speak French as a first language, amounted to a mere 338 people out of a resident population of 87,186. Sadly, unless positive efforts are soon made, knowledge of the French language and culture by Islanders is likely to decline further. One wonders what Dr. Frank Le Maistre, (author of the *Dictionnaire Jersiais-Français*), might have thought about such a possibility. Even in 1947, he had observed:

“...French, though still the official language, to all intents and purposes has now reached the status of a foreign language and though by nature we should be bilingual people, the knowledge of French is becoming more and more limited. Insufficient attention is paid to the teaching of it in the elementary schools...”⁴

2 This article examines some of the areas where the French language and, in particular, Norman-French survives in the Channel Islands: notably in various spoken dialects and in our law. It further considers the influence of Norman-French, and French generally, upon the English legal system and upon the English language as a whole.

Norman-French dialects

3 Norman-French dialects are still spoken in Jersey, Guernsey and Sark, albeit by a steadily-reducing number of people. They are known as *Jèrriais*, *Dgèrnésiais*, and *Sèrtchais* respectively. The Alderney dialect of *Auregnais* has now died out without leaving

¹ I am indebted to Professor Trotter of the University of Wales, Aberystwyth who kindly assisted me in the drafting of this article and also to Elizabeth Hanson for her extensive research.

² J.R.R. Tolkien (1892 – 1973), *The Lost Road*.

³ Mari C. Jones, *Jersey Norman French: A Linguistic Study of an Obsolescent Dialect* (Blackwell 2001) states at para. 8.3.1 that “...the English spoken on the Island has been heavily influenced by the Jèrriais substrate, to the extent that it is possible to describe it as a separate regional variety of English.” As is subsequently acknowledged, however, this contention is limited to particular, well established Jersey families. A number of factors have all combined to water down the Jersey characteristics to which Mari Jones refers in her chapter “Cross-Linguistic Influence on Jersey.”

⁴ Extract taken from his paper *The Jersey Language in its Present State*.

a literature for posterity. According to the 2001 Jersey census, fewer than 3,000 people in Jersey speak *Jèrriais* as a main or secondary language (although a significantly greater number of people, however, will at least be familiar with *Jèrriais*.) The Guernsey census of 2001 shows that some 1,300 people speak *Dgèrnésiais* “fluently” (the majority of whom are over 60 years of age), whilst there are fewer than a further 3,500 people who are able to speak it “a little”. N.C.W. Spence has noted the remarkable similarities between the Islands and Norman mainland dialects. However, he observes that -

“...There are remarkable variations⁵ not only between the dialects of the separate Islands, but within the dialects of Jersey and Guernsey themselves. Since the total area of Jersey is 45 sq. miles and that of Guernsey under 30 sq. miles, the existence of such marked variation is surely unusual. In French, one would refer to *les parlers Jersiais* (or *Guernesiais*) and the use of the plural is certainly justified. Even an unobservant Jerseyman would identify a speaker as being from either east or west Jersey, and indeed would recognise the pronunciation of someone from St. Ouen in the north/west as different from that of other west Jersey speakers. A language-conscious observer could probably place a speaker within a mile or so of his or her birth place. The same is no doubt true of Guernsey.”⁶

4 The writer and philosopher, Johann Herder (1744-1803), contended that language embodies the uniqueness of a culture and expresses a whole way of life.⁷ Upon this basis, the differing Channel Islands’ dialects, are important indeed, and, thankfully, organisations such as the *Société Jersiaise*⁸ in Jersey, “Les Ravigotteurs” and the *Société Guernesiaise* in Guernsey, are dedicated to preventing their demise. The decline of such dialects has, however, long been a reality and commenced around the turn of the 19th century, with the arrival of English garrisons and subsequent English-speaking immigrants.⁹ Within only a further fifty years, English had not only taken root in Jersey, but, as Kelleher observes, had established itself “as the language of progress on every level”.¹⁰ The decline is further charted by writers such as Le Maistre, who, in 1947, noted, for instance, the growing use of English in preference to *Jèrriais*, with the apparent intention of appearing more sophisticated. In Le Maistre’s concluding lament at the decline of *Jèrriais*, it is important to note his further appeal for the preservation of a particular way of life. He clearly regarded this as being inseparable from the language itself -

⁵ “Il ya une rivalité historique entre Jersey et Guernesey – plutôt de bonne humeur. Les Jersiais se moquent du Dgèrnésiais: chez nous, on aime “chanter” et “danser” et à Guernesey on aime “chantai” et “dànsai”. “Au revoir” à Jersey se dit “à bétôt” et à Guernesey “à la perchoïne”. A Jersey on se moque des diphthongues du Dgèrnésiais. Et les gens de Guernesey à leur tour se moque de nous et de notre “th” intervocalique....On se moque, bien sûr, mais on se comprend.” Geraint Jennings, *Les Iles Anglo-Normandes – plutôt “anglo” ou plutôt “normandes”?*

⁶ *The History of English in the British Isles*. See also J.P. Collas, *Some Aspects of the Norman Dialect in the Channel Islands, with Special Reference to Guernsey*, (1934) Transactions of the Société Guernesiaise, 213-225.

⁷ *Treatise on the Origin of Language* 1772.

⁸ This has a website address at www.societe-jersiaise.org

⁹ Kelleher, *The Triumph of the Country* (1994) at page 121.

¹⁰ *Ibid.* at page 134.

“...when the old walls in the country lanes no longer echo the pleasant sounds of the Jersey language, when those docile and graceful natives the Jersey cows are no longer addressed in the Jèrriais they have understood for so many generations, when the Jersey soil is trampled upon by descendants of her sons uttering a foreign tongue to it, when the children are lulled to sleep in English, when the seagulls cry out to the cliffs in English and when the dogs bark in English – then Jersey will no longer be Jersey and we shall have lost irretrievably a very precious possession indeed. We shall be anglicised and modernised, systemised and standardised, but shall we be more content than were our fathers, the Jersey patriarchs? I think not. ¹¹

The Law & Customs of the Channel Islands

5 Aside from the existence of these remaining dialects, the local law remains an important bastion for both Old French, and Norman-French. A trip to the Samedi Court in Jersey will readily illustrate this fact. On a Friday¹² afternoon, the Royal Court will deal with the conveyance of immovable property and related transactions that are required to be passed “*devant Justice*”. (The basic structure of such a conveyance has been explained in an earlier issue of the this Review¹³ and a sample conveyance can further be found in the annex to a note in this issue by Professor Trotter.) A quick perusal of a conveyance will reveal a number of old French words that otherwise have long fallen out of use. For example, consider the introductory paragraph of the conveyance: “*A Tous ceux qui ces présentes Lettres Verront ou Orront...*” The word *orront*, meaning “*shall hear [when read aloud]*,” is derived from the verb *oyer*. JH Baker’s *Manual of Law French* states that this verb is derived from the Latin *audire* and the author goes on to cite a number of examples of its use in England many centuries ago. For example, in Henry IV’s time, one finds a reference to *oyer del breffe*, meaning the “reading of the writ [in open Court].” Whilst variants still exist of this verb in English (notably *oyez* or *oyes* as one might hear a town crier say), and, further, in modern French we can find the noun *l’ouï-dire* meaning “hearsay”, the verb *oyer* has, over the centuries, otherwise fallen out of use. In the French language, it has been superseded by the verb *entendre*. In the body of the conveyance itself, one will frequently see a number of other words that are of interest and that are, further, identifiably Norman-French. For example, one often sees the word *la côtière* meaning the side of a building, but not a gable end wall, or *le hôgard* meaning a drying area for crops.

6 In more recent times, the purity of the conveyancer’s art has, to some extent, become corrupted by English terminology, reflecting the wider use of the English language in the Islands. Thus, for example, a more modern conveyance may be seen to refer to

¹¹ Le Maistre continues: “Finally, may I quote Victor Hugo? “*O vous tous! Braves Normands des Iles de la Manche – sachez-le – votre patois est vénérable; votre patois est sacré – car c’est de votre patois qu’est sortie, comme une fleur de la racine, cette belle langue, la langue française*”. In translation: “O you brave Normans of the Channel Islands – know ye that your dialect is a venerable one – and sacred – for it is from your dialect that has sprung, as a flower from the root, that beautiful tongue, the French language.” Unfortunately, such a romantic contention is obviously incorrect.

¹² Despite its title, in modern times, the Samedi Court does not sit on a Saturday.

¹³ Falle, *The Structure of a Pro-Forma Conveyance* (2004) 8JL Review 156.

“...*pension bourgeoise* (anglicisée “guest house” ou “boarding house”) or “*certaine maisonette* (anglicisée bungalow),” as the conveyancer attempts to achieve greater certainty than s/he feels can otherwise be achieved with the French vocabulary alone. In an article by Peter Bisson,¹⁴ entitled *Les contrats héréditaires de Jersey*, it is noted that such a practice arose during the 19th century, particularly after the building of new houses on the outskirts of St. Helier. Bisson, therefore, notes the use of English terms, such as “drawing-rooms” and “shrubberies” in such contracts. These admixtures of French and English, it is submitted, demonstrate a decline in the conveyancer’s art in recent times.¹⁵ Nevertheless, whilst English has only infiltrated the conveyancing process in Jersey, it is notable that in Guernsey it entirely supplanted the French language in 1969.

7 After dealing with the passing of such contracts, an observer will then see advocates dealing with other matters before the *Samedi* Court, in which various French terms will be employed. When a party’s case is called on, for example, an advocate will announce his presence by declaring “*Garde*.”

8 French and, to a far lesser extent, Norman-French continue to exert an influence in the law of the Channel Islands by the reliance of the courts upon various Norman texts that were written several centuries ago, and which are indicative of the law and customs of the Channel Islands at that time. (In this respect, more detailed reference may be made to Stéphanie Nicolle in *The Origin and Development of Jersey Law: An Outline Guide*.¹⁶ For example, Norman commentators of the 16th century, such as Le Rouillé¹⁷ and Terrien¹⁸ are, from time to time, relied upon in the Jersey legal process. In fact, so that Terrien’s commentaries may, in the future, be made more accessible, the Jersey Legal Information Board¹⁹ intends to publish such works upon its website.²⁰

Law reform and the continued use of French in the legal process

9 More often than not, law does not change radically, but gradually evolves over time, and the changes that do occur, are often long awaited. Frequently, these changes reflect the evolutionary processes that have already taken place in society, and sometimes by many years. For example, the decision of the House of Lords in 1991 that finally recognised the offence of rape in marriage, can be explained, in part, as the eventual acceptance of society’s altered view of marriage as a partnership of equals.²¹ Indeed, those who subscribe to a social-contract theory of law,²² would probably be quite content with judicial development following in such a belated manner. Followers of such a theory might argue, for example, that for the courts to develop law legitimately, they should

¹⁴ Formerly of the Judicial Greffe. His article appeared in *Parlers et Traditions Populaires de Normandie* 1984 Vol. 16, Issue 63.

¹⁵ Note the rather pejorative description by the defendant’s advocate of monoglot conveyancing clerks in *Thomas v Blampied*, 17th March, 1992, Jersey Unreported, at page 13.

¹⁶ Published privately, but available from the States Greffe bookshop, St. Helier.

¹⁷ He produced two editions of *Le Grand Coutumier de Normandie et de la Glose* in 1534 and 1539

¹⁸ He produced two editions of the *Commentaires du Droit Civil Tant Publicque Privé Observé au Pays et Duché de Normandie* in 1574 and 1578.

¹⁹ This has a website at www.jerseylegalinfo.je

²⁰ Depending upon availability and condition, Terrien’s work might cost something in the region of £1,000-£1,500 to purchase.

²¹ *R v R (Rape: Marital Exemptions)* [1991] 4 All ER 481.

²² *E.g.* John Locke 1632-1704.

necessarily follow a cautious approach so as to ensure that they are, indeed, merely reflecting the revised consensus view held by society.²³

10 Notwithstanding such theoretical justifications, however, the evolutionary process in the Channel Islands can, at times, feel a little slower than in other jurisdictions. To an English lawyer, in particular, there will be a variety of features that appear obscure and worthy of change. For example, the retention in Jersey of archaic French in the conveyancing process, when its society is made up of an overwhelmingly English-speaking population, is immediately bewildering. Further, with the drive in other English-speaking jurisdictions towards the use of “plain English”, and the growing emphasis upon notions of access to justice, it is perhaps only a matter of time before change occurs in the Channel Islands. Such forces are, of course, not just passing fashions, but lie at the heart of any legitimate legal system. In essence, the greater the obscurity and uncertainty in the rules applied by a given legal system, the further away that system may be said to be from ensuring “the rule of law.” As Professor Raz once observed -

“A person conforms with the rule of law to the extent that he does not break the law. But he obeys the law only if part of his reason for conforming is his knowledge of the law. Therefore, if the law is to be obeyed it must be capable of guiding the behaviour of its subjects. It must be such that they can find out what it is and act on it.”²⁴

11 The use of French in the legal systems of the Channel Islands has from time to time been criticised for obscuring our law. It is a sentiment that has been expressed since at least the 19th century, and is, for instance, recorded in the 1861 Report of the Royal Commissioners -

“.....In Jersey, with scarcely any exception, all legal proceedings are conducted in the French language. Much complaint on this head generally and in particular with regard to the speeches of counsel, was made to us, by or on behalf of the exclusively English-speaking part of the population.....Still, notwithstanding the general knowledge of English, there exists among those of Jersey blood, a strong national feeling in favour of their ancient language.”²⁵

12 Whilst the Royal Commissioners were not prepared to recommend any change in the language utilised before the Court, they did emphasise the importance of a party having the right to a fair hearing -

“A party, however, who does not understand French, should, in every court in the Island, have a right to demand that legal instruments and evidence, if given

²³ In this respect, customary law works well, in that it requires the tacit consent of the people, or certain relevant sections of it, for its creation and development. See *The Connétable of St.Helier v Gray and Att.Gen.* [2004] JRC 177 for a recent example, and, more generally, Auguste Lebrun’s 1932 work: *La Coutume, ses sources – son autorité en droit privé.*

²⁴ *The Rule of Law and its Virtue* (1977) 93 LQR 195 at 198. Consider also Lon Fuller’s *The Morality of the Law.*

²⁵ Note also the *Carus Wilson case* of 1844 that provoked widespread controversy upon the refusal of the Royal Court of Jersey to conduct its proceedings in English. See Kelleher, *ibid.* at pages 127-128.

in that language, may be interpreted to him; the party ignorant of English having a similar right in cases where, as very frequently happens, English testimony or documents are brought forward. Each should be entitled, if he demanded it, to have the interpretation on oath.”

13 In more modern times, such a right might be expressed in terms of a “human right”, as enshrined in article 6 of the European Convention on Human Rights. (See also *Williams v Cowell*).²⁶ Since the Second World War, however, English has gained more influence in the court process such that English has been expressly “permitted”²⁷ and is now the usual language utilised by the court.²⁸

French & English

14 Without wishing to detract from the importance of litigants having proper access to their legal system and, in an ideal world, being able to understand the generality of their laws without the need to instruct a lawyer, there is a great irony in an English lawyer viewing too critically the use of French and, in particular, Norman-French in the Channel Islands. To appreciate this, it is necessary to have regard to the significance of the Norman Conquest. The reader will, of course, be familiar with the fact that, in 1066, William as Duke of Normandy (of which, the Channel Islands then formed part) made good his claim to the English throne. However, we sometimes overlook the influence that the Normans subsequently imposed upon the evolution of the English language -

“What the language would have been like if William the Conqueror had not succeeded in making good his claim to the English throne can only be a matter of conjecture. It would probably have pursued much the same course as the other Germanic languages retaining perhaps more of its inflections and preserving a preponderantly Germanic vocabulary, and incorporating words from other languages much less freely. In particular it would have lacked the greater part of that enormous number of French words which today make English seem, on the side of vocabulary, almost as much a Romance as a Germanic language. The Norman conquest changed the whole course of the English language.”²⁹

15 The Normans carried their own particular dialect into England, which developed there into a specific variety known as “Anglo-Norman”. However, as Professor David Trotter has recently observed, “Anglo-French” is possibly a more accurate descriptive term

²⁶ [1999] EWCA Civ 1893. It was held by the Court of Appeal to be an intrinsic component of a fair hearing that a party could understand what was said in Court, and also could be understood. There was, however, no right to require proceedings to be conducted in another language, such as in Welsh.

²⁷ RCR 15/10.

²⁸ French is used in the prayers said at the commencement of the Royal Court’s sitting, and is employed on other official occasions.

²⁹ Baugh and Cable, *The Domination of French in England*. See www.orbilat.com under “Romance Influences.”

“[Anglo-Norman] is something of a misnomer: the specifically Norman traits of the language found in England are neither overwhelmingly dominant, nor are they the only dialectal elements which are discernible in documents written in French in England.”³⁰

16 The variety in such French influence is similarly noted by Mary Serjeantson -

“Later the influence [of Anglo-Norman] was reinforced by new introductions from France, both from Norman-French and from the more southerly Central French, and also, (though these are not common), from the speech of southern France, the *langue d’oc* or *Provençal*.”³¹

17 From these French influences, words passed into English. In searching for a specific Norman influence, however, Milroy³² suggests that one should look at those areas where the Normans were dominant. He identifies these as -

“...the legal, military and domestic fields, and [those] relating to social organisation and administration. Basic vocabulary in these areas is largely Norman...”³³

18 Whilst accepting the early influence of the Normans, Rothwell has emphasised the importance of the subsequent development that then took place -

“...a great many French terms took on new senses in England as a direct result of being written as well as spoken, not by Norman conquerors but by thousands of Englishmen in a professional capacity, generations after the conquerors had been absorbed.”³⁴

Anglo-French & the English legal system

19 As has been suggested above, therefore, the use of French in the legal process, had a particular influence upon the development of the English language. In fact, Maitland³⁵ suggests that English (*la langue de païis*) had to borrow from the French, “a word corresponding to almost every legal concept that has yet been fashioned.” Maitland gives particular emphasis to the role of the courts in the following passage -

³⁰ See www.anglo-norman.net/an-intro.html

³¹ *A History of Foreign Words in English*, 1935 ed.

³² *The History of English in the British Isles* forming part of the book *Language in the British Isles* (1984) edited by Peter Trudgill.

³³ For example, prison, burglar, attorney, war, captain, sergeant, soldier, table, boil, beef, duke, bailiff, rent, treasure. Milroy goes on to state that “Many old English words were displaced by French ones; some disappeared entirely (e.g. OE *frip* “peace”), whereas others remained with altered (and usually restricted) meanings (thus OE *bord* “table” remains as “board.”

³⁴ *The Legacy of Anglo-French: faux amis in French and English*. See www.anglo-norman.net/articles/fauxamis.xml In the Channel Islands, one can gain a sense of how this process of development and distortion must have occurred simply by looking at the current pronunciation of French words in the mouths of English speaking residents. For example, the well known family name of “*Le Feuvre*” would, only some sixty to seventy years ago, have been pronounced as the French would have it. Phonetically, “*Feuvre*” would have been pronounced as “føVR.” Nowadays, this surname has, rather surprisingly, become distorted and is pronounced as if it were the English word for “*fever*.” Other family names such as “*Voisin*,” “*Huelin*,” and “*Poingdestre*” have all suffered similar anglicisation. In the latter case, the name is commonly pronounced as “*Poinchester*.”

³⁵ Introduction to *The Year Books of Edward II* edited by Maitland for the Selden Society. See extract at www.orbilat.com

“Let us look for a moment at some of the words which “lay in the mouths” of our serjeants and judges: words descriptive of logical and argumentative processes: words that in course of time would be heard far outside the courts of law. We see “to allege, to aver, to assert, to affirm, to avow, to suppose, to surmise (*surmettre*), to certify, to maintain, to doubt, to deny, to accept (*excepcioner*), to demur, to determine, to reply, to traverse, to join issue, to try, to examine, to prove”. We see “a debate, a reason, a premiss, a conclusion, a distinction, an affirmative, a negative, a maxim, a suggestion”. We see “repugnant, contrariant, discordant.” We see “impertinent” and “inconvenient” in their good old senses. We even see “sophistry”. Our French-speaking, French-thinking lawyers were the main agents in the distribution of all this verbal and intellectual wealth. While as yet there was little science and no popular science, the lawyer mediated between the abstract Latin logic of the schoolmen and the concrete needs and homely talk of gross, unschooled mankind. Law was the point where life and logic met.”

20 Whilst, as Maitland suggests, the law was a means by which French words were able to become part of the English language, it is important to observe that many Anglo-French words that were in general use, were also taken over by the lawyers and then refined, thereby developing new meanings.

21 It would be incorrect, however to believe that a knowledge of French was anything but exceptional among the common people as a whole. French was more the language of the court and the upper classes, who may, or may not, have also spoken English. By the reign of Edward III (1312-1377), however, the fusion of the Saxon and French elements was far advanced and the French tongue was little understood. By an Act of 1362, an attempt was made to substitute *la lange du paiis* for *la lange francais*, *qest trope desconue* as the oral language of the courts. All pleas therefore were required to be pleaded, defended, answered, debated and judged in English.

22 It has been stated by a number of authors that it was ironic that the Act of 1362 was, itself, expressed in French. However, this is to misunderstand the fact that this statute was not intended to be a blanket ban on the use of French. It merely attempted to make the legal process more comprehensible as to what was said in Court, whilst the recording of such proceedings and other written process were left unaltered.³⁶ Whilst the statute does not appear to have been particularly successful, its failings have been exaggerated by a number of authors who have misunderstood what the Act intended to achieve. Nevertheless, the statute of 1362, represents an important historical landmark.

³⁶ See Rothwell *English & French in England after 1362*, (2001) English Studies 82, 539-559.

“Apparently French remained the language of “pleadings” properly so called, while English became the language of that “argument” which was slowly differentiated from out of the mixed process of arguing and pleading ...”³⁷

23 In fact, it was not until a further statute of 1650³⁸ that the lawyers were forced to give up (what had then become) a wholly mysterious tongue.

24 The rise and fall of French is well charted in the Year Books (c.1275-1535) that stretch from the reign of Edward I down to Henry VIII. These were accounts³⁹, written in Anglo-French, of cases decided in the King’s courts, although they were not law reports in the modern sense. The deterioration in the use and quality of such Anglo-French by the sixteenth century has been viewed critically by some eminent writers, such as Pollock & Maitland who describe it as becoming “mere dog-French.”⁴⁰ Such deterioration is, however, humorously illustrated by a later 17th century case, during which the prisoner is said to have “*ject un brickbat a le dit justice, que narrowly mist.*” The event itself, however, was not so amusing as the Judge ordered the prisoner’s right arm to be amputated. For good measure, the prisoner was also then hanged in the presence of the Court.

“This [account] parallels the report of an affray towards the end of Elizabeth I’s reign, in the trial of which, in the Star Chamber, Sir Edward Coke prosecuted. A Lancashire mayor had refused to give the accused lodging whereupon one Johnson “*done luy blowe del eare*”. Even in its last phase, the language of the courts had lost nothing of its old vigour, even though its elegance had long since vanished.”⁴¹

25 The legacy left by Norman-French, and French more generally, upon English law is so great that one author has stated that it is impossible to imagine the English legal system without the French terms that have “so completely permeated” the language of the law.⁴²

“Contract, agreement, covenant, obligation, debt, condition, bill, note, master, servant, partner, guarantee, tort, trespass, assault, battery, slander, damage, crime, treason, felony, misdemeanour, arson, robbery, burglary, larceny, property, possession, pledge, lien, payment, money, grant, purchase, devise, descent, heir, easement, marriage, guardian, infant, ward, all are French. We enter a court of justice. Court, justices, judges, jurors, counsel, attorneys, clerks, parties, plaintiff, defendant, action, suit, claim, demand, evidence, verdict,

³⁷ Maitland, *Introduction to the Year Books of Edward II*, *ibid*.

³⁸ This required “That all the Report-Books of the Resolution of Judges, and other Books of the Law of England, shall be Translated into the English Tongue: And that from and after the First day of January 1650 all Report-Books of the Resolution of Judges, and all other Books of the Law of England, which shall be printed, shall be in the English Tongue only.”

³⁹ See www.languageandlaw.org/TEXTS/CASES/CASES.HTM

⁴⁰ *Ibid* at page 87, footnote 3. Professor Rothwell has, however, more recently argued that such criticism is misplaced and that Anglo-French of this period has much to offer. See generally www.anglo-norman.net/articles

⁴¹ Keeton, *The Norman Conquest and The Common Law* (1966), page 169.

⁴² Keeton, *ibid*. at page 165.

conviction, judgement, sentence, appeal, reprieve, pardon, executive, everyone and everything, save the witnesses, writs, and oaths, have French names. In the province of justice and police with its fines, its gaols and its prisons, its constables, its arrests, we must, now that outlawry is a thing of the past, go as far as the gallows if we would find an English institution.”⁴³

26 It is noteworthy that the use of French in the English legal system ultimately ensured the distancing of the majority of the masses from the legal world of the time. In 1549, for example, Archbishop Cranmer noted the discomfort of litigants who could not understand the language used by their lawyers during the hearing of their case in court.⁴⁴ In fact, during Henry VIII’s time, Norman-French was openly described as a “barbarouse tong ...which now seruyth to no purpose else.”⁴⁵ Norman-French, further, caused difficulties in subsequent centuries for scholars and practitioners. Thus a barrister called Robert Kelham perceived the need for “*A Dictionary of the Norman or Old French language*” which was published in 1779.⁴⁶ In more modern times, Slapper & Kelly, in their work, *The English Legal System*,⁴⁷ refer to the Year Books and their use of “Legal French” as being “the bane of law students”⁴⁸ and “a backwater little navigated by those whose concern is modern law.”

27 It is, therefore, somewhat ironic to note the continued use of Anglo-French terminology in the UK Parliament where, for example, the House of Lords still signify their agreement with a House of Commons Bill, by declaring “*a ceste Bille les Seigneurs sont assentus*.” Interestingly, the use of such terminology was recently queried in Parliament during 1997, by Mr. Rhoderi Morgan, MP -

“While we are on the subject of plain English, why do we use Norman-French in all communications when sending amended legislation from the House to the other place? Is it not ludicrous that, 550 years after the last speech was made in French in this place, we still do not use plain English, modern French or even grammatical old French for those communications? If it is considered indelicate to use the English language when endorsing Bills and returning them to the other place, why do we not use the language of heaven?”⁴⁹

⁴³ Pollock & Maitland, *The History of English Law Before the Time of Edward I*, Volume 1, page 81. Published upon the internet at www.constitution.org/cmt/poll-mait/poll-mait.htm

⁴⁴ Whilst contending with the rebels of Devonshire over the propriety of using English speech in the services of the Church, he said, “I have heard suitors murmur at the bar because their attorneys pleaded their causes in the French tongue which they understood not”. Maitland, *Introduction to the Year Books of Edward II*, *ibid*.

⁴⁵ Maitland, *Introduction to the Year Books of Edward II*, *ibid*. Moderate reformers of the Inns of Court argued that the true remedy was for students to be taught to plead in good French.

⁴⁶ His Preface is informative: “So many Statutes, Acts of State, Records, Law Books, and MSS. are extant in the Norman and old French Language, that a Dictionary is become necessary to enable the Reader to understand such difficult Words as occur therein in that Language; whether such Difficulty arises from the Words being merely idiomatical, or from the Inorthography of them.”

⁴⁷ 7th ed. at page 76

⁴⁸ In Jersey, where conveyancing in old French is still examined, law students will sympathise.

⁴⁹ The “language of heaven” is a reference to the Welsh language. In 1563 Elizabeth I enacted a law by which all churches in Wales were required to have a copy of the Book of Common Prayer and of the Bible in Welsh by 1567. Welsh therefore became the first non-state language of Europe to be used in conveying the word of God after the Reformation. The passage quoted is taken from the Hansard debates for 15th July, 1997.

Conclusion

28 The use of French, and particularly Norman-French, in the legal systems of the Channel Islands, will appear to obfuscate the law and legal procedure. It may also strike one as surprising given that the Islands are overwhelmingly English speaking. The irony is, of course, that much of the English lawyer's *own* terminology is Norman-French or French in origin, but over the years, and through education, many of the words have simply become familiar and their origins often overlooked.

29 It is further of interest that, just as in England from about the 14th century, law in the Channel Islands remains one of the last bastions of French, displaying a stubborn reluctance to give way to English. Moreover, we can see from an examination of more modern Jersey conveyances a decline in the quality of the French utilised as the art of conveyancing becomes corrupted by English and as a result more confusing to succeeding generations; a decline that is reminiscent of that which occurred in the later English Year Books and in subsequent reports.

30 Finally, it is appropriate to draw a parallel with the way that Norman-French became regarded in England, as "a barbarous tongue," with the preference for the English language in Jersey over *Jèrriais* (as Le Maistre observes) to enhance one's stature and give an appearance of sophistication. Clearly, *Jèrriais* too, came to be regarded by many as a far less civilised tongue.

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