

INTERNATIONAL COURT OF JUSTICE

REPORTS OF JUDGMENTS,
ADVISORY OPINIONS AND ORDERS

THE MINQUIERS
AND ECREHOS CASE
(FRANCE / UNITED KINGDOM)

JUDGMENT OF NOVEMBER 17th, 1953

1953

COUR INTERNATIONALE DE JUSTICE

RECUEIL DES ARRÊTS, AVIS CONSULTATIFS ET
ORDONNANCES

AFFAIRE DES MINQUIERS
ET DES ÉCRÉHOUS
(FRANCE / ROYAUME-UNI)

ARRÊT DU 17 NOVEMBRE 1953

LEYDE
SOCIÉTÉ D'ÉDITIONS
A. W. SIJTHOFF

LEYDEN
A. W. SIJTHOFF'S
PUBLISHING COMPANY

This Judgment should be cited as follows :

“*The Minquiers and Ecrehos case,
Judgment of November 17th, 1953 : I.C.J. Reports 1953, p. 47.*”

Le présent arrêt doit être cité comme suit :

« *Affaire des Minquiers et des Écréhous,
Arrêt du 17 novembre 1953 : C.I.J. Recueil 1953, p. 47.* »

Sales number
N° de vente : **110**

INTERNATIONAL COURT OF JUSTICE

1953
November 17th
General List:
No. 17

YEAR 1953

November 17th, 1953

**THE MINQUIERS
AND ECREHOS CASE
(FRANCE / UNITED KINGDOM)**

Special Agreement.—Problem of exclusive sovereignty over the two groups of islets and rocks.—Status of condominium and res nullius excluded by the Special Agreement.—Burden of proof: each Party obliged to prove its title.—Origin of the dispute: initial division of the territory, subject in the feudal period to a dual authority, that of the Duke of Normandy, King of England, and that of the King of France as suzerain.—Severance of the feudal link.—Treaties of the XIIIth, XIVth and XVth centuries: absence of provisions relating to the disputed groups; indications giving rise to a presumption of possession of the Channel Islands as a whole by England.—Decisive evidence: acts of possession relating to each group.

Convention of 1839: settlement relating to fisheries excluding any settlement of territorial questions.—Question of the critical date with regard to the acceptance of evidence.

Evidence relating to sovereignty over each group.—Fief of Ecrehos held of the King of England; evidence from medieval documents.—The Minquiers group: jurisdiction exercised by Jersey in the XVIIth century.—Exercise of jurisdiction and local administration by Jersey in relation to the two groups in the XIXth and XXth centuries.—Evidence from diplomatic exchanges.—Absence of valid title on the part of France.

JUDGMENT

Present: Vice-President GUERRERO, Acting President; President Sir Arnold McNAIR; Judges ALVAREZ, BASDEVANT, HACKWORTH, WINIARSKI, KLAESTAD, BADAWI, READ, HSU MO, LEVI CARNEIRO, ARMAND-UGON; Deputy-Registrar GARNIER-COIGNET.

In the Minquiers and Ecrehos case,
between

the French Republic,

represented by :

M. André Gros, Professor of the Faculties of Law, Legal Adviser
to the Ministry for Foreign Affairs,

as Agent,

assisted by :

M. Jean Burnay, *Conseiller d'Etat*,

Rear-Admiral Durand de Saint-Front (Retd.),

M. Prosper Weil, Professor *agrégé* of the Law Faculty of Grenoble,

M. Pierre Duparc, Archivist-Palaeographer, Assistant Keeper
of Archives at the Ministry for Foreign Affairs,

as Expert Advisers,

and

the United Kingdom of Great Britain and Northern Ireland,

represented by :

Mr. R. S. B. Best, Third Legal Adviser to the Foreign Office,

as Agent,

assisted by :

Sir Lionel Heald, Q.C., M.P., Attorney-General,

Mr. C. S. Harrison, O.B.E., Attorney-General for the island of
Jersey,

Mr. G. G. Fitzmaurice, C.M.G., Legal Adviser of the Foreign
Office,

Professor E. C. S. Wade, Downing Professor of the Laws of
England in the University of Cambridge,

Mr. D. H. N. Johnson, Assistant Legal Adviser, Foreign Office,

as Counsel,

and by :

Mr. J. D. Lambert, Research Department, Foreign Office,

as Expert Adviser,

THE COURT,

composed as above,

delivers the following Judgment :

By a letter dated December 5th, 1951, the British Ambassador to the Netherlands transmitted to the Registry on behalf of his Government a certified copy of a Special Agreement concluded between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic, signed on December 29th, 1950, the instruments of ratification in respect of which were exchanged at Paris on September 24th, 1951.

Pursuant to Article 33, paragraph 2, of the Rules of Court, the French Government was informed of the notification to the Court of the Special Agreement, copies of which were, in accordance with Article 34, paragraph 2, of the Rules of Court, transmitted to the States entitled to appear before the Court and to the Secretary-General of the United Nations.

The Preamble and Articles I and II of the Special Agreement were in the following terms :

"The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic ;

Considering that differences have arisen between them as a result of claims by each of them to sovereignty over the islets and rocks in the Minquiers and Ecrehos groups ;

Desiring that these differences should be settled by a decision of the International Court of Justice determining their respective rights as regards sovereignty over those islets and rocks ;

Desiring to define the issues to be submitted to the International Court of Justice ;

Have agreed as follows :

ARTICLE I

The Court is requested to determine whether the sovereignty over the islets and rocks (in so far as they are capable of appropriation) of the Minquiers and Ecrehos groups respectively belongs to the United Kingdom or the French Republic.

ARTICLE II

Without prejudice to any question as to the burden of proof, the Contracting Parties agree, having regard to Article 37 of the Rules of Court, that the written proceedings should consist of

- (1) a United Kingdom memorial to be submitted within three months of the notification of the present Agreement to the Court in pursuance of Article III below;
- (2) a French counter-memorial to be submitted within three months of delivery of the United Kingdom memorial;
- (3) a United Kingdom reply followed by a French rejoinder to be delivered within such times as the Court may order."

The Pleadings were filed within the time-limits fixed and subsequently twice extended at the request of the Parties by Orders of the Acting President. On March 28th, 1953, the case became ready for hearing.

Public hearings were held between September 17th and October 8th, 1953. In the course of these hearings the Court, which was presided over by the Vice-President, in accordance with Article 13, paragraph 1, of the Rules, heard the Parties who by agreement addressed the Court in the order in which they had submitted their Pleadings. Sir Lionel Heald, Mr. Fitzmaurice, Professor Wade and Mr. Harrison spoke on behalf of the United Kingdom Government, and Professor Gros on behalf of the French Government.

At the end of the arguments before the Court, that is on October 6th and October 8th respectively, the following final Submissions were presented by the Parties :

On behalf of the United Kingdom Government :

"The Court is asked to declare :

That the United Kingdom is entitled under international law to full and undivided sovereignty over all the Islets and Rocks of the Minquiers and the Écréhous groups :

(1) by reason of having established the existence of an ancient title supported throughout by effective possession evidenced by acts which manifest a continuous display of sovereignty over the groups ;

alternatively,

(2) by reason of having established title by long continued effective possession alone, such possession being evidenced by similar acts."

On behalf of the French Government :

"May it please the Court,

To adjudge and declare :

(1) that France possesses an original title to the islets and rocks of the Minquiers group on the one hand and the Ecrehos group on the other ;

51 MINQUIERS AND ECREHOS CASE (JUDGMENT OF 17 XI 53)

(2) that France has at all times confirmed this original title by an effective exercise of her sovereignty to the extent that the character of these islets and rocks lent itself to such an exercise ;

(3) that the United Kingdom has been unable to establish that it had effective possession of these islets and rocks at the time of the conclusion of the Treaty of Paris of 1259, which made effective possession the necessary condition for English sovereignty over the various Channel Islands, or at any subsequent period ;

(4) that by the Convention of August 2nd, 1839, the United Kingdom and France brought into being, between a line three miles from low water mark on the island of Jersey and an *ad hoc* line defined in Article 1 of the Convention, a zone in which fishery of every type should be common to the subjects of the two countries ;

(5) that the islets and rocks of the Minquiers and Ecrehos groups, being within the common fishery zone as so defined, were, in 1839, subjected by the Parties to a régime of common user for fishery purposes, without the territorial sovereignty over these islets and rocks being otherwise affected by the said Convention ;

(6) that the acts performed by each Party on the islets and rocks subsequently to August 2nd, 1839, are consequently not capable of being set up against the other Party as manifestations of territorial sovereignty, with the result that such sovereignty belongs to-day to that one of the Parties to whom it belonged before August 2nd, 1839 ;

(7) that this 'critical date' would still apply even if the construction put upon the Convention of August 2nd, 1839, by the French Government should be incorrect, since the Government of the United Kingdom was not unaware of this interpretation or of the possibility it afforded to the Government of the United Kingdom and to British subjects to benefit from the institution of a common user of the islets and rocks of the two groups for fishery purposes, as this resulted, in the mind of the French Government, from Article 3 of the Convention of August 2nd, 1839 ;

(8) that, even if the 'critical date' should be fixed at a date subsequent to August 2nd, 1839, the acts of possession invoked by the Government of the United Kingdom do not satisfy the conditions required by international law for the acquisition or preservation of territorial sovereignty ;

(9) that, furthermore, France in the nineteenth and twentieth centuries has performed the acts of sovereignty required, having regard to the special character of these islets, and has assumed the essential responsibilities inherent in her sovereignty ;

(10) that, for these reasons, sovereignty over the islets and rocks of the Minquiers group and the Ecrehos group respectively belongs, in so far as these islets and rocks are capable of appropriation, to the French Republic."

* * *

The Submissions reproduced above and presented by the United Kingdom Government consist of three paragraphs, the last two being reasons underlying the first, which must be regarded as the final Submission of that Government. The Submissions of the French Government consist of ten paragraphs, the first nine being reasons leading up to the last, which must be regarded as the final Submission of that Government.

The Submissions of the Parties should therefore be considered to be as follows :

of the United Kingdom Government,

"that the United Kingdom is entitled under international law to full and undivided sovereignty over all the Islets and Rocks of the Minquiers and the Écréhos groups;"

of the French Government,

"that, for these reasons, sovereignty over the islets and rocks of the Minquiers group and the Écréhos group respectively belongs, in so far as these islets and rocks are capable of appropriation, to the French Republic".

By Article I of the Special Agreement, signed on December 29th, 1950, the Court is requested

"to determine whether the sovereignty over the islets and rocks (in so far as they are capable of appropriation) of the Minquiers and Écréhos groups respectively belongs to the United Kingdom or the French Republic".

Having thus been requested to decide whether these groups belong either to France or to the United Kingdom, the Court has to determine which of the Parties has produced the more convincing proof of title to one or the other of these groups, or to both of them. By the formulation of Article I the Parties have excluded the status of *res nullius* as well as that of *condominium*.

In Article II the Parties have stated their agreement as to the presentation of the Pleadings "without prejudice to any question as to the burden of proof", a question which it is for the Court to decide. Having regard to the position of the Parties, both claiming sovereignty over the same territory, and in view of the formulation of the task of the Court in Article I, and the terms of Article II, the Court is of opinion that each Party has to prove its alleged title and the facts upon which it relies.

By the Special Agreement the Court is requested to determine the sovereignty over the islets and rocks in so far as they are capable of appropriation. These words must be considered as relating to islets and rocks which are physically capable of appropriation. The Court is requested to decide in general to which Party sovereignty over each group as a whole belongs, without determining in detail the facts relating to the particular units of which the groups consist.

These groups lie between the British Channel Island of Jersey and the coast of France and consist each of two or three habitable islets, many smaller islets and a great number of rocks. The Ecrehos group lies north-east of Jersey, 3.9 sea-miles from that island, measured from the rock nearest thereto and permanently above water, and 6.6 sea-miles from the coast of France, measured in the same way. The Minquiers group lies south of Jersey, 9.8 sea-miles therefrom and 16.2 sea-miles from the French mainland, measured in the same way. This group lies 8 sea-miles from the Chausey Islands which belong to France.

* * *

Both Parties contend that they have respectively an ancient or original title to the Ecrehos and the Minquiers, and that their title has always been maintained and was never lost. The present case does not therefore present the characteristics of a dispute concerning the acquisition of sovereignty over *terra nullius*.

The United Kingdom Government derives the ancient title invoked by it from the conquest of England in 1066 by William, Duke of Normandy. By this conquest England became united with the Duchy of Normandy, including the Channel Islands, and this union lasted until 1204 when King Philip Augustus of France drove the Anglo-Norman forces out of Continental Normandy. But his attempts to occupy also the Islands were not successful, except for brief periods when some of them were taken by French forces. On this ground the United Kingdom Government submits the view that all of the Channel Islands, including the Ecrehos and the Minquiers, remained, as before, united with England and that this situation of fact was placed on a legal basis by subsequent Treaties concluded between the English and French Kings.

The French Government does not dispute that the Islands of Jersey, Guernsey, Alderney, Sark, Herm and Jethou continued to be held by the King of England; but it denies that the Ecrehos and Minquiers groups were held by him after the dismemberment of the Duchy of Normandy in 1204. After that event, these two groups were, it is asserted, held by the King of France together

with some other islands close to the continent, and reference is made to the same medieval Treaties as those which are invoked by the United Kingdom Government.

In such circumstances it must be examined whether these Treaties, invoked by both Parties, contain anything which might throw light upon the status of the Ecrehos and the Minquiers.

The Treaty of Lambeth of 1217, to which the Parties have referred, cannot be said to contain anything which might elucidate this question. The Treaty of Paris of 1259, which appears to be the principal Treaty on which the Parties rely, enumerates in Article 4 all the lands which the King of England should hold in fee of the King of France in Saintonge beyond the river Charente as well as Bordeaux, Bayonne and Gascony and "all the land which he holds on this side of the sea of England in fee and in demesne and the islands, if any there be, which the king of england holds which are of the realm of france, and he shall hold of us as peer of france and duke of Aquitaine". These terms seem to refer to islands which the King of England held as Duke of Aquitaine, and not to the Channel Islands. But even assuming that these Islands were also included, the article refers in any case only to islands, if any there be, which are held by the English King. It does not say which islands were at that time held by him. Article 6 enumerates all the lands which the King of England relinquished "in any part of the Realm of france or in the islands, if any are held by us or by our brother or by others in our or their behalf". This text refers only to islands, if any, which are held by the King of France, without indicating which islands were so held. From the text itself of this Treaty nothing can therefore be deduced with regard to the status of the Ecrehos and the Minquiers. The Treaty of Calais of 1360 contains in Article 6 a clause providing that the King of England shall have and hold all islands which he "now holds". This provision must be considered as including those of the Channel Islands which the King held at that time. But as it is not said which of these Islands were held by the English King, it is not possible to draw from this text alone any conclusion as to the status of the islets in dispute. The Treaty of Troyes of 1420 contains many far-reaching provisions, but it cannot be said to provide anything which might throw light upon the present dispute. Common to all these Treaties is the fact that they did not specify which islands were held by the Kings of England and France respectively. The Court would therefore not be justified in drawing from them any conclusion as to whether the Ecrehos and the Minquiers at the time when these Treaties were signed were held either by the English or by the French King. This question depends on facts which cannot be deduced from the text of these Treaties.

There are, however, other documents which provide some indication as to the possession of the islets in dispute.

By a Charter of January 14th, 1200, King John of England granted to one of his Barons, Piers des Préaux, the Islands of Jersey, Guernsey and Alderney "to have and to hold of us by service of three knights' fees". Three years later, by a Charter of 1203, Piers des Préaux granted to the Abbey of Val-Richer "the island of Escrehou in entirety", stating that the King of England "gave me the islands" (*insulas mihi dedit*). This shows that he treated the Ecrehos as an integral part of the fief of the Islands which he had received from the King. In an Order from the English King of July 5th, 1258, the Sub-Warden of the Islands was ordered "to guard the islands of Gernere and Geresey, and the king's other islands in his keeping". In Letters Patent of the English King, dated June 28th, 1360, it was provided that the "keeper of the islands of Gerneseye, Jerezeye, Serk and Aurneye, and the other islands adjacent thereto" may have the keeping for a further period. The Truce of London of 1471 provided in Article 3 that the King of France would not make any hostile act against the Kingdom of England and other lands specially mentioned, including the Islands "of guernsey, Jersey and alderney [and] other territories, islands, lands and lordships, which are, or will be, held and possessed by the said lord King of england or by his subjects". A Papal Bull of January 20th, 1500, transferring the Channel Islands from the Diocese of Coutances to the Diocese of Winchester, mentioned "the Islands of Jersey and Guernsey, Chausey, Alderney, Herm and Sark", while two commercial Treaties of 1606 and 1655 mentioned only Jersey and Guernsey.

Basing itself on facts such as these, the United Kingdom Government submits the view that the Channel Islands in the Middle Ages were considered as an entity, physically distinct from Continental Normandy, and that any failure to mention by name any particular island in any relevant document, while enumerating other Channel islands, does not imply that any such island lay outside this entity. Having regard to the above-mentioned documents, and particularly to the Charters of 1200 and 1203, and in view of the undisputed fact that the whole of Normandy, including all of the Channel Islands, was held by the English King in his capacity as Duke of Normandy from 1066 until 1204, there appears to be a strong presumption in favour of this British view. If the Ecrehos and Minquiers were never specifically mentioned in such enumerations, this was probably due to their slight importance. Even some of the more important Islands, such as Sark and Herm, were only occasionally mentioned by name in documents of that period, though they were held by the English King just as were the three largest Islands. The Court does not, however, feel that it can draw from these considerations alone any definitive conclusion as to the sovereignty over the Ecrehos and the Minquiers, since this question must ultimately depend on the evidence which relates directly to the possession of these groups.

The French Government derives the original title invoked by it from the fact that the Dukes of Normandy were the vassals of the Kings of France, and that the Kings of England after 1066, in their capacity as Dukes of Normandy, held the Duchy in fee of the French Kings. It is contended that the Channel Islands became added to the fiefs of the Duke of Normandy when William Longsword in 933 received the Islands in fee of the King of France, and that he, as well as his successors, did homage to the French Kings for the whole of Normandy, including the Islands. The French Government further relies on a Judgment of April 28th, 1202, of the Court of France and contends that King John of England was thereby condemned to forfeit all the lands which he held in fee of the King of France, including the whole of Normandy. On the basis of this historical origin and of the Judgment of 1202, there is, in the opinion of that Government, a presumption in favour of the present French claim to sovereignty over the Ecrehos and the Minquiers.

The United Kingdom Government contends that the feudal title of the French Kings in respect of Normandy was only nominal. It denies that the Channel Islands were received by the Duke of Normandy in fee of the King of France, and that William Longsword or any of his successors ever did homage for the Islands. It contests the validity, and even the existence, of the Judgment of 1202, and asserts that even if such a Judgment was validly pronounced against the English King in his capacity as Duke of Normandy, it could not have the alleged consequences.

These opposite contentions are based on more or less uncertain and controversial views as to what was the true situation in this remote feudal epoch. For the purpose of deciding the present case it is, in the opinion of the Court, not necessary to solve these historical controversies. The Court considers it sufficient to state as its view that even if the Kings of France did have an original feudal title also in respect of the Channel Islands, such a title must have lapsed as a consequence of the events of the year 1204 and following years. Such an alleged original feudal title of the Kings of France in respect of the Channel Islands could to-day produce no legal effect, unless it had been replaced by another title valid according to the law of the time of replacement. It is for the French Government to establish that it was so replaced. The Court will later deal with the evidence which that Government has produced with a view to establishing that its alleged original title was replaced by effective possession of the islets in dispute.

With regard to the Judgment of 1202 invoked by France it is the opinion of the Court that, whatever view is held as to its existence, validity, scope and consequences, it was not executed in respect of the Channel Islands, the French Kings having failed to obtain possession of these Islands except for brief periods. Even if this feudal Judgment, assuming that it was in fact pronounced,

was intended to produce legal effects at that time, it remained in any case inoperative with regard to the Channel Islands. To revive its legal force to-day by attributing legal effects to it after an interval of more than seven centuries seems to lead far beyond any reasonable application of legal considerations.

The view is expressed by the French Government that the dismemberment of the Duchy of Normandy, which in fact occurred in 1204 when Continental Normandy was occupied by the King of France, has legal consequences in the present dispute. It is said that if the United Kingdom Government is unable to establish its claim to the Ecrehos and the Minquiers, the title to these islets must be considered as having remained with France since 1204. But since that time there has been a further development in the territorial position. Many wars and peace settlements between the two States succeeded each other during the following centuries. The Channel Islands, or some of them, were occupied temporarily by French forces during some years immediately following the events in 1204, as well as for brief periods in the next two centuries, and Continental Normandy was reconquered by the English King and held by him for a long period in the fifteenth century. In such circumstances it is difficult to see why the dismemberment of the Duchy of Normandy in 1204 should have the legal consequences attributed to it by the French Government. What is of decisive importance, in the opinion of the Court, is not indirect presumptions deduced from events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers groups.

* * *

Before considering this evidence, the Court will examine some questions which concern both groups.

On August 2nd, 1839, France and the United Kingdom concluded a Convention concerning fishery, and particularly the oyster fishery between the Island of Jersey and the neighbouring coast of France. It is common ground between the Parties that this Convention did not settle the question of sovereignty over the Ecrehos and the Minquiers. But the French Government has submitted contentions which to a certain extent affect that question. These contentions, which were modified during the proceedings, were at the public hearing on October 8th, 1953, formulated as follows, as part of the Submissions presented on behalf of that Government :

“(4) that by the Convention of August 2nd, 1839, the United Kingdom and France brought into being, between a line three miles from low water mark on the island of Jersey and an *ad hoc* line defined in Article 1 of the Convention, a zone in which fishery of every type should be common to the subjects of the two countries ;

(5) that the islets and rocks of the Minquiers and Ecrehos groups, being within the common fishery zone as so defined, were, in 1839, subjected by the Parties to a régime of common user for fishery purposes, without the territorial sovereignty over these islets and rocks being otherwise affected by the said Convention ;

(6) that the acts performed by each Party on the islets and rocks subsequently to August 2nd, 1839, are consequently not capable of being set up against the other Party as manifestations of territorial sovereignty, with the result that such sovereignty belongs to-day to that one of the Parties to whom it belonged before August 2nd, 1839".

These contentions were based on the first three Articles of the Convention, and particularly on Article 3. By Article 1 an *ad hoc* line is acknowledged by the two Governments "as defining the limits between which and the French shore the oyster fishery shall be reserved exclusively to french subjects". Article 2 provides that "oyster fishery within three miles of the Island of Jersey, calculated from lower water mark, shall be reserved exclusively to british subjects". Article 3 provides as follows :

"The oyster fishery outside of the limits within which that fishery is exclusively reserved to french and british subjects respectively, as stipulated in the preceding articles, shall be common to the subjects of both countries."

The French Government asserts and the United Kingdom Government denies that the Ecrehos and Minquiers groups are included within this agreed common fishery zone, the United Kingdom Government basing itself on a provision in Article 9 concerning exclusive right of fishery for British subjects within three miles from low water mark "along the whole extent of the coasts of the British Islands".

The Court does not consider it necessary, for the purpose of deciding the present case, to determine whether the waters of the Ecrehos and Minquiers groups are inside or outside the common fishery zone established by Article 3. Even if it be held that these groups lie within this common fishery zone, the Court cannot admit that such an agreed common fishery zone in these waters would involve a régime of common user of the land territory of the islets and rocks, since the Articles relied on refer to fishery only and not to any kind of user of land territory. Nor can the Court admit that such an agreed common fishery zone should necessarily have the effect of precluding the Parties from relying on subsequent acts involving a manifestation of sovereignty in respect of the islets. The Parties could have established such a common fishery zone, including the waters of the groups, even if these groups had in 1839 been under the undisputed exclusive sovereignty of one of them ; and they could equally have acquired or claimed exclusive sovereignty after 1839 and relied upon subsequent acts involving

the manifestation of sovereignty, notwithstanding such an agreed common fishery zone, provided of course that the common fishery in this zone would not in any way be impaired thereby. The above-mentioned contention as to exclusion of acts subsequent to 1839 is, moreover, not compatible with the attitude which the French Government has taken since that time. It not only claimed sovereignty over the Ecrehos in 1886 and over the Minquiers in 1888, and later, but it has, in order to establish such a sovereignty, itself relied on measures taken subsequent to 1839, as referred to in its communications to the Foreign Office, dated August 27th, 1888, and July 15th, 1903, as well as in the present proceedings. Nor can the contention that the Court should determine to which Party sovereignty belonged in 1839, be considered as consistent with the Special Agreement of 1950, by which the Court is requested to determine to which Party sovereignty belongs at present. The Court is therefore unable to accept the above-mentioned contentions as to the effects of the Convention of 1839 on the question of the sovereignty over the Ecrehos and Minquiers groups.

The Parties have further discussed the question of the selection of a "critical date" for allowing evidence in the present case. The United Kingdom Government submits that, though the Parties have for a long time disagreed as to the sovereignty over the two groups, the dispute did not become "crystallized" before the conclusion of the Special Agreement of December 29th, 1950, and that therefore this date should be considered as the critical date, with the result that all acts before that date must be taken into consideration by the Court. The French Government, on the other hand, contends that the date of the Convention of 1839 should be selected as the critical date, and that all subsequent acts must be excluded from consideration.

At the date of the Convention of 1839, no dispute as to the sovereignty over the Ecrehos and Minquiers groups had yet arisen. The Parties had for a considerable time been in disagreement with regard to the exclusive right to fish oysters, but they did not link that question to the question of sovereignty over the Ecrehos and the Minquiers. In such circumstances there is no reason why the conclusion of that Convention should have any effect on the question of allowing or ruling out evidence relating to sovereignty. A dispute as to sovereignty over the groups did not arise before the years 1886 and 1888, when France for the first time claimed sovereignty over the Ecrehos and the Minquiers respectively. But in view of the special circumstances of the present case, subsequent acts should also be considered by the Court, unless the measure in question was taken with a view to improving the legal position of the Party concerned. In many respects activity in regard to these groups had developed gradually long before the dispute as

to sovereignty arose, and it has since continued without interruption and in a similar manner. In such circumstances there would be no justification for ruling out all events which during this continued development occurred after the years 1886 and 1888 respectively.

There is also another point concerning both groups which the Court will mention before dealing with each group separately. The United Kingdom Government has endeavoured to show that the groups must be considered as dependencies of Jersey and has referred to Article 38 of a Franco-British Fishery Convention of 1867, which was ratified but not brought into operation. This Article provided :

“The terms ‘British Islands’ and ‘United Kingdom’, employed in this Convention, shall include the Islands of Jersey, Guernsey, Alderney, Sark and Man, with their dependencies.”

The United Kingdom Government has also invoked similar clauses in a Franco-British Submarine Telegraph Convention of 1859 and in a British Sea Fisheries Act of 1843.

These various clauses indicate that there are islands or islets which are dependencies of such Channel Islands as are enumerated ; but no evidence is produced showing that it was the intention of the contracting Parties to include the Ecrehos and Minquiers groups within the terms “British Islands” or “dependencies” or, on the other hand, to exclude the groups from these terms.

* * *

The Court will now consider the claims of both Parties to sovereignty over the *Ecrehos* and begins with the evidence produced by the United Kingdom Government.

It has already been mentioned that the Charter of 1200 of the English King, whereby he granted the fief of the Channel Islands to Piers des Préaux, and the Charter of 1203, whereby the latter in turn granted the Ecrehos to the Abbey of Val-Richer, show that the Ecrehos were treated by him as an integral part of his fief.

The grant of the Ecrehos was in frankalmoine. The French Government contends that such a grant had the effect of severing the feudal link between Piers des Préaux and the Abbey, so that the Ecrehos no longer formed a part of the fief of the Channel Islands. The view submitted by that Government is that the Ecrehos remained subject to the Duke of Normandy through the intermediary of the Abbey of Val-Richer, which was situated on the French mainland, and that, when the King of France succeeded

to the rights of the Duke after the occupation of Continental Normandy in 1204, the Abbey "passed under his protection, as did the Ecrehos, whose overlord he became".

This contention renders it necessary to consider the Charter of 1203 more closely. It provided the following:

".... Noverit universitas vestra me divinæ pietatis intuitu concesisse & dedisse, & præsenti charta mea confirmasse Deo & ecclesiæ sanctæ Mariæ de Valle-Richerii, & monachis ibidem Deo servientibus, pro salute animæ Johannis illustris regis Angliæ, qui insulas mihi dedit, & pro salute animæ meæ, & patris & matris meæ, & omnium antecessorum meorum, insulam *de Escrehou* integre, ad ædificandam ibidem basilicam in honore Dei & beatæ Mariæ, ita ut divina ibidem celebrentur mysteria singulis diebus, habendam & possidendum libere & quiete, plenarie & honorifice, in liberam & puram & perpetuam eleemosynam, & quidquid in eadem insula poterunt augmentare & ædificare. Item concessi prædictis monachis quidquid ab hominibus meis *de Gersy*, & *de Gernesé*, & *de Aurene*, eis caritatis intuitu rationabiliter datum fuerit, salvo jure meo."

[*Gallia Christiana*, XI, col. 94, No. XXXII (Instrumenta).]

[*Translation*]

".... Know ye all that I, having regard to the mercy of God, have granted and given and by my present charter have confirmed to God and to the church of St. Mary of Val-Richer and to the monks there serving God, for the salvation of the soul of John, illustrious king of England, who gave me the islands, and for the salvation of the souls of myself and of my father and mother and of all my ancestors, the island of Escrehou in entirety, for the building there of a church in honour of God and of the blessed Mary, so that the divine mysteries be daily celebrated there, to have and possess [it] and whatever in the same island they shall be able to increase and build, freely and quietly, fully and honourably, in free pure and perpetual alms. I have further granted to the aforesaid monks whatever by my men of Jersey, and of Guernsey, and of Alderney, having regard to charity, shall be reasonably given to them, saving my right."

It appears clearly from the *Grand Coutumier de Normandie* of the thirteenth century, chapters XXVIII and XXXII (de Gruchy edition, 1881, pp. 90-91 and 98), that land held in frankalmoine was a tenure, and that such a grant in frankalmoine to an ecclesiastical institution did not have the effect of severing feudal ties. The text of the first part of Chapter XXXII is as follows:

[*Translation*]

"They are said to hold by alms who hold lands given in pure alms to God and his servants, wherein the donors retain nothing to themselves or their heirs save only the patronal domain; and they hold from them by alms only, as from patrons. None can make alms out of any land, save only that which is his own therein. Wherefore note that neither the duke, nor barons, nor anyone, ought to sustain any detriment if their men make alms of the lands which

they hold of them ; and their lords shall exercise their justice and levy their rights in the lands so put in alms, notwithstanding."

This text shows that the grantor retained the "patronal domain" (*dominium patronale*). According to this ancient Norman custom, Piers des Préaux did not by his grant drop out of the feudal chain as far as the Ecrehos was concerned. He continued to hold the Ecrehos as a part of his fief of the Channel Islands, with the Abbot of Val-Richer as his vassal and the King of England as his overlord, and the King continued to exercise his justice and levy his rights in the land so put in alms. By granting the Ecrehos in frankalmoine to the Abbey, Piers des Préaux did not, and could not, alienate the island from the fief of the Channel Islands ; it remained a part of that fief.

This view is contested by the French Government on the ground that Piers des Préaux had not in the Charter reserved any feudal service and that he therefore had not created any feudal tenure. It seems that no such condition for the creation of a "*teneure par omesne*", or frankalmoine, was required by the ancient Norman custom, as described in the *Coutumier*. But even assuming that a condition or reservation was required, the grant to the Abbey did contain such a condition or reservation. As is seen from the text of the Charter, the Abbey was to build a church in the Ecrehos "so that the divine mysteries be daily celebrated there", and when the grant was said to be given "for the salvation of the soul of John, illustrious king of England and for the salvation of the souls of myself and of my father and mother and all my ancestors", this could, in view of the custom at that time, only mean that a service of prayers was reserved in the Charter. That this must also have been the view of the Abbot himself and of his successors is seen from the records of certain *Quo Warranto* proceedings held in Jersey in 1309 before the King's itinerant Justices. The Assize Rolls show that a chapel had in fact been built in the Ecrehos, and that the Prior of that chapel, appearing before the Justices, gave evidence that he and his fellow monk, dwelling in the chapel throughout the whole year, "always celebrate for the lord the King and his progenitors". These records show that the Prior himself as well as the Justices called the grant a *tenura*.

Shortly after his grant of 1203 Piers des Préaux forfeited the fief of the Channel Islands, which thereupon reverted to the English King and were administered by Wardens appointed by that King, except for certain periods in the thirteenth and the beginning of the fourteenth century, when the Islands were again granted in fee. Up to 1309, there is no indication that any change had occurred as to the connection of the Ecrehos with the Channel Islands.

The object of the *Quo Warranto* proceedings of 1309 mentioned above was to enquire into the property and revenue of the English King. These proceedings, which were numerous, took the form of calling upon persons to justify their possession of property. The Abbot of Val-Richer was summoned before the King's Justices to answer regarding a mill and the *advocatio* of the Priory of the Ecrehos as well as a rent. As the mill was situated in Jersey and the rent was payable there, the proceedings in respect of these objects do not show anything with regard to the status of the Ecrehos. But the question of the *advocatio* is in a different position. Such a right of a patron to presentation to an ecclesiastical office was, according to an ancient Norman custom, considered and treated as a *jus in rem*, inherent in the soil and inseparable from the territory of the fief to which it was attached. (*Grand Coutumier de Normandie*, Chapter CXI, de Gruchy edition, p. 259; *Atiremens et Jugiés d'Eschequiers*, published by Génestal and Tardif, 1921, p. 7, § 18.) When therefore the Abbot of Val-Richer was summoned before the King's Justices in Jersey to answer for this *advocatio*, it must have been on the ground that the Ecrehos, to which the *advocatio* was attached, was within the domain of the English King. And when the Prior of the Ecrehos appeared as the Abbot's attorney in answer to the summons, jurisdiction in respect of the Ecrehos was exercised by the Justices, who decided that "it is permitted to the said Prior to hold the *premissa* as he holds them as long as it shall please the lord the King".

The Prior of the Ecrehos became involved in three other legal proceedings in Jersey in the years 1323 and 1331. As they concerned events which occurred in Jersey, they do not throw any light upon the status of the Ecrehos, but they show that there was a close relationship between the Ecrehos and Jersey at that time. Further evidence of this relationship is given by Letters of Protection, which, on August 18th, 1337, shortly before the outbreak of the Hundred Years War between England and France, were granted by the English King to ten Priors of Jersey and Guernsey, including the Prior of the Ecrehos, who was described as "*Prior de Acrehowe de Insula de Iereseye*". Such protection was apparently accorded to him because the Priory was under the authority of the English King.

In his Charter of 1203 Piers des Préaux "granted to the aforesaid monks whatever by my men of Jersey and of Guernsey and of Alderney, having regard to charity, shall be reasonably given to them, saving my right". That such gifts were in fact given to the Priory of the Ecrehos is shown by subsequent documents, such as an account of the Warden of the Channel Islands for 1328-1329, a list of rents in a fifteenth century rental and in other rentals of Jersey showing wheat-rents due by certain Jersey parishioners "by cause of Escrehoo" in 1528 and some later years. It is explained that these wheat-rents, which formerly

were due to the Priory, had been appropriated by the English King as a result of confiscatory measures taken against "alien priories". Both Parties have endeavoured to draw from this fact conclusions as to the status of the Ecrehos. The French Government contends that the confiscation of the Ecrehos rents can only be ascribed to the fact that the Priory was regarded as foreign; it was the result of measures taken against "alien priories". The United Kingdom Government asserts that this term meant priories established on English soil whose mother church was situated on foreign territory. The Court cannot find that the Parties have justified their respective contentions in this regard. It appears that it was as a result of these confiscatory measures that the Priory, having lost its means of subsistence, some time later was abandoned and the chapel fell into ruins. The close relationship between the Ecrehos and Jersey ceased and for a considerable period thereafter the islets were only occasionally visited by Jerseymen for the purpose of fishing and collecting seaweed.

In 1706 fishermen from Jersey proceeding to the Ecrehos came across a Frenchman there who had just fled from police prosecution in France, and at his request they brought him to Jersey, where he was examined by the authorities. The United Kingdom Government has relied on this examination, but it cannot be considered as an exercise of jurisdiction in respect of the Ecrehos. It was a measure which would naturally have been taken against any fugitive arriving in Jersey who was a national of another State.

In 1754 plague broke out at Rouen and, as a sanitary measure, the States of Jersey issued an Act providing *inter alia*:

"Qu'aucun Vaisseau ou Bateau venant du Royaume de France ne sera souffert à entrer dans aucun Havre, ni mettre à Terre Aucun Passagers ou Marchandises en aucun Endroit de cette Isle, pareille Deffence etant faite à l'egard des Iles & Rochers de Chauzé, Marqués, & Icrehots, ou Rochers adjacents."

Both Parties have invoked this Act, but its text is ambiguous. It may signify a ban on traffic from France to these islands and rocks, thereby involving a manifestation of authority in respect of them. But the text may also mean that traffic to Jersey from France, as well as from these islands and rocks is forbidden, as in a previous prohibition in 1720. The prohibition could then be explained by the fact that it was impossible to create a sanitary barrier round the Minquiers and the Ecrehos, and that therefore it became necessary to defend Jersey against the dangers of infection spreading from these islets. But even if this were the case, it would not follow that these islets were regarded as foreign territory.

From the beginning of the nineteenth century the connection between the Ecrehos and Jersey became closer again because of

the growing importance of the oyster fishery in the waters surrounding the islets, and Jersey authorities took, during the subsequent period, action in many ways in respect of the islets. Of the manifold facts invoked by the United Kingdom Government, the Court attaches, in particular, probative value to the acts which relate to the exercise of jurisdiction and local administration and to legislation.

In 1826 criminal proceedings were instituted before the Royal Court of Jersey against a Jerseyman for having shot at a person on the Ecrehos. Similar judicial proceedings in Jersey in respect of criminal offences committed on the Ecrehos took place in 1881, 1883, 1891, 1913 and 1921. On the evidence produced the Court is satisfied that the Courts of Jersey, in criminal cases such as these, have no jurisdiction in the matter of a criminal offence committed outside the Bailiwick of Jersey, even though the offence be committed by a British subject resident in Jersey, and that Jersey authorities took action in these cases because the Ecrehos were considered to be within the Bailiwick. These facts show therefore that Jersey courts have exercised criminal jurisdiction in respect of the Ecrehos during nearly a hundred years.

Evidence produced shows that the law of Jersey has for centuries required the holding of an inquest on corpses found within the Bailiwick where it was not clear that death was due to natural causes. Such inquests on corpses found at the Ecrehos were held in 1859, 1917 and 1948 and are additional evidence of the exercise of jurisdiction in respect of these islets.

Since about 1820, and probably earlier, persons from Jersey have erected and maintained some habitable houses or huts on the islets of the Ecrehos, where they have stayed during the fishing season. Some of these houses or huts have, for the purpose of parochial rates, been included in the records of the Parish of St. Martin in Jersey, which have been kept since 1889, and they have been assessed for the levying of local taxes. Rating schedules for 1889 and 1950 were produced in evidence.

A register of fishing boats for the port of Jersey shows that the fishing boat belonging to a Jersey fisherman, who lived permanently on an islet of the Ecrehos for more than forty years, was entered in that register in 1872, the port or place of the boat being indicated as "Ecrehos Rocks", and that the licence of that boat was cancelled in 1882. According to a letter of June, 1876, from the Principal Customs Officer of Jersey, an official of that Island visited occasionally the Ecrehos for the purpose of endorsing the licence of that boat.

It is established that contracts of sale relating to real property on the Ecrehos islets have been passed before the competent authorities of Jersey and registered in the public registry of deeds of that island. Examples of such registration of contracts are produced for 1863, 1881, 1884 and some later years.

In 1884, a custom-house was established in the Ecrehos by Jersey customs authorities. The islets have been included by Jersey authorities within the scope of their census enumerations, and in 1901 an official enumerator visited the islets for the purpose of taking the census.

These various facts show that Jersey authorities have in several ways exercised ordinary local administration in respect of the Ecrehos during a long period of time.

By a British Treasury Warrant of 1875, constituting Jersey as a Port of the Channel Islands, the "Ecrehou Rocks" were included within the limits of that port. This legislative Act was a clear manifestation of British sovereignty over the Ecrehos at a time when a dispute as to such sovereignty had not yet arisen. The French Government protested in 1876 on the ground that this Act derogated from the Fishery Convention of 1839. But this protest could not deprive the Act of its character as a manifestation of sovereignty.

Of other facts which throw light upon the dispute, it should be mentioned that Jersey authorities have made periodical official visits to the Ecrehos since 1885, and that they have carried out various works and constructions there, such as a slipway in 1895, a signal post in 1910 and the placing of a mooring buoy in 1939.

*

The French Government, in addition to the alleged original feudal title considered above, has invoked the fact that the States of Jersey in 1646 prohibited the inhabitants of Jersey from fishing without special permission at the Ecrehos and the Chausey Islands, and that they restricted visits to the Ecrehos in 1692 because of the war between England and France. This shows, it is contended, that the Ecrehos were not considered as British territory. But the Court does not consider that this is the necessary or natural inference to be drawn from these facts.

In the course of the diplomatic exchanges between the two Governments in the beginning of the nineteenth century concerning fisheries off the coast of Cotentin, the French Ambassador in London addressed to the Foreign Office a Note, dated June 12th, 1820, attaching two charts sent from the French Ministry of Marine to the French Ministry of Foreign Affairs purporting to delimit the areas within which the fishermen of each country were entitled to exclusive rights of fishery. In these charts a blue line marking territorial waters was drawn along the coast of the French mainland and round the Chausey Islands, which were indicated as French, and a red line marking territorial waters was drawn round Jersey, Alderney, Sark and the Minquiers, which were indicated as British. No line of territorial waters was drawn round the Ecrehos group, one part of which was included in the red line

for Jersey and consequently marked as belonging to Great Britain and the other part apparently treated as *res nullius*. When the French Government in 1876 protested against the British Treasury Warrant of 1875 and challenged British sovereignty over the Ecrehos, it did not itself claim sovereignty, but continued to treat the Ecrehos as *res nullius*. In a letter of March 26th, 1884, from the French Ministry of Foreign Affairs to the French Minister of Marine, it was stated that the British Government had not ceased to claim the Ecrehos as a dependency to the Channel Islands, and it was suggested that French fishermen should be prohibited access to the Ecrehos. It does not appear that any such measure was taken, and subsequently, in a Note to the Foreign Office of December 15th, 1886, the French Government claimed for the first time sovereignty over the Ecrehos “*à la lumière des nouvelles données historiques et géologiques*”.

*

The Court, being now called upon to appraise the relative strength of the opposing claims to sovereignty over the Ecrehos in the light of the facts considered above, finds that the Ecrehos group in the beginning of the thirteenth century was considered and treated as an integral part of the fief of the Channel Islands which were held by the English King, and that the group continued to be under the dominion of that King, who in the beginning of the fourteenth century exercised jurisdiction in respect thereof. The Court further finds that British authorities during the greater part of the nineteenth century and in the twentieth century have exercised State functions in respect of the group. The French Government, on the other hand, has not produced evidence showing that it has any valid title to the group. In such circumstances it must be concluded that the sovereignty over the Ecrehos belongs to the United Kingdom.

* * *

The Court will now consider the claims of both Parties to sovereignty over the *Minquiers* and begins with the evidence produced by the United Kingdom Government.

The Rolls of the Manorial Court of the fief of Noirmont in Jersey contain three entries for the years 1615, 1616 and 1617 concerning certain objects shipwrecked at the *Minquiers*. The first two entries state that certain wreckage of a ship, believed to belong to Honfleur, and lost at the *Minquiers*, was carried off from the islets by certain named persons. The Court, which was held “on this fief”, ordered the Serjeant to take charge of the objects until other provision should have been made. The third entry states that a named person is “in default towards the Officers of the Seigneur for having taken away an Anchor from the *Minquiers* and their neighbourhood

and carried it to St. Malo". The Court, which again was held "on the fief", ordered that certain persons "keep their day at the next Court, or answer in the superior Court if the circumstances shall require". The United Kingdom Government contends and the French Government contests that these entries show that the Minquiers were a part of the fief of Noirmont.

The *Grand Coutumier de Normandie*, to which the French Government has referred in this connection, deals with wreck in Chapter XVII (de Gruchy edition, pp. 48-50) and contains detailed statements as to custody and ownership. The wreck should be guarded and thereafter inspected by the Bailiff or his Officers, whereupon it should be given into custody of the lord of the fief or of "preudes hommes" and kept during a year and a day in case the owner should come forward and claim it. The *Coutumier* enumerates the things to which the Duke of Normandy was entitled and continues: "All things other than these shall enure to the lord in whose fief the wreck is found."

The Court inclines to the view that it was on the basis of this ancient Norman custom that the Manorial Court of Noirmont dealt with these two cases of wreck found at the Minquiers. It dealt with them on behalf of "the lord in whose fief the wreck is found", the lord of Noirmont. In the first case it ordered the Serjeant to take charge of the wreck, in the second case it declared a certain person to be "in default towards the Officers of the Seigneur" for having taken away the wreck, and it ordered some other persons to "keep their day at the next Court". As the jurisdiction of a local Court such as that of a Manor must have been strictly territorial and, in cases concerning wreck, limited to wreck found within the territory of its jurisdiction, it is difficult to explain its dealing with the two cases unless the Minquiers were considered to be a part of the fief of Noirmont.

The United Kingdom Government has further invoked a Judgment of 1692 of the Royal Court of Jersey in litigation between the English King and the guardian of the Seigneur of the fief of Samarès in Jersey, concerning goods shipwrecked on the rocks of the Minquiers. The Court decided that the goods should be shared between the two litigants and the salvors, each taking a third, and it based this decision on "certain Letters" of the King's Privy Council of 1620 and on an Act of 1632. As these documents are not produced, it cannot be seen on what ground the Judgment was based. It is therefore not possible to draw from this Judgment any conclusion supporting the British claim to the Minquiers.

In 1779 the Jersey Piers and Harbours Committee made an order for subsidizing the owner of a boat for the use of his boat and for services rendered by him and his crew "who have been at the Minquiers for the purpose of helping and saving persons

who, there was reason to think, had been shipwrecked there". This shows that the Committee was interested in ensuring such services at the Minquiers, but it can hardly be considered as a measure by which authority was exercised in respect of the islets, nor can it be concluded that the Committee made the grant only because it considered the Minquiers to be a part of Jersey. The United Kingdom Government has further invoked two Judgments of 1811 and 1817 of the Royal Court of Jersey relating to salvage services rendered by Jerseymen to two ships wrecked at the Minquiers. The cases appear to have been ordinary salvage cases, and it is not shown that the Royal Court of Jersey would have lacked jurisdiction if the salvage had taken place outside the territory of Jersey.

The further evidence produced by the United Kingdom Government in respect of the Minquiers is of the same character as that considered above in connection with its claim to the Ecrehos. As already mentioned, the law of Jersey has for centuries required the holding of an inquest on corpses found within the Bailiwick. Such inquests on corpses found at the Minquiers were held in 1850, 1938 and 1948 and show that jurisdiction was exercised in respect of these islets.

Since about 1815, and perhaps earlier, persons from Jersey have erected and maintained some habitable houses or huts also on the islets of the Minquiers, where they have stayed during the fishing season. Some of these houses or huts have, for the purpose of parochial rates, been included in the records of the Parish of Grouville in Jersey, and property taxes have been paid by the owners. Rating schedules for 1939 and 1950 are produced.

It is established that contracts of sale relating to real property in the Minquiers have, as in the case of the Ecrehos, been passed before the competent authorities of Jersey and registered in the public registry of deeds of the Island. Examples of such registration of contracts are given for 1896, 1909 and some later years.

In 1909 Jersey customs authorities established in the Minquiers a custom-house with the arms of Jersey. The islets have been included by Jersey authorities within the scope of their census enumerations, and in 1921 an official enumerator visited the islets for the purpose of taking the census.

These various facts show that Jersey authorities have in several ways exercised ordinary local administration in respect of the Minquiers during a long period of time.

Of other facts throwing light upon the dispute it should be mentioned that Jersey authorities have made periodical official visits to the Minquiers since 1888, and that they have carried out various works and constructions there, such as a slipway in 1907, a mooring buoy in 1913, a number of beacons and buoys in 1931 and later years and a winch in 1933.

The evidence thus produced by the United Kingdom Government shows in the opinion of the Court that the Minquiers in the beginning of the seventeenth century were treated as a part of the fief of Noirmont in Jersey, and that British authorities during a considerable part of the nineteenth century and in the twentieth century have exercised State functions in respect of this group.

*

The French Government has, in addition to the alleged original feudal title, invoked certain facts. It contends that the Minquiers have been a dependency of the Chausey Islands, which, according to the view of that Government, have always belonged to France, and which in 1022 were granted by the Duke of Normandy to the Abbey of Mont-Saint-Michel. It has referred to a Papal Bull of 1179 which confirmed this Abbey in all its possessions, among which the Bull mentioned "*totam insulam de cause cum pertinentiis suis*". But from this general clause about appurtenances to the Chausey Islands no deduction can be made with regard to the status of the Minquiers. The United Kingdom Government has, on the other hand, contended that the Chausey Islands belonged to England until about 1764. But the Court does not, for the purpose of deciding the present case, consider it necessary to determine at what time the Chausey Islands became a French possession.

In 1784 a French national submitted to the French Minister of Marine an application for a concession in respect of the Minquiers, an application which was not granted. The correspondence between the French authorities, relating to this matter, does not disclose anything which could support the present French claim to sovereignty, but it reveals certain fears of creating difficulties with the English Crown.

In 1831 a French national made a hydrographical survey of the Minquiers group; but a British Naval officer, on instructions from the British Admiralty, surveyed both the Minquiers and the Ecrehos as early as 1813-1815.

The French Government further contends that since 1861 it has assumed the sole charge of the lighting and buoying of the Minquiers for more than 75 years, without having encountered any objection from the United Kingdom Government. The buoys were placed outside the reefs of the group and purported to aid navigation to and from French ports and protect shipping against the dangerous reefs of the Minquiers. In 1888 a French mission, appointed to make a hydrographic survey of the islets, erected provisional beacons on several of them to facilitate the survey.

The French Government has also relied on the fact that the French Prime Minister and the Air Minister in 1938 travelled to the Minquiers in order to inspect the buoys, and that a Frenchman

in 1939 erected a house on one of the islets with a subsidy from the Mayor of Granville. It has finally referred to certain recent hydro-electric projects for the installation of tidal power plants in the Bay of Mont-Saint-Michel and the region of the Minquiers islets.

The Court does not find that the facts, invoked by the French Government, are sufficient to show that France has a valid title to the Minquiers. As to the above-mentioned acts from the nineteenth and twentieth centuries in particular, including the buoying outside the reefs of the group, such acts can hardly be considered as sufficient evidence of the intention of that Government to act as sovereign over the islets; nor are those acts of such a character that they can be considered as involving a manifestation of State authority in respect of the islets.

A perusal of the diplomatic exchanges between the two Governments from the beginning of the nineteenth century confirms this view. By his Note of June 12th, 1820, to the Foreign Office, already referred to above, the French Ambassador in London transmitted a letter from the French Minister of Marine of September 14th, 1819, to the French Foreign Minister, in which the Minquiers were stated to be "*possédés par l'Angleterre*", and in one of the charts enclosed the Minquiers group was indicated as being British. It is argued by the French Government that this admission cannot be invoked against it, as it was made in the course of negotiations which did not result in agreement. But it was not a proposal or a concession made during negotiations, but a statement of facts transmitted to the Foreign Office by the French Ambassador, who did not express any reservation in respect thereof. This statement must therefore be considered as evidence of the French official view at that time. When the British Embassy in Paris, in a Note of November 12th, 1869, to the French Foreign Minister, had complained about alleged theft by French fishermen at the Minquiers and referred to this group as "this dependency of the Channel Islands", the French Minister, in his reply of March 11th, 1870, refuted the accusation against French fishermen, but made no reservation in respect of the statement that the Minquiers group was a dependency of the Channel Islands. It was not until 1888, that France, in a Note of August 27th, for the first time made a claim to sovereignty over that group, a claim which appears to have been provoked by a visit to the islets of the Jersey Piers and Harbours Committee. In 1929 a French national, M. Leroux, commenced the construction of a house on one of the islets of the Minquiers in virtue of a lease issued by French Government officials. In a Note of July 26th, 1929, the United Kingdom Government protested and said that they "have no doubt that the French Government, in order to obviate all risk of the occurrence of some untoward incident on the spot, will restrain Monsieur Leroux from proceeding further with his building operations". No reply appears to have been

given by the French Government; but the construction of the house was stopped. That it was stopped at the instigation of that Government appears to follow from a Note of October 5th, 1937, from the French Ambassador to the Foreign Office, where it was stated that "the French Government, moreover, in spite of the slight distance between the Minquiers islands and the Chausey islands, did not hesitate, a few years ago, to prevent the acquisition of land on the Minquiers by French nationals".

*

In such circumstances, and having regard to the view expressed above with regard to the evidence produced by the United Kingdom Government, the Court is of opinion that the sovereignty over the Minquiers belongs to the United Kingdom.

* * *

For these reasons,

THE COURT,

unanimously,

finds that the sovereignty over the islets and rocks of the Ecrehos and Minquiers groups, in so far as these islets and rocks are capable of appropriation, belongs to the United Kingdom.

Done in English and French, the English text being authoritative, at the Peace Palace, The Hague, this seventeenth day of November, one thousand nine hundred and fifty-three, in three copies, one of which will be placed in the archives of the Court and the others will be transmitted to the Government of the French Republic and to the Government of the United Kingdom of Great Britain and Northern Ireland, respectively.

(Signed) J. G. GUERRERO,

Vice-President.

(Signed) GARNIER-COIGNET,

Deputy-Registrar.

Judge ALVAREZ declares that he concurs in the conclusions reached in the Judgment of the Court but for different reasons.

In his opinion, it is clear from the written proceedings and the oral arguments that the Parties have attributed excessive importance to historic titles and that they have not sufficiently taken into account the state of international law or its present tendencies in regard to territorial sovereignty.

He wishes to emphasize that the task of the Court is to resolve international disputes by applying, not the traditional or classical international law, but that which exists at the present day and which is in conformity with the new conditions of international life, and to develop this law in a progressive spirit.

Judges BASDEVANT and CARNEIRO, availing themselves of the right conferred on them by Article 57 of the Statute, append to the Judgment of the Court statements of their individual opinions.

(Initialled) J. G. G.

(Initialled) G.-C.