

**GUERNSEY
LAW JOURNAL**

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INTRODUCTION

The Guernsey Law Journal is designed to provide readily accessible information concerning developments in the law of the Bailiwick of Guernsey.

It is intended to be an index and record of legal material rather than an authoritative work. Readers should refer to the original text of the legislation or judgment that is digested. Copies of legislation may be purchased at the Greffe and copies of full judgments may be inspected there.

It is hoped to produce the Journal twice a year and this edition has concentrated on developments between January and June 1985. The Editorial Committee is aware that much material exists from former years which has not been the subject of any formal recording in a work such as this. Any contributions digesting or analysing earlier legislation and cases will be welcome for future editions as will any articles on subjects relating to the law of the Bailiwick.

The entries are presented alphabetically under broad subject headings.

The Editorial Committee would like to acknowledge the debt that they owe to the Editors of the Northern Ireland and Manx Law Bulletins who have already trodden the path of producing a work similar to this for their respective jurisdictions.

Whilst due care has been taken in recording the material published herein no responsibility is accepted in law for the contents of this issue or its accuracy.

Editorial Committee

H.M. Procureur, Advocate J. N. van Leuven, Advocate V. C. Ogier, H.M. Greffier.

Compiled by members of the Editorial Committee and the Legislative Draftsmen at St. James Chambers from sources including all Orders in Council, Ordinances, Projets de Loi and subordinate legislation and selected cases and other relevant material which became available during the months January to July, 1985.

19th July, 1985.

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GUERNSEY.

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AGRICULTURE AND ANIMALS

Animal Diseases

1. Ordinance: The Foot and Mouth and other Animal Diseases (Amendment) Ordinance, 1985. - Adds sheep pox to the list of animal diseases to which the Foot and Mouth and other Animal Diseases Ordinance, 1950 applies.

In force 30.1.85. (No. V of 1985).
2. States Resolution of 29.5.85. - Directing preparation of legislation to deal with certain horse and sheep diseases.

Birds

Ordinance: The Control of Birds Ordinance, 1985. - Enables the Committee for Agriculture to control the number of birds congregating in public places by authorising persons to carry out directions of the Committee of which certain details are to be published in La Gazette Officielle.

In force 29.5.85. (No. XV of 1985).

4. Ordinance: The Protection of Pigeons (Amendment) Ordinance, 1985. - Increases the maximum fine for offences under the Ordonnance pour la Protection des Pigeons, 1933 from £5 to £250.

In force 29.5.85. (No. XVI of 1985).

ARBITRATION

5. States Resolution of 12.6.85. - Directing preparation of legislation to amend the Arbitration (Guernsey) Law, 1982, by providing for the exclusion of rights of judicial review by agreement.

AVIATION AND AIRPORTS

6. Ordinance: The Airport Fees (Amendment) Ordinance, 1985. - Increases the fees payable under the Airport Fees Ordinance, 1979, as amended, in respect of aircraft using Guernsey and Alderney Airports; a single scale of fees is now payable for test, familiarisation and training flights and for extension fees; a 25p passenger fee is now payable in respect of inter-island passengers arriving at Alderney.

In force 1.4.85. (No. IX of 1985).

7. Order: The Guernsey Airport (Traffic) Order, 1985 made under section 11(1) of the Airport Ordinance, 1950, as amended, controls parking and driving at Guernsey Airport.

In force 11.2.85. (S.I. No. 2 of 1985).

BANKING INSURANCE AND FINANCE INDUSTRIES

Bank Mergers

8. Projet de Loi: The Royal Bank of Scotland (Guernsey) Law. - Designed to effect the transfer to RBSG public limited company (the name of which is intended to be changed to The Royal Bank of Scotland public limited company) of that portion of the undertaking of Williams & Glyn's the transfer of which falls to be governed by the law of Guernsey.

Note: Originally this was intended to be a Bailiwick Law but at the request of the sponsors the Projet was restricted in its application to Guernsey, Herm and Jethou. Approved by the States of Guernsey on 27.6.85. Awaiting Royal Sanction.

Convention

9. Agreement between Her Majesty's Government and Senegal for the Promotion and Protection of Investments (Cmnd. 9292) registered on 2.4.85.

Legal Tender

10. Ordinance: Legal Tender (Amendment) (Guernsey) Ordinance, 1985. - Provides that the halfpenny coin shall cease to be legal tender.

In force 24.4.85. (No. XIII of 1985).

Protection of Depositors

11. States Resolution: Directing preparation of legislation to make extensive amendments to the Protection of Depositors Ordinance, 1971, as amended, (Billet d'Etat XIII of 1985, p.585).

CHILDREN AND YOUNG PERSONS

See CRIMINAL LAW: The Protection of Children (Bailiwick of Guernsey) Law, 1985 (see paragraph 21).

COMPANIES

Change of Name

12. Case:

Company - Order to change name - Failure to comply - Increase of Penalty

On 19.7.84, on the application of Vekaplast Windows (C.I.) Limited ("Vekaplast"), Veka Guernsey Limited ("Veka") was ordered, pursuant to Article XIV of the Companies (Guernsey) Law, 1908, to change its name on the ground that its designation was of such a nature as to induce the public to confuse Veka with Vekaplast. The change of name was to be effected within the period of two months, subject to a penalty of £5 per week thereafter.

On 4.10.84 Veka petitioned the Court pursuant to Article IX of the said law to confirm a special resolution changing its name to "Sovereign Veka Guernsey Limited". This petition was opposed by Vekaplast and was refused; the Court being satisfied that the proposed change of name would affect the rights of others.

On 14.2.85, on the application of Vekaplast, the Court increased the penalty stipulated in the Order of 19.7.84 from £5 per week to £50 per week.

(On 28.3.85 the Court granted a petition by Veka to change its name to "H.L.V. Profiles Limited".)

[Vekaplast Windows (C.I.) Ltd. v. Veka Guernsey Ltd. 1985 Plaids de Meubles 428.]

CONSTITUTIONAL LAW

Election Expenses

13. Ordinance: The Electoral Expenditure Ordinance, 1985. - Prescribes the maximum permissible amount of election expenditure by a candidate in relation to an election for the office of People's Deputy.

In force 30.1.85. (No. III of 1985).

Electoral Roll

14. Projet de Loi: The Reform (Amendment) (Guernsey) Law, 1985. - Amends the Reform (Guernsey) Law, 1948, as regards persons entitled to be inscribed on the Electoral Roll, the appointment of the Registrar-General of Electors and the publication of the notice of an election. Approved by States on 24.4.85. Awaiting Royal Sanction.

States Committees

15. Projet de Loi: The President of the States Insurance Authority (Validation) (Guernsey) Law, 1985. - Retrospectively validates acts of Conseiller R. M. Chilcott and the Board of Administration between 30.4.82 and 29.4.85 notwithstanding any defect in his election. Approved by States on 29.5.85. Awaiting Royal Sanction.

States of Election

16. States Resolution of 13.2.85. - Directing preparation of legislation regarding the constitutions of States Committees following consideration of Report of Committee investigating Constitution of States Committees.
17. Projet de Loi: The Reform (Amendment) (Guernsey) Law, 1984. - Provides that a Rector may not vote in the States of Election unless he has had his ordinary place of residence in Guernsey for twelve months prior to exercising his vote.

Registered and in force 29.1.85.

COURTS

18. Order: The Court of Appeal (Civil Division) (Costs and Fees) (Amendment) (Guernsey) Rules, 1985. - Increases and amends basis of calculation of fees in civil cases before the Court of Appeal.

In force 1.2.85. (S.I. No. 1 of 1985).

CRIMINAL LAW

Obscene Publications

19. Projet de Loi: The Obscene Publications (Bailiwick of Guernsey) Law, 1985. - Replaces the "Loi ayant rapport à la répression de la circulation et du trafic des publications obscènes, 1924" (Ordres en Conseil Vol. VII p.297) with wider provisions for the control of obscene publications, including powers to search premises and seizure of articles. Approved by States on 24.4.85. Awaiting Royal Sanction.

Prevention of Terrorism

20. Act: The Prevention of Terrorism (Temporary Provisions) Act 1984. Registered on the 29.1.85.

Note: The 1984 Act was extended with modifications with effect from 31.3.84 by U.K. S.I. No. 1165 of 1984.

Protection of Children

21. Projet de Loi: The Protection of Children (Bailiwick of Guernsey) Law, 1985. - Provides for new offences of indecent conduct towards children; or possessing for commercial purposes, printing, publishing, selling or letting on hire publications which are harmful to children; taking distributing or possessing indecent photographs of children; and also ancillary powers relating to evidence, arrest, search and seizure of articles. Approved by the States on 24.4.85. Awaiting Royal Sanction.

CUSTOMS

Open General Import Licence

22. Order: Amendment No. 2 made by the Board of Administration under powers given by Import and Export of Goods (Control) (Guernsey) Order 1978. This amendment updates the licence in certain areas in line with United Kingdom Policy.

In force 18.6.85. (S.I. No. 7 of 1985).

DIVORCE AND MATRIMONIAL CAUSES

23. Case:

Divorce proceedings in Guernsey - Leave to arrest personalty and register charge on realty on filing petition - Guernsey and Norman customary law mutable

'W' commenced divorce proceedings against 'H' before the Matrimonial Causes Division of the Royal Court. 'H' was non-resident and his only substantial local asset was a private hotel occupied and run by 'W'. In her petition 'W' prayed, inter alia, for the said premises to be vested in her sole name. 'W' alleged that 'H' was likely to sell the said premises and remove his assets from the jurisdiction before the conclusion of the divorce proceedings. Upon 'W's ex parte application, the Deputy Bailiff, on

18.2.85, granted leave to arrest the assets in Guernsey belonging to 'H' and to register a charge against the said premises in the sum of £250,000 to secure payment of the relief, as yet unquantified, claimed in 'W's petition. 'H' applied, inter partes, to the Deputy Bailiff, sitting alone, to review the arrest order on the grounds that it was made without power or authority by the law and custom, that it was more widely drawn than was necessary or proper to secure 'W's presumptive interest and that it was an abuse of process and made without sufficient cause.

THE DEPUTY BAILIFF HELD:-

- (i) that unlike English Common Law, Norman and Guernsey customary law change and adapt to meet changed circumstances; this characteristic was of the greatest advantage to Guernsey as a small jurisdiction, but there must always be the qualification that any development must be reasonable and sensibly develop any pre-existing legal situation;
- (ii) that the application of the anticipatory arrest procedure to matrimonial causes did not in any way significantly develop the law. The Royal Court was one Court and its operation in Divisions was largely a matter of procedural convenience; and
- (iii) that there should nevertheless be provision for an all embracing Order such as that made on 18.2.85 to be tempered by the likely limits of any future Order at the conclusion of the divorce proceedings.

AND AFFIRMED the said Order, subject to the modification that it should be open to 'H' to apply to the Matrimonial Causes Division inter partes and by affidavit for a release of some part of the said arrest order. Leave was granted to 'W' to register this present order to secure the continued registration of her charge upon 'H's realty.

[Bars v. Bars 1985 Plaids de Meubles 696.]

ECCLESIASTICAL LAW

Report of Committee on Ecclesiastical Court (see paragraph 61).

EDUCATION

24. Ordinance: Commencement of Law: The Ladies' College (Amendment) (Guernsey) Law, 1984 (Commencement) Ordinance, 1985. - Brings the Law of 1984 into force on 1.2.85. (No. VI of 1985).

Note: The Law of 1984 (registered on 27.11.84) amends the Ladies' College (Guernsey) Law, 1962 by substituting references to "Principal" for references to "Headmistress" and by introducing references to "Vice-Principal" in some sections.

25. Ordinance: The Ladies' College (Amendment) Ordinance, 1985. - Ensures the lawfulness of appointment of males to the staff of the Ladies' College as Principal (which expression replaces "Headmistress") Vice-Principal (whose appointment and role are dealt with in substitution for the provisions previously relating to the Deputy Headmistress) or assistant teachers.

In force 1.2.85. (No. VII of 1985).

EUROPEAN COMMUNITIES

Equality of treatment for EC Nationals

Ordinance: Pilotage (Amendment) (Sark) Ordinance, 1985. - See Sark - Shipping, paragraph

EVICTION

Landlord and Tenant

26. Case:

Action by tenant against sub-tenant - tenant evicted by landlord prior to hearing - action dismissed

'P', tenant of certain premises, commenced eviction proceedings against the sub-tenant 'D', by way of notice to quit duly served by H.M. Sergeant. Prior to the hearing of the action, 'P' was evicted by the head landlords. At the hearing of the action before the Ordinary Court 'D' submitted that the action should be dismissed because 'P' had ceased to have any possessory rights to the premises upon its eviction by the head landlords.

THE COURT DISMISSED the action with costs, having been directed by the DEPUTY BAILIFF:-

- (i) that the tenant 'P' had lost its standing to pursue the eviction proceedings as a result of its eviction by the head landlords;
- (ii) that the tenancy of 'D' had nevertheless been lawfully terminated by 'P' prior to its own eviction;
- (iii) that the head landlords were thus the only party with the right to possession of the premises and the right to pursue eviction proceedings against 'D' as a tenant in lawful occupation whose tenancy had been lawfully determined by notice to quit; and
- (iv) that the tenant 'D' was entitled to the protection conferred by the Stay of Evictions Laws, 1946 and 1954 (Skillett v. Le Sauvage 1966 Plaids de Meubles 132 distinguished).

[Auto-Tune Ltd. v. Pearce 1985 Plaids de Meubles 407.]

GAMBLING

Betting

27. States Resolution of 29.5.85. - Directing preparation of legislation to increase fees under Gambling (Betting) Ordinances, 1973 to 1981.

Channel Islands Lottery

28. Order, 1985, made under The Gambling (Channel Islands Lottery) (Bailiwick of Guernsey Ordinances, 1975 and 1977 (Ordinances Tome XX. p.51 and No. XXX of 1977)). - Increases the amount of commission paid to an agent on the presentation of a winning ticket.

In force 1.4.85. (S.I. 1985 No. 5).

HARBOURS AND MOORINGS

Fees, dues and charges

29. Ordinance: The Mooring Charges (Amendment) (Guernsey) Ordinance, 1985. - Increases the charges payable for moorings in the harbours of St. Peter Port and St. Sampson.

In force 1.4.85. (No. VIII of 1985).

HEALTH AND MEDICINE

30. Agreement: Between Her Majesty's Government and Iceland on Health Services (Cmnd. 8747). Registered on 2.4.85.

Health Service (Pharmaceutical)

31. Ordinance: The Alderney (Application of Legislation) (Health Service) (Pharmaceutical) Ordinance, 1985. - Provides that the Health Service (Pharmaceutical) (Amendment) (Guernsey) Law, 1984, shall have effect in the Island of Alderney as it has effect in the Islands of Guernsey, Herm and Jethou.

In force 30.1.1985. (No. IV of 1985).

32. States Resolution of 26.6.85. - Directing legislation for increased prescription charge under the Health Service (Pharmaceutical) (Guernsey) Law, 1972.

Hospitals

Control of vehicular traffic (see paragraph 53).

HOUSING

Control of Occupation

Ordinance: Housing (Control of Occupation) (Variation of Schedule) Ordinance, 1985. - Adds to the list of dwellings in Schedule II to the Housing (Control of Occupation) (Guernsey) Law, 1982 certain additional dwellings.

In force 24.4.85. (No. XII of 1985.)

34. Ordinance: Housing (Control of Occupation) (Addition of Annexes) Ordinance, 1985. - Adds to the list of dwellings in Schedule II to the Housing (Control of Occupation) (Guernsey) Law, 1982, two hotel annexes, to be inscribed, if application is duly made, in the housing register as part of the inscription relating to their hotels for so long as they are used for specified purposes.

In force 29.5.85. (No. XIV of 1985.)

ISLAND DEVELOPMENT

Detailed Development Plans

35. Five Plans are now in force and there are included for record purposes the following details of dates of approval and approximate areas affected.

Detailed Development Plan No. 1

(The North-west: The area lying to the North of a line drawn from Cobo Bay to the Track Football Ground and West of a line drawn therefrom to Grande Havre Bay).

Review No. 2 approved by the States on the 23rd February, 1983.

Detailed Development Plan No. 2

(The Town: Covering most of St. Peter Port and the parts of St. Andrew's, St. Martin's and St. Sampson's bordering the Town).

Review No. 1 is currently the subject of a Planning Inquiry. Original Plan continues to have effect until the 26th June, 1986, or until superseded by new Plan or review (States Resolution of the 26th June, 1985).

Detailed Development Plan No. 3

(The South-west area lying to the west of a line drawn from Vazon Bay to the Prevoté watch house).

Original Plan approved by States on the 24th February, 1982.

Detailed Development Plan No. 4

(The West: The area enclosed by a line drawn from Vazon Bay to St. Saviour's Rectory to the Princess Elizabeth Hospital to Le Pont Vaillant to Cobo Bay).

Original Plan approved by the States on the 24th November, 1982.

Detailed Development Plan No. 5

(The North-east: The area to the East of a line drawn from the Vale Church to Bellegreve Bay at the junction of Victoria Avenue).

Original Plan approved by the States on the 13th March, 1985.

It is anticipated that Detailed Development Plans for the remainder of the Island will be laid before the States within the next 3 years.

Note: Under the provisions of the Island Development (Guernsey) Law, 1966, as amended, unless otherwise provided a Detailed Development Plan has effect for the period of five years from the date on which it is approved by the States.

LIQUOR

36. Ordinance: The Liquor Licensing (Amendment) Ordinance, 1985. - Amends section 115(b) of the Liquor Licensing Ordinance, 1984 to provide that qualifying vessels must be fit to carry 90 passengers by day.

In force 29.5.85. (No. XVII of 1985.)

37. States Resolution: Report of Committee to Investigate Ways of Reducing Alcohol, Drugs and Solvent Abuse Related Offences - Alcohol Abuse (Billet d'Etat XIV, p.638) considered 26.6.85. Resolved to direct preparation of legislation:-

(a) transferring responsibility for dealing with renewals of liquor licences from the States Treasurer to H.M. Greffier;

(b) to make it an offence for a person

(i) if under 18 to be in possession of alcohol in a public place;

(ii) if 18 or over to supply alcohol to persons under 18 in a public place.

MOTOR TAXATION

38. States Resolution of 13.3.1985. - Directing preparation of legislation to repeal and consolidate existing legislation - it is intended that the new legislation should, as far as possible, be in the form of an enabling Law which would then be implemented by Ordinance. The legislation required is complex and is likely to take a considerable time to complete.

NUCLEAR INSTALLATIONS

Conventions

- ? Paris Convention on Third Party Liability in the field of Nuclear Energy - 29.7.60. Registered 7.5.85.
40. Convention: Brussels Convention supplementary to the Paris Convention of 1960. Registered 5.2.85.

PAROCHIAL MATTERS

Taxation

41. Ordinance: The Parochial Taxation (Amendment) Ordinance, 1985. - Amends Article 6 of the "Ordonnance relative aux Taxes Paroissiales" made permanent on 5.10.31, regarding the payment of Occupiers' Rate and provides for the levying of a £3 charge where the Rate has to be collected after the due date.

In force 24.4.85. (No. XI of 1985.)

POLICE

Special Constabulary

42. States Resolution of 24.4.85. - Directing preparation of legislation to empower the Guernsey Special Constabulary to serve in the Island of Herm as well as in the Island of Guernsey.

POST OFFICE

43. Order: The Post Office (Inland Post) (Amendment) Order, 1985. - Increases the postal rate on inland letters and parcels.

In force 1.4.85. (S.I. 1985 No. 4.)

PRACTICE AND PROCEDURE

Arrêt de Biens

44. Case:

Arrêt de Biens - Divorce proceedings pending in England - contemplation of reciprocal enforcement - whether cause of action triable in Guernsey

On 3.10.84 'W' successfully applied ex parte to the Deputy Bailiff for leave to arrest assets belonging to 'H' and held by banks in Guernsey. In support of her application 'W' alleged that 'H' was likely to remove his assets from the jurisdiction, thereby prejudicing future action by her to enforce in Guernsey, pursuant to the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957, a judgment which she hoped to obtain in due course upon the determination of divorce proceedings instituted by her in England. On 7.2.85 'H' applied inter partes to the Deputy Bailiff sitting in Chambers for the arrest to be set aside.

THE DEPUTY BAILIFF

- (i) HELD:-
that the affidavit submitted on behalf of 'W' on 3.10.84 did not disclose any cause of action triable in this jurisdiction and that the existence of such a cause of action was a condition precedent to the grant of permission to arrest; and
- (ii) ORDERED:-
(a) that the arrest be lifted, provided that such order be stayed for three weeks to enable 'W' to apply to the Court of Appeal, the Deputy Bailiff having refused leave to appeal pursuant to section 15(e) of the Court of Appeal (Guernsey) Law, 1961;
(b) that the sum of £2,000 be released from the said arrest with immediate effect to enable 'H' to meet his legal expenses pending any possible appeal; and
(c) that W pay the costs of these proceedings.

[Fewtrell v. Fewtrell 1985 Plaids de Meubles 424.]

Delay

45. Case:

Civil action - Exceptions de Forme - delay by Plaintiff in filing amended cause - ordered to file within three weeks

'P instituted proceedings against 'D' in 1982 claiming, inter alia, damages of £3,113,929.40. On 14.4.83 'D' filed defences, including Exceptions de

Fonds and Exceptions de Forme. On 26.1.84, shortly before the date fixed for the hearing of the Exceptions, 'P' filed an amended cause, with leave of the Court. On 22.3.84 'D' filed defences to the amended cause, including Exceptions de Fonds and Exceptions de Forme. 22.1.85 was fixed for hearing of the Exceptions de Forme. On 16.1.85 'P' notified 'D' that he would not proceed with the hearing on 22.1.85 and would file an amended cause in due course. 'D' applied to the Court for relief on the ground that 'P' had acted unconscionably and/or unreasonably in the prosecution of his action.

THE DEPUTY BAILIFF, sitting alone, ORDERED 'P':-

- (i) to pay the costs incurred by 'D' during the year 1984;
- (ii) to pay the costs of the present action; and
- (iii) to file an amended cause within three weeks.

[Joannou & Paraskevaides (Overseas) Ltd. v. Ghosn 1985 Plaids de Meubles 409.]

Livre des Obligations

Registration of Divorce petition therein see case reported in Divorce and Matrimonial Causes (paragraph 23).

46. Case:

Court of Appeal (Civil Division) - Default Judgment - Leave to appeal out of time

Judgment by default in the sum of £4,040.50 and costs was given by the Royal Court against the Appellant ("A") on 1.11.84. On 26.11.84 Counsel for "A" filed notice of appeal, alleging that "A" had been prevented by reason of sudden illness from attending the Royal Court hearing. "A" failed subsequently to lodge his case within 4 months of the appeal being set down, as required by Rule 8 of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964 and he was deemed to have abandoned his appeal. "A" applied in person to the Court of Appeal for leave to pursue his appeal out of time. The Respondent ("R") opposed this application.

THE COURT OF APPEAL (Civil Division)

- (i) GRANTED the application;
- (ii) ALLOWED the appeal; and
- (iii) ORDERED that the action by "R" against "A" be restored to the Rôle des Causes à Plaider;

THE WHOLE UPON CONDITION THAT "A" should, within the period of one month:-

- (a) pay all costs incurred by "R" to date; and
- (b) lodge with H.M. Greffier the sum of £100 as security for costs.

[Hall v. Le Noury - Court of Appeal 16.4.85.]

Judgments (Interest)

47. Projet de Loi: The Judgments (Interest) (Bailiwick of Guernsey) Law, 1985.
- Provides for the awarding of interest on debts and damages by Courts in the Bailiwick and for judgment debts to carry interest. The Courts prescribed are the Guernsey Court of Appeal, the Royal Court of Guernsey, the Magistrate's Court of Guernsey, the Court of Alderney and the Court of the Seneschal of Sark.

Approved by the States of Guernsey on 24.4.85. Awaiting the approval of the States of Alderney and the Chief Pleas of Sark before being submitted for Royal Sanction.

Péremption d'Instance

48. Case:

Action to confirm arrest - adjournment sine die - Exception de Fonds - Péremption d'Instance

'P' brought an action to confirm an arrest of monies belonging to 'D'. The action was placed on the Rôle des Causes à Plaider and was adjourned sine die on 13.1.83 with the consent of both parties. On 26.7.84 the action was tabled before the Court and after further adjournments 'D' filed defences on 27.9.84, pleading by way of Exceptions de Fonds:-

- (a) that the arrest was not capable of confirmation in that more than a year and a day had elapsed since the date of arrest and since the action was placed on the Rôle des Causes à Plaider;
- and (b) further or in the alternative that the action was périmée pursuant to section 4 of the Ordonnance au sujet de la Péremption d'Instance, 1851 (Tome III at p.207).

THE BAILIFF, sitting alone,

- (i) HELD that an Order of the Court adjourning proceedings stops the time of péremption from running; and
- (ii) DISMISSED the Exceptions de Fonds.

[Nigerian Television Authority v. Transcom International Ltd. 1985
Plaids de Meubles 1007]

Stay of Execution

49. Case:

Court of Appeal (Civil Division) - Security for Costs - Stay of execution - Conditions applied.

The Appellants ("A") appealed to the Court of Appeal (Civil Division) from a judgment of the Royal Court whereby they were ordered to pay to the Respondent ("R") the sum of £15,393.60 with costs. "A" applied for a stay of execution pending appeal and "R" applied for £1,500 to be lodged with the Court of Appeal as security for costs.

THE COURT OF APPEAL (Civil Division):-

- (1) GRANTED a stay of execution of the said judgment pending the

outcome of the appeal, upon the condition that "A" lodge with the Court:-

- (a) the amount of the judgment, within 28 days; and
- (b) the amount of recoverable costs incurred by "R", within 28 days of the issue of a certificate of taxation; and

(11) ORDERED that "A" lodge with the Court security for costs in the sum of £750.

[Bonner-Morgan v. Sheth - Court of Appeal 5.3.85.]

RECREATION

50. Order in Council: The King George The Fifth Memorial Playing Field Trust (Guernsey) Law, 1984. - Regularises the trusts affecting the King George V Playing Field by vesting the trust property, rights and liabilities in statutory trustees; setting out the purposes of the trust and the powers of the trustees; providing for the appointment etc. of future trustees and the constitution, proceedings etc. of a Management Committee.

In force 19.3.85. No.I of 1985.

RENT CONTROL

51. Order: Rent Control (Variation) Order 1985. - Increases variable items at recoverable rents of controlled dwellings by 7.5%.

In force 1.7.85. (S.I. No. 6 of 1985.)

ROAD TRAFFIC

52. Ordinance: The Prohibited and One-Way Streets (Amendment) etc. Ordinance, 1985. - Gives legislative force to the new traffic scheme at the Bus Terminus, St. Peter Port.

In force 1.7.85. No.XIX of 1985.

53. Ordinance: The Vehicular Traffic (Hospitals, etc.) Ordinance, 1985. - Controls the driving and parking of vehicles on prescribed controlled land by means of traffic signs - Contravention is an offence punishable with a fine not exceeding £100. The controlled land prescribed is land at the Princess Elizabeth Hospital, the Duchess of Kent House, the King Edward VII Hospital and the Castel Hospital.

In force 26.6.85. No.XVIII of 1985.

SHIPPING

54. Statutory Instrument: The Boats (Guernsey) Regulations, 1985, made under the "Ordonnance par rapport aux Bateaux portant Passagers ou mis en location" of the 14th February, 1931 (Ordonnances Tome VI, p.48) provide that for a period of six months from 1.4.85, boats which ply for hire from Guernsey require to be licensed and need to conform to certain safety

standards.

In force 1.4.85. (S.I. No. 3 of 1985).

SOCIAL INSURANCE

55. Ordinance: The Social Insurance (Reciprocal Agreement with the United States of America) (Guernsey) Ordinance, 1985. - Provides reciprocal social insurance benefits.

In force 1.1.85. (No. I of 1985).

56. Ordinance: The Social Insurance (Reciprocal Agreement with the Republic of Cyprus) (Guernsey) Ordinance, 1985. - Provides reciprocal social insurance benefits.

In force 1.1.84. (No. II of 1985).

57. Projet de Loi: The Social Insurance (Amendment) (Guernsey) Law, 1985. - Under section 6(3) of the Social Insurance (Guernsey) Law, 1978, a self-employed person wishing to pay an earnings related Class 2 contribution is required to make a fresh application every year. The amendment is intended to enable an application to be made for an indefinite number of years, provided that the applicant's earnings do not exceed the current upper annual earnings limit for Class 2 contributions prescribed by Regulations Awaiting Royal Sanction.

58. States Resolution of 26.6.85: Directing preparation of legislation for increased rates of contributions and benefits under the Social Insurance (Guernsey) Law, 1978 and under the Supplementary Benefit (Guernsey) Law, 1971.

STATES EMPLOYEES

Appointments

5. Projet de Loi: The Appointments to the Established Staff (Guernsey) Law, 1985. - Provides for the appointment of persons to the Established Staff of the States. Approved by the States 27.6.85. Awaiting Royal Sanction.

TORT

Clameur de Haro

60. Case:

Endorsement - functions of Bailiff therein - Clameur not to be used to regain possession once lost - must identify clearly persons to be restrained.

Facts

Appellant alleged he had been in partnership with 'B' and that they had carried on business as Veterinary Surgeons together at premises which were

owned by 'B'. 'B' later sold the premises to 'M'. Appellant contended that he still had some kind of leasehold interest in the premises and that there were still articles there belonging to him. He maintained that 'M' and his employees were trespassers on his premises. In pursuance of this claim the Appellant raised the Clameur de Haro outside the premises on the 15th May, 1984. Later that day he appeared before the Deputy Bailiff and applied for his endorsement on the document recording the Clameur so as to register it at the Greffe. The Deputy Bailiff refused this application and from that refusal the Appellant appealed.

Held

1. The Clameur may properly be used by a person in possession of immovable property to restrain interference with his possession or enjoyment of it. It cannot be used to recover possession once lost.

2. When the Appellant raised the Clameur on the 15th May, 1984, he had been excluded from premises, rightly or wrongly for 2 years. His avowed purpose was to stop alleged trespass by persons then in possession of the premises. The Clameur could not be used in those circumstances or for that purpose. The Deputy Bailiff was therefore right to decline his endorsement.

3. In addition when the Clameur has been raised, the purpose of presenting a declaration for the Bailiff's endorsement is not simply to establish the time at which the Clameur was raised and the declaration made. For that purpose registration at the Greffe would suffice. The purpose of presenting declaration was to enable Bailiff to decide whether prima facie the circumstances justified the use of the Clameur. If they did not the Bailiff should refuse his endorsement.

"The importance of this stage of the proceedings arises from the nature of the Clameur. It is a process by which the clamant, simply by his own act and without any recourse to the Court, can place the other party under an immediate restraint. If the other party ignores this restraint he exposes himself to the risk of proceedings for contempt of court. There must be some close and immediate control of a remedy so easily exercised and potentially so burdensome."

4. If the Bailiff was to discharge this function, the declaration had to state the time and the place at which the Clameur was raised and the purpose of raising it, and to identify with adequate clarity the persons whom it was sought to restrain. Appellant's declaration did not comply with this requirement. For this reason also the learned Deputy Bailiff was right in declining to endorse it.

Appeal dismissed

Leave granted to appeal to the Privy Council on terms.

[In re Kirk's Clameur de Haro. Court of Appeal 16.4.85.]

TRUSTS

Order in Council: The King George The Fifth Memorial Playing Field Trust (Guernsey) Law, 1984. - See RECREATION, paragraph 50.

WILLS AND ADMINISTRATION OF ESTATES

61. States Resolution: Directing preparation of legislation to clarify the functions of the Ecclesiastical Court in relation to wills of personalty (Billet d'Etat I of 1985, p.12).

ALDERNEY

BUILDING AND DEVELOPMENT CONTROL

62. Order in Council: The Building and Development Control (Amendment) (Alderney) Law, 1985. - Amends law of 1975 to provide that the use as two or more dwellings of any building previously used as a single dwelling involves a material change for purposes of the definition of "development" in that Law.

Registered 29.1.85. Deemed to have come into force 25.8.83.

63. Order in Council: The Building and Development Control (Amendment) (No. 2) (Alderney) Law, 1984. - Replaces the concept of a "dump" in the 1975 Building and Development Control (Alderney) Law with an article or substance appearing to the Alderney Building and Development Control Committee to be detrimental to the amenities of the locality. The Committee will be able to serve notice and, if the required action is not taken, will be able (subject to safeguards including a right of appeal) to take the specified action and recover the costs.

Registered 21.5.85. Not in force.

CONGÉ

64. Projet de Loi and Ordinance: The Alderney Land and Property &c. (Amendment) Law, 1984 and Alderney Congé Fee Ordinance, 1985. - See Land and Property paragraph 66.

FIREARMS

65. Ordinance: Dangerous Weapons (Amendment) (Alderney) Ordinance, 1985. - Increases the fee payable in respect of a weapon certificate under the Dangerous Weapons (Alderney) Ordinance, 1965 from 10/- per weapon to £12.00 for the first weapon and £2.00 for each additional weapon.

In force 7.3.85.

LAND AND PROPERTY

66. Order in Council: The Alderney Land and Property, etc. (Amendment) Law, 1984 (Ordres en Conseil No. XXIV of 1984) . - Amends section 16(5) of the Alderney Land and Property, Law, 1949 so that the proper fee payable to the registrar under section 15 includes, in lieu of congé, an amount equal to 4% (or such lower percentage as the States prescribe) of either the consideration for the sale of the realty concerned or 400 times its rateable value, whichever is lower; an applicant for alteration on the register is required to make a declaration and false statements are punishable on

conviction by a penalty of three times the fee evaded in addition to a fine.

Registered on 29.1.85.

In force 1.5.85 - vide The Alderney Land and Property, etc. (Amendment) Law, 1984 (Commencement) Ordinance, 1985.

Ordinance: The Alderney Congé Fee Ordinance, 1985. - Fixes the fee in lieu of congé payable under section 16(5)(a), Alderney Land and Property, &c., Law, 1949, as amended at 3%.

In force 1.5.85.

SARK

PRACTICE AND PROCEDURE

68. **Projet de Loi: The Court of the Seneschal (Increase of Jurisdiction and Transfer of Prisoners) (Amendment) Law, 1985.** - Contains provisions whereby the jurisdiction of the Court of the Seneschal of Sark in criminal matters is amended, in that the maximum fines which can be imposed for one or more offences is increased [increases maximum for one offence to £200 and for several offences, the aggregate maximum is increased to £400].

Approved by Chief Pleas 10.4.85. Awaiting Royal Sanction.

SHIPPING

69. **Ordinance: The Pilotage (Amendment) (Sark) Ordinance, 1985.** - Amends the Ordonnance portant règlement pour les Pilotes de l'Ile de Serk of 1932 so as to allow EC nationals other than British subjects to become Sark Pilots and to increase pilotage dues.

In force 13.3.85. (Guernsey Ordinance No. X of 1985).