

# GUERNSEY LAW JOURNAL

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GUERNSEY LAW JOURNAL

THIRD ISSUE

Introduction

The Editorial Committee still welcomes comments on this publication and contributions for future issues.

The original texts of legislation and judgments that are digested are available at the Greffe.

Whilst 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.

Citation:

References to this issue in future issues will be cited using the figure and letters 3.GLJ followed by the paragraph number.

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 June, 1986.

1st December, 1986.

Address of the Editorial Committee:  
St. James Chambers,  
GUERNSEY.

IN OTHER JURISDICTIONS:

**Duty of care - occupier of Court House**

S, while seated as counsel at the bar table in the old Alice Springs Court House, was shot and injured by an assailant, who had entered intending to shoot another lawyer. The Commonwealth owned, occupied and exclusively controlled the building. S contended that control, together with knowledge of the high emotion generated by court proceedings, imposed upon the defendant a duty to protect persons required to work in the Court House. At first instance, it was held that, although the defendant owed a duty of care to the class of persons of which S was one, there was no breach of that duty. The foreseeable risk was remote and no action beyond that which was done would have been taken by a reasonable man.

Held, on appeal, that there was no general duty of care arising by reason of the Commonwealth's role in the administration of justice and that no duty arose in the circumstances of the case: SKUSE v. COMMONWEALTH OF AUSTRALIA, 62 A.L.R. 108, Federal Ct. of Australia.

[Current Law September 1986 - H.E.R.]

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## GUERNSEY

### ALIENS

#### British Nationality

1. Regulations: The British Nationality (Fees) (Amendment) Regulations, 1986. - (Made by the Treasury under the British Nationality Act, 1981) increase with effect from 1.4.86 certain fees payable under the 1981 Act.

Registered on 22.4.86. (U.K. S.I. 1986 No. 378).

### ANCIENT MONUMENTS

#### Case:

2. Ancient Monuments and Protected Buildings (Guernsey) Law, 1967 - Protected building - Unauthorised alterations - Direction by Ancient Monuments Committee - Appeal - Access to expert evidence considered by the Committee

'A' owned a Regency dwelling-house at Hauteville, St. Peter Port which had been designated as a 'protected building' pursuant to the Ancient Monuments and Protected Buildings (Guernsey) Law, 1967. He caused the rendering on the street façade to be removed and the wooden windows on the second floor to be replaced by uPVC windows. 'A' subsequently applied to the Ancient Monuments Committee for permission to carry out these alterations. The Committee refused this application and directed that the building be restored to its former appearance by re-rendering the façade and replacing the uPVC windows with wooden ones. Before reaching its decision the Committee requested and considered a report by Mr. Brian Anthony, Assistant Chief Inspector, Historic Building and Monuments Commission for England. 'A' included in his submissions to the Committee a report prepared at his request by Sir Hugh Casson, an eminent architect. 'A' appealed to the Royal Court sitting as a Full Court alleging that the Committee's decision had been an unreasonable exercise of its powers, on the ground, inter alia, that the Committee had reached its decision on the evidence of fact and/or opinion which was not disclosed to 'A', this notwithstanding the prior request of 'A' to be allowed the opportunity of considering and, if appropriate, commenting on such evidence.

THE BAILIFF RULED that this was not a good ground of appeal, having DIRECTED the Jurats that "the Committee receives submissions from the Appellant or any person and it is entitled to take its own expert view, and having come to those it then gives a decision, and the matter is then up to review by the Court, and the Committee and the parties must put before it all the matters which were before the Committee when it was considering its decision; and you are considering today whether the Committee acted reasonably or not, and it is not either Mr. Anthony or Sir Hugh Casson who is considering the matter today, it is this Court".

THE COURT, having carried out a "vue de justice" and having considered the remaining grounds of appeal:-

- (i) ALLOWED the appeal in respect of the windows by a majority of 6 votes to 2;

(ii) DISMISSED the appeal in respect of the rendering by a majority of 7 votes to 1; and

(iii) ORDERED that the parties shall bear their own costs.

[Pattison v. States Ancient Monuments Committee - Requête 19.3.86.]

Historic Wreck:

See SHIPPING (paragraph 75).

ARBITRATION

3. Order in Council: The Arbitration (Amendment) (Guernsey) Law, 1986. - See 2.GLJ.4.

Registered and in force 6.5.86. (No. VII of 1986).

AVIATION AND AIRPORTS

Fees and charges

4. Ordinance: The Airport Fees (Amendment) Ordinance, 1986. - Increases the fees payable in respect of aircraft using Guernsey and Alderney airports; commercial aircraft and visiting private aircraft over 10 tons are now permitted to park without charge for 24 hours.

In force 1.4.86. (No. VIII of 1986).

5. States Resolution of 28.5.86. - Directing preparation of legislation to enable airport fees to be set by resolution of the States of Guernsey rather than by Ordinance.

(Billet d'Etat XI of 1986 p. 524).

BANKING INSURANCE AND FINANCE INDUSTRIES

Banks: Disclosure:

See PRACTICE AND PROCEDURE (paragraphs 58 and 59).

Financial Services Commission

6. States Resolution of 1.5.86. - Directing the preparation of legislation establishing a statutory body to exercise supervisory functions under the protection of depositors, insurance business and compulsory third-party insurance legislation, to provide assistance to the Advisory and Finance Committee in relation to the financial services sector and to prepare schemes for regulation and legislative reform in connection with that sector.

(Billet d'Etat IX of 1986, p. 471).

## Insurance business

7. **Projet de Loi:** The Insurance Business (Guernsey) Law, 1986. - Provides a framework for the supervision of persons carrying on insurance business in, or from within, Guernsey and Alderney.

With certain specified exceptions (including an important exemption for insurers authorised under the legislation of EEC member States) insurers will not be permitted to carry on business, or hold themselves out as carrying on business, in or from within the Islands without being registered by the States Advisory and Finance Committee. Local bodies will also be required to obtain the Committee's consent to carry on insurance business elsewhere. Special registration is required if an insurer is to carry on domestic business, as defined in the Projet. These restrictions will apply to all types of insurance business, including captive business, carried on in the Islands and an insurer who has a business address, advertises a point of contact, or issues an invitation will be deemed to be holding himself out as carrying on such business here.

The Committee will be debarred from registering an insurer if it is of the opinion that registration would not be for the benefit of policyholders or in the best economic interests of the Islands or (subject to a calendar year's transitional exemption for existing insurers) if not satisfied that the insurer intends to carry on business here. Subject to certain safeguards, conditions may be imposed on or after registration.

Registered insurers will be required to have a minimum paid-up share capital, to maintain a margin of solvency calculated in accordance with specified rules and to ensure that of the assets required to maintain that margin a minimum specified percentage are approved assets within the meaning of the Projet. They will be obliged to disclose information to the Committee as to interested and connected persons, to co-operate with the Committee in the exercise of its powers under the Projet to obtain information and documents etc. and to appoint a general representative with specified responsibilities.

An annual return will have to be made to the Committee by each registered insurer; and each year accounts in the prescribed form will have to be prepared, audited in accordance with specified rules, submitted to the Committee and, in the case of domestic business, made available to policyholders. The States are also empowered, subject to certain safeguards to prohibit the effecting of specified descriptions of insurance contracts.

Insurers carrying on life or other long term business will be subject to special requirements relating, for example, to actuarial investigations and separation and transfers of long term assets and liabilities. The consent of the Committee (in connection with the obtaining of which a strict procedure is laid down) will be prerequisite to the transfer of long term business; the long term assets must be kept separate in any liquidation and a liquidator is enabled to carry on that business with a view to its being transferred.

Some of the detailed requirements may not be necessary or appropriate in the case of some categories of insurers and the Committee will have various powers of waiver in certain circumstances.

Persons, other than employees, exercising managerial or similar functions in relation to insurers will need to be authorised by the Committee to act as "insurance managers". Such a person will have to satisfy the Committee as to his knowledge and experience and may not be authorised if the Committee is of opinion that authorisation would not be in the best economic interests of the Islands. An insurance manager will be required to furnish the Committee from time to time with specified details of insurers for which he acts.

Provision is made for the compilation and public inspection of lists of registered insurers and authorised insurance managers and for the publication of certain particulars of those lists.

The registration of an insurer may be cancelled, or the authorisation of an insurance manager withdrawn, on various grounds set out in the Projet.

Before refusing, withdrawing, or imposing or varying a condition on, a registration or authorisation the Committee will be obliged to give notice to the person affected, to give written reasons if so requested and to have regard to his representations. A person who is still aggrieved will have a right of appeal to the Ordinary Court and the status quo is in general preserved pending the outcome of an appeal.

The Committee will be empowered to petition for the winding up of locally incorporated registered insurers which fail to satisfy their obligations or which are considered unable to pay their debts (having regard to the solvency requirements of the Projet); and also, in the case of inability to pay debts, for the winding up of locally incorporated bodies which apply for registration or which have been registered for the transitional period. Policyholders will have certain rights to petition for winding up; persons knowingly party to fraud may incur personal liability for the debts of an insurer in liquidation; and the Court may order a reduction in contracts in place of winding-up.

Advertisements relative to insurers which are neither registered nor exempt will be prohibited; invitations to contract with them will have to carry "health warnings"; and persons providing professional services for them will be required to give information to the Committee.

The States are empowered by Ordinance to exclude prospectively the liability of persons exercising functions under the Projet for things done or omitted in good faith.

The Projet will not derogate from the requirements of other legislation relative to insurers and neither is an insurance contract entered into when one party is in breach of a requirement of the Projet to be considered void or voidable for that reason alone. In addition, however, to the possibilities of de-registration, withdrawal of authorisation and a petition for winding-up, the Projet will create a number of criminal offences and impose criminal liability on directors and senior officers who connive at, or consent to, offences by incorporated bodies.

Approved by the States of Guernsey on 25.6.86 and by the States of Alderney on 9.7.86. Awaiting Royal Sanction.

## Investment business

8. Agreement: Agreement between Her Majesty's Government and the Republic of Panama for the Promotion and Protection of Investments (Cmnd. 9736) registered on 7.4.86.
9. Agreement: Agreement between Her Majesty's Government and Sri Lanka for the Promotion and Protection of Investments. Extended to Guernsey, with effect from 23.10.84.

## BASTARDY AND LEGITIMATION

### Maintenance for illegitimate children

10. Projet de Loi: The Illegitimacy (Amendment) (Guernsey) Law, 1986. - Extends classes of person who may apply for orders for payment of maintenance in respect of illegitimate children by enabling applications to be made by married women who were single at date of birth of child in question.

Approved by the States on 30.4.86. Awaiting Royal Sanction.

## CHILDREN AND YOUNG PERSONS

11. Order in Council: The Children and Young Persons (Amendment) (Guernsey) Law, 1985. See 2.GLJ.11.

Registered and in force 18.2.86. (No. XIV of 1985).

12. Projet de Loi: The Children and Young Persons (Control of Intoxicating Liquor) (Guernsey) Law, 1986. - Provides that a minor who consumes, attempts to consume or is found in possession of intoxicating liquor in a public place, and any person who supplies or attempts to supply any intoxicating liquor to a minor in a public place shall be guilty of an offence. There is an exception for religious worship purposes.

Approved by the States on 30.4.86. Awaiting Royal Sanction.

## CONSTITUTIONAL LAW

### Election Expenses

13. Ordinance: The Electoral Expenditure (Constables and Douzeniers) Ordinance, 1986. - Prescribes the maximum permissible amount of election expenses by a candidate in relation to an election for the office of Constable or Douzenier.

In force 25.6.86. (No. XIV of 1986).

14. Ordinance: The Electoral Expenditure (People's Deputies) Ordinance, 1986. - Repeals and re-enacts the Electoral Expenditure Ordinance, 1985 (No. III of 1985) as regards election expenditure by a candidate in relation to an election for the office of People's Deputy. See 1.GLJ.13. Effect is to make it clear that expense can be incurred on the day of the election as well as during the 28 days previous thereto.

In force 25.6.86. (No. XV of 1986).

Election of Procureurs and Overseers of the Poor:

See PUBLIC ASSISTANCE (paragraph 63).

COURTS

International co-operation

See PRACTICE AND PROCEDURE (paragraph 61).

Juvenile Court

15. States Resolution of 26.2.86 directing legislation to designate the Magistrate's Court when hearing a charge against a juvenile, as a Juvenile Court, to confer appropriate jurisdiction thereupon, to provide for the composition of the Juvenile Court and matters ancillary thereto.
16. Magistrate's Court

Rules: The Restriction of Vexatious Legal Proceedings Rules, 1986. - Made under the Restriction of Vexatious Legal Proceedings (Guernsey) Law, 1985 (No. VII of 1985). These provide for the manner in which applications under the Law are made to the Royal Court.

Made and in force on 4.2.86. (O.R.C. II of 1986).

Extradition

17. Spain: The Extradition Treaty between the United Kingdom and the Kingdom of Spain was registered in Guernsey on the 17.6.86. It provides for the reciprocal extradition of criminal offenders (excluding political offences) and applies to Guernsey (as well as the other Channel Islands).
18. U.S.A.: The Extradition Treaty concluded between the United Kingdom and the United States of America on the 8.6.72, which came into force on the 21.1.77, provides for the reciprocal extradition of offenders.

Applies to the Channel Islands - see U.K. S.I. 1976 No. 2144.

Registered in Guernsey 3.6.86.

CRIMINAL LAW

Jurisdiction

19. Order in Council: The Criminal Jurisdiction (Guernsey) Law, 1986. See 2.GLJ.21.

Registered and in force 6.5.86. (No. VIII of 1986).

Juvenile Court

See COURTS (paragraph 15).

Misuse of Drugs:

Case:

20. Appeal to Court of Appeal against sentence - Importation of cannabis - Imprisonment and substantial fine - Whether sentence excessive - Guernsey not the ultimate destination - Credit for plea of guilty - Whether defendant had assets to pay fine - Fine set aside

On 5.12.85 'A', a yachtsman, pleaded guilty on indictment before the Royal Court to four offences, the most serious of which was the improper importation into Guernsey of 500 kilograms of cannabis resin. For that offence he was sentenced to seven years' imprisonment and a fine of £10,000 with the alternative of one year's imprisonment, consecutive. He was granted leave to appeal against this sentence on the ground that it was excessive.

THE COURT OF APPEAL (Criminal Division) HELD:-

- (i) that the fact that a sentence of only two years had been imposed in a comparable case five years previously did not demand the reduction of the sentence presently under appeal. Two cases separated by five years could not be said to have established a sentencing policy from which there had been some sudden and inconsistent departure;
- (ii) that the fact that it was intended to import the drugs into a third country and that the call at Guernsey en route from Spain was, 'A' claimed, accidental, was no good reason for reducing the sentence imposed. It would be as well if it could be known very widely that offences of this kind were very seriously regarded in Guernsey and severely punished;  

(R. v. Otjen (1981) 3 Cr. App. R. (S) 186 applied)
- (iii) that there was no justification for reducing the sentence on the ground that 'A' had pleaded guilty. He pleaded guilty at a time when abundant material to support his prosecution was already in the hands of the authorities and, even after his admission, 'A' did not deal entirely frankly with the authorities;
- (iv) that when imposing the fine of £10,000 the Royal Court had no material to indicate that 'A' in fact had available to him either the proceeds of the crime or indeed any other means to pay the fine and it could therefore be said that the fine was an indirect addition of a further year to the sentence of imprisonment. When imposing a substantial fine with the alternative of an additional term of imprisonment in default of payment, in addition to a sentence of imprisonment, the normal practice was to discount the alternative term from the sentence of imprisonment so that the total sentence would not be excessive even if the defendant failed to pay the fine and had to serve the full term.

(R. v. Michel, Berry and Eade, 1985 Crim. L.R. 162 applied); and

ALLOWED the appeal to the extent that the fine of £10,000 with the alternative of one year's imprisonment, consecutive, was set aside.

[Law Officers of the Crown v. Rooke - Court of Appeal 7.1.86.]

## Summary Offences

21. States Resolution of 26.2.86. - Directing legislation to amend the Summary Offences (Bailiwick of Guernsey) Law, 1982 to provide for a breach of the peace to be constituted by threatening abusive or insulting "behaviour" as well as "words"; also to provide protection for postmen and other lawful visitors to premises from attack by ferocious animals and to provide in suitable cases for the animal to be either kept under control or destroyed.

## CUSTOMS

### International Convention

22. The International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (done at Nairobi on 9.6.77) provides for international co-operation between customs agencies in, inter alia, drug smuggling cases - the U.K. has acceded to the Convention and has accepted Annex X thereof which relates to "assistance in action against the smuggling of narcotic drugs and psychotropic substances".

Request made to be included in the U.K. Acceptance of the Convention limited to Annex X. Registered 20.1.86.

### Open General Import Licence

23. Statutory Instrument: Amendment No. 3 to the Open General Import Licence of 1984. Updates the licence in certain areas in line with current U.K. Governmental Policy.

In force 26.2.86. (S.I. No. 8 of 1986).

24. Statutory Instrument: Amendment No. 4 to the Open General Import Licence of 1984. - Prohibits import of gold coins originating in, and consigned from, Republic of South Africa.

In force 24.5.86. (S.I. 15 of 1986).

25. Statutory Instrument: Amendment No. 5 to the Open General Import Licence of 1984. Updates the licence to certain areas in line with current U.K. Governmental policy.

In force 25.6.86. (S.I. No. 18 of 1986).

## ECCLESIASTICAL LAW

### Transfer of property and patronage

26. Projet de Loi: The Saint Stephen's Church and School Law, 1986. - See TRUSTS, paragraph 80.

### Variation of trusts

27. Projet de Loi: The Saint Sampson's Church Institute (Variation of Trusts) (Guernsey) Law, 1986. - See TRUSTS, paragraph 75.

Projet de Loi: The Saint Stephen's Church and School Law, 1986. - See TRUSTS, paragraph 80.

## ELECTRICITY

### Power of forcible entry

28. Projet de Loi: The Electricity (Amendment) (No. 2) (Guernsey) Law, 1986. - Enables States Electricity Board, if any sum due to it has been outstanding for at least a month, to apply to Magistrate's Court for an order authorising it to enter premises by force to disconnect electricity supply to them. Attempts to enter the premises by other means must have been made. Increases fines for obstruction.

Approved by States 26.3.86. Awaiting Royal Sanction.

### Standing charges

29. Order in Council: The Electricity (Amendment) (Guernsey) Law, 1986. - See 2.GLJ.25.

Registered on 4.3.86. (No. I of 1986).

## EMPLOYMENT

### Arbitration

30. Projet de Loi: The Industrial Disputes and Conditions of Employment (Amendment) (Guernsey) Law, 1986. - Provides that the provisions of Part I of the Arbitration (Guernsey) Law, 1982, shall not apply to arbitration voluntarily submitted to by the parties to an industrial dispute under Article 3(c)(i) of the Industrial Disputes and Conditions of Employment Law, (1947), as amended.

Approved by the States on 27.2.86. Awaiting Royal Sanction.

## EUROPEAN COMMUNITIES

### Single European Act

31. Projet de Loi: The European Communities (Amendment) (Bailiwick of Guernsey) Law, 1986. - Further amends 1973 Law to take account of Single European Act signed in Luxembourg and the Hague in February 1986. The Act substantially amends original Treaties and empowers European Court of Justice to appoint national courts to hear cases at first instance.

Approved by States on 28.5.86. To be brought into force on date of ratification of Act by United Kingdom.

## FISHING

32. Ordinance: The Fishing (Amendment) Ordinance, 1986. - Repeals and re-enacts section 11B of the Fishing Ordinance, 1969, as amended in 1974, regarding the restrictions on the landing, sale, etc., of lobster tails and crab claws.

In force 30.4.86. (No. XII of 1986).

## HARBOURS AND MOORINGS

### Fees, dues and charges

33. Ordinance: The Mooring Charges (Amendment) (Guernsey) Ordinance, 1986. - Increase the charges payable for moorings in the harbours of St. Peter Port and St. Sampson.

In force 1.4.86. (No. VII of 1986).

34. States Resolution of 28.5.86. - Directing preparation of legislation to enable harbour dues, harbour facilities charges and mooring charges to be set by resolutions of the States rather than by Ordinance.

(Billet d'Etat X of 1986, p.524).

## HEALTH AND MEDICINE

### 35. Penalties

Projet de Loi: The Public Health and Related Offences (Increase in Fines) (Guernsey) Law, 1986. - Increases the maximum fine which may be imposed upon conviction of an offence under a number of Laws concerning public health and related matters.

Approved by the States on 30.4.86. Awaiting Royal Sanction.

36. Ordinance: The Public Health and Related Offences (Increase in Fines) Ordinance, 1986. - Increases the maximum fine which may be imposed upon conviction of an offence under a number of Ordinances concerning public health and related matters.

In force 30.4.86. (No. X of 1986).

### Reciprocal health care

37. Agreement: Between Her Majesty's Government and the Government of Australia entitling Bailiwick residents visiting Australia to certain medical treatment on terms no less favourable than those for Australian residents, and vice versa.

In force 1.7.86.

## HORTICULTURE

### Plant Health

38. Ordinance: The Elms and Dutch Elm Disease (Temporary Provisions) (Extension) Ordinance, 1986. - Extends controls over the felling and lopping of elms for a further five years from 1.5.86.

In force 30.4.86. (No. XIII of 1986).

## Tomato Marketing

39. Order in Council: The Tomato Marketing (Removal of Compulsion) (Guernsey) Law, 1986. - (See 2.GLJ.37).

In force 8.4.86. (No. II of 1986).

## HOUSING

### Control of occupation

40. Ordinance: The Housing (Control of Occupation) (Addition of Dwellings and Annexes) Ordinance, 1986. - Adds to the lists of dwellings in Schedules 1 and 2 to the Housing (Control of Occupation) (Guernsey) Law, 1982 five private dwellings, one hotel and three hotel annexes; the hotel annexes are to be inscribed in the housing register, if application is duly made as part of the inscription relating to their hotels for so long as they are used for the specified purposes.

In force 25.6.86. (No. XVI of 1986).

### Liability of Housing Authority for damages in negligence:

See NEGLIGENCE (paragraph 49).

## HUMAN RIGHTS

### Data Protection

41. States Resolution of 28.5.86. - Directing the preparation of legislation to regulate the holding of personal data and the operation of computer bureaux.

(Billet d'Etat XI of 1986, p. 516).

## INCOME TAX

42. Regulations: The Income Tax (Guernsey) (Retirement Annuity Schemes and Retirement Annuity Trust Schemes) Regulations, 1986. - Increase the limits of contributions that may be made to such schemes.

Approved by States 26.3.86. In force 1.1.86. (S.I. No. 7 of 1986).

## INDIRECT TAXATION

43. Ordinance: The Impôts (Budget) Ordinance, 1986. - Implements the budget proposals. See 2.GLJ.39. Approved by the States on 29.1.86.

In force 1.2.86. (No. V of 1986).

## ISLAND DEVELOPMENT

### Appeals

#### Case:

#### 44. Island Development Law - Appeal from Committee decision - Extent to which Committee is bound by Detailed Development Plan

'A' applied to the Island Development Committee for a preliminary declaration for residential development on premises belonging to 'A'. This application was refused by the Committee for the following reasons which the Committee was bound to take into account under section 17 of the Island Development (Guernsey) Law, 1966:-

- (a) Detailed Development Plan No. 4 as approved by the States; and
- (b) the extent to which the development would detract from the amenity of the locality concerned.

'A' appealed from the decision to the Royal Court sitting as a Full Court on the ground, inter alia, that the zoning of 'A's premises by virtue of Detailed Development Plan No. 4 did not prevent the grant by the Committee of the permission requested. (The Plan showed the premises as being in a "White Area" reserved for agricultural purposes.) This issue was considered as a preliminary point of law by the Bailiff sitting alone.

Counsel for 'A' submitted that the right of appeal provided by section 26 of the Law on the grounds that a decision was ultra vires or an unreasonable exercise of the powers of the Committee, gave the Court a wide discretionary power and that, albeit the Committee was mandated under section 17(a) of the Law to consider a Detailed Development Plan, as there was a right of appeal the Court had a residual discretion to overrule the Committee's decision.

THE BAILIFF DISMISSED the appeal and made no order as to costs, having ruled:-

- (i) that section 7 of the Law provided that 'Detailed Development Plans shall have effect for a period of five years commencing on the day on which each Plan is approved by the States'. The Law further provided for Planning Inquiries to be held prior to the consideration by the States of a proposed Detailed Development Plan with a right for individual members of the public to make representations at such Inquiries;
- (ii) that when a Detailed Development Plan had been approved by the States, under section 17(a) of the Law "the Committee shall take into account" such Plan. If the Plan showed, as it did in this particular case, that Non-Conforming Uses such as dwellings will be prohibited, then the Committee was bound by the Plan;
- (iii) that the only remedy was under section 18(a) and (b) of the Law (under which the Committee was empowered to permit development involving a minor departure from a Detailed Development Plan) though whether, in the event of the Committee refusing, when requested, to take any action there was a right of appeal against such a refusal, was not for the Court to decide at this juncture.

[Le Noury v. Island Development Committee - Requête 13.1.86.]

## Detailed Development Plans

### 45. Detailed Development Plan No. 2.

Review No. 1. Approved by the States 26.2.86.

## MILK

### 46. Order in Council: - The Sale of Milk by Imperial Measure Law of 1919 (Repeal) (Guernsey) Law, 1985. See 2.GLJ.41.

Registered and in force 7.4.1986. (No. IV of 1986).

### 47. Statutory Instrument: - The Milk (Retail Prices) (Guernsey) Order, 1986. Increases retail price of milk to 27p per pint, 47p per litre and 26p per half litre.

In force 1.7.86. (S.I. No. 17 of 1986).

### 48. Statutory Instrument: - The Milk (Wholesale Prices) (Guernsey) Order, 1986.

In force 1.7.86. (S.I. No. 16 of 1986).

## NEGLIGENCE

### Case:

### 49. Negligence - Action for damages alleging breach of duty of care by a public authority in the exercise of statutory powers to grant a licence - Circumstances in which such an action will lie

'P', who was not a qualified resident within the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1982, applied to the States Housing Authority ("the Authority") for a licence to occupy a dwelling. In July, 1983 'P' was granted a licence which he considered wholly inadequate. In October 1984 'P' instituted an appeal against the Authority's decision on the ground that it was an unreasonable exercise of its powers, pursuant to section 40 of the Law. By letter dated 25.1.85 the Authority informed 'P' that it was prepared in principle to grant him a licence, the only condition being that the dwelling must have a rateable value of £45 or more. On 28.1.85 'P's appeal was determined by the Royal Court sitting as a Full Court, which made no order in respect thereof but awarded costs in favour of 'P'.

'P' actioned the Authority alleging that it had acted in breach of the duty of care imposed upon it by the Law to use its power reasonably when considering an application for a housing licence, not to attach unreasonable and onerous conditions, and to act consistently to all applicants. 'P' claimed damages in the sum of £131,640.

The Authority pleaded the following Exception de Fonds:-

- (i) that the cause disclosed no cause of action, in that no duty of care, whether arising under the Law of 1982 or otherwise, was owed to 'P' by the Authority; and

- (ii) that the allegations contained in the cause, which were not admitted, if established would give rise in law to no remedy in damages against the Authority.

This Exception was considered as a preliminary point of law.

THE FOLLOWING AUTHORITIES were referred to in the judgment:-

Cherub Investments Ltd. v. The Channel Islands Aero Club (Guernsey) Limited - Court of Appeal 13.1.82.

Firth v. States of Guernsey - Court of Appeal 14.5.81.

Le Noury v. States of Guernsey 1983 Plaids de Meubles 1069.

Roberts v. Hopwood (1925) A.C. 578.

Donaghue v. Stevenson (1932) A.C. 562.

Anns v. London Borough of Merton (1978) A.C. 729.

Wade on Administrative Law, 5th Edition pp. 655-673.

Dunlop v. Woollahra Municipal Council (1982) A.C. 158.

Bourgoin v. Ministry of Agriculture (1983) 3 W.L.R. 585.

Cutler v. Wandsworth Stadium Ltd. (1949) A.C. 398.

Dorset Yacht Co. v. Home Office (1970) A.C. 1004.

Halsbury's Laws of England, 4th Edition, Vol. 1, para. 62.

THE BAILIFF, sitting alone on 25.4.86,

- (i) REJECTED the submission by counsel for 'P' that because there was no provision in the Housing Law similar to section 28 of the Island Development (Guernsey) Law, 1966 (which exempted the States from liability for their decisions under that Law) then prima facie an action would lie. Because a section appeared in one law its omission in another law did not of itself lead to a different interpretation in the other law. Further, the Island Development Law sought to control the use and enjoyment of land already owned by a person; the relevant sections of the Housing Law did not impose any restrictions on acquired rights.
- (ii) DISTINGUISHED Firth v. States of Guernsey and Le Noury v. States of Guernsey;
- (iii) HELD that where an Act created an obligation and enforced the performance in a specific manner, it can be taken to be a general rule that the performance cannot be enforced in any other manner. In relation to the Housing Law, the performance of the duties of the Authority were enforceable by appeal under section 40 and section 40 alone (the rule in Cutler v. Wandsworth Stadium);

- (iv) HELD that to found an action as alleged there must be malice, negligence, abuse of power or breach of statutory duty, none of which were present in the instant case; and

UPHELD the Exception and AWARDED COSTS to the Authority.

[Kirk v. States Housing Authority 1986 Plaids de Meubles 976.]

Case:

50. Negligence - Action against States Water Board - Strict liability under statute - Indemnity claimed against contractor

Two Plaintiffs ('PP') suffered damage as a result of a burst of water from a water main installed in neighbouring premises by the States Water Board ("the Board"). Each Plaintiff brought an action against the Board alleging, inter alia,

- (i) negligence by the servants and/or agents and/or contractors employed by the Board in the laying of the pipes; and
- (ii) that the Board was responsible for the natural consequences of the escape of water from the main onto adjoining premises.

The actions were heard together by the Royal Court sitting as an Ordinary Court. The quantum of damages and many of the facts were agreed. The Board denied liability, pleaded prescription by way of Exception de Fonds and joined the contractor responsible for laying the pipe as Third Party, seeking full indemnification in respect of the claims by 'PP'.

THE FOLLOWING AUTHORITIES were referred to by the DEPUTY BAILLIFF in his directions:-

Rylands v. Fletcher (1868) L.R. 3 H.L. 330.

Clerk and Lindsell on Torts 15th Edition para. 24-23.

THE DEPUTY BAILLIFF DIRECTED THE JURATS as follows:-

- (i) that it was agreed that the damage occurred in 1984 and in the light of that uncontested evidence prescription as a defence must fail;
- (ii) that there was strict liability upon the Board for the work that they undertook. Article 6 of the "Loi ayant rapport à la Fourniture d'Eau par les Etats de cette Ile aux habitants de la dite Ile, 1935", empowered the Board to carry out works in the roads and further provided for the Board to "do all other acts which the Board shall from time to time deem necessary for supplying water to the inhabitants of the Island, doing as little damage as can be in the execution of the powers herein granted, and making compensation for any damage which may be done in the execution of such powers". This made the Board liable for damage done to others, whether that damage occurred through negligence or otherwise;
- (iii) to find that the Board was liable for the consequences of the escape of water from the mains;

(iv) that the questions remaining to be considered by the Jurats were:-

- (a) (not withstanding the direction in (iii) above) was the job done in laying the pipe, in the light of knowledge at the time, to a proper standard as one might reasonably expect of a public undertaking in Guernsey, namely the Board; and
- (b) supposing that the answer to (a) was 'yes', to what extent, if at all, should the Third Party indemnify the Board?

THE COURT:-

- (i) FOUND the Board had been negligent;
- (ii) AWARDED JUDGMENT in favour of 'PP' in the sums claimed, £1,878 and £8,077 respectively, with costs; and
- (iii) ORDERED that the said sums and costs be payable as to two-thirds by the Board and as to one-third by the Third Party.

[Boyer v. (i) States Water Board  
(ii) William Press & Son Ltd.

Kings Mills Hotel Ltd. v. (i) States Water Board  
(ii) William Press & Son Ltd.  
1986 Plaids de Meubles 1214.]

#### PAROCHIAL MATTERS

##### 51. Election Expenses

See CONSTITUTIONAL LAW, paragraph 13.

##### 52. Elections of Procureurs and Overseers of the Poor

See PUBLIC ASSISTANCE, paragraph 63.

#### POLICE

53. Projet de Loi: The Police Force (Guernsey) Law, 1986 [see 2.GLJ.44]. - Provides for the obtaining of assistance from outside police forces in an emergency, also provides for the duties and powers of police officers of other forces, and enables them to operate in the Island without having to be sworn in before the Royal Court.

Approved by the States on 26.3.86. Awaiting Royal Sanction.

#### POST OFFICE

54. Order: The Post Office (Inland Post) (Amendment) Order, 1986. - Increases the Bailiwick postal rate on letters and parcels and the rate on newspapers and miscellaneous services, also introduces a new category of postal packet

namely "flower boxes" and provides the appropriate rate of postage therefor.

In force 1.4.86. (S.I. 1986 No. 10).

55. Order: The Post Office (Overseas Letter Post) (Amendment) Order, 1986. - Increases the compensation payable for overseas letters.

In force 1.4.86. (S.I. 1986 No. 12)

56. Order: The Post Office (Overseas Parcel Post) (Amendment) Order, 1986. - Increases the postage rate on overseas parcels and the compensation payable in the case of insured parcels.

In force 1.4.86. (S.I. 1986 No. 11).

57. Order: The Post Office (Postal Order) (Amendment) Order, 1986. - Increases the poundage payable on postal orders.

In force 12.5.86. (S.I. 1986 No. 13).

### PRACTICE AND PROCEDURE

#### Arrêt de biens

##### Case:

58. Order for disclosure by bank - Application to set aside - No assets which can be arrested within the jurisdiction - Manner of notification of arrest

On 5.2.86 the Bailiff granted to the Arab Monetary Fund ('R') permission to arrest assets of Jawad Hashim ('D') in Guernsey to secure payment of the sum of 22 million U.S. dollars in respect of which sum it was intended to seek judgment against 'D' in England and subsequently to seek enforcement of such judgment in Guernsey, or in the alternative to issue proceedings in Guernsey against First National Bank of Chicago (C.I.) Limited ('A') holders of the said sum, seeking recovery of the same. The arrest order further provided, inter alia, for 'A' to disclose to H.M. Sheriff for the information of 'R', following service by H.M. Sheriff of the arrest order upon 'A', particulars of all and any monies and assets held or having been held within the previous five years by any person, firm or company in Guernsey or elsewhere on behalf of or for the benefit of 'D', whether in his name or in the name of First Chicago Trust Company Cayman Limited or otherwise.

'A' applied to the Bailiff for the arrest to be lifted on the ground that neither Defendant was resident in Guernsey nor were there assets in Guernsey the arrest of which could be confirmed in subsequent proceedings. In the alternative, 'A' applied for the order to be varied to provide for formal notice to be served upon 'D' to give him an opportunity to apply to the Court for the order to be set aside, to postpone disclosure to H.M. Sheriff to enable 'A' to apply to the Court in the Cayman Islands for directions pursuant to section 3(a) of the Confidential Relationships (Preservation) Law, 1976 and to provide for reimbursement by 'R' to 'A' on a full indemnity basis of all reasonable costs incurred in complying with the order.

THE COURT was referred to:-

Bank of Bermuda (Guernsey) Limited v. P.C.W. Underwriting Agencies Limited 1983 Plaids de Meubles 131.

Third Chandris Shipping Corporation et al. v. Unimarine SA [1979] 2 All Eng. 976.

THE BAILLIFF, sitting alone, on 6.3.86, HELD:-

- (i) that a Third Party, such as 'A', which had been served with an arrest order could on showing good cause apply to the Court for such an arrest order to be lifted;
- (ii) that a total lack of assets within the jurisdiction was good cause;
- (iii) in this case, there being no assets within the jurisdiction, the arrest order must be set aside;
- (iv) when the arrest order is set aside, any ancillary orders fail;
- (v) that, as a general rule, when any application is made for an arrêt de biens, the arresting creditor should state for approval by the Court the manner in which he proposes to inform the proposed defendant of the arrest; and

SET ASIDE the arrest order made on 5.2.86, together with the ancillary orders attached to it, and awarded costs in favour of 'A'.

[First National Bank of Chicago (C.I.) Limited v. Arab Monetary Fund 1986 Plaids de Meubles 728.]

#### Commission Rogatoire

Case:

#### 59. Disclosure by bank - Action by witness to set aside - Balancing of right of privacy as against public interest - Fishing for evidence

On the application of the Securities and Exchange Commission of the United States ('S.E.C.') on 27.9.85, the Royal Court sitting as an Ordinary Court granted a Letter of Request issued by a Judge of the U.S. District Court, Southern District of New York, for the taking of evidence from the Managing Director of Rea Brothers (Guernsey) Limited ("the Witness") in relation to proceedings before the U.S. Court in which 'S.E.C.' were seeking an order for "disgorgement of ill-gotten profits" against Giuseppe B. Tome et al., alleging 'insider dealing' in securities. The application was brought pursuant to the Evidence (Proceedings in other Jurisdictions) Act 1975, registered in Guernsey on 30.11.82.

The Witness applied to have the order, made on the 27.9.85, set aside on the ground, inter alia, that the evidence sought to be adduced in Guernsey was of a 'fishing' nature in that it was evidence which the S.E.C. wished to have to see whether there was just cause to proceed against the said Defendants, not to prove a prima facie case which was already before the Court in New York.

THE COURT was referred to:-

In re S.E.C. v. Certain Unknown Purchasers of the Common Stock of Sante Fe International Corporation 23.2.1984 Q.B. Transcript.

In re Asbestos Insurance Coverage Cases [1985] 1 All Eng. 716.

In re Westinghouse Electric Corporation [1978] A.C.547.

In re State of Norway's Application 12.2.1986 Q.B. Transcript.

THE DEPUTY BAILIFF, sitting in Chambers on 11.3.86, HELD:-

- (i) that under Guernsey law, except to the extent of the Bankers' Books Evidence (Guernsey) Law, 1954, banks had exactly the same rights and duties as every other person except that they had a contractual duty of privacy to their customers;
- (ii) that rights of privacy were contained in the Convention for the Protection of Human Rights and Fundamental Freedoms made at Rome in 1950, in particular in Article 8, but they already existed by virtue of common law;
- (iii) that the Court had to balance the right of privacy against the public interest;
- (iv) that the 'S.E.C.' was seeking the disclosure of a whole range of documents far exceeding those necessary for the prosecution of a civil action against the present Defendants;
- (v) that an Order so drafted that only matters relating to the present Defendants and their interest in insider dealings would be revealed, would be impractical or impossible to observe;
- (vi) that the real purpose of the application by 'S.E.C.' was to fish for evidence; and

GRANTED the application by the Witness, SET ASIDE the Order made on 27.9.85 and AWARDED costs in favour of the Witness.

[Rea Brothers (Guernsey) Limited v. S.E.C. 1986 Plaids de Meubles 811.]

[S.E.C. appealed to the Court of Appeal; on 1.7.86 their applications for an adjournment or alternatively for leave to withdraw the appeal were refused and the appeal was dismissed, with costs.]

### Costs

#### Case:

60. Recoverable costs - Payment of sum claimed on receipt of summons by defendant or withdrawal by plaintiff before the cause is tabled - Right of the other party to apply for costs - Court to consider each application on its merits - Quantum to be determined pursuant to the Royal Court (Costs and Fees) Rules, 1981

In a chambers reference for directions on an application for release of security for costs lodged with Her Majesty's Greffier, the Deputy Bailiff

expressed the view that costs become an issue which can become the subject of a court application as soon as process is served upon a defendant. It may be open therefore for a party to apply to court for costs where the defendant has paid the amount claimed on receipt of a summons, or where a plaintiff has withdrawn before tabling his cause. The Court will then deal with the application on its merits after determining the facts; if an order is made the Costs and Fees Rules will then determine the quantum. The merits of an application will not be affected by a provision in an ex-parte arrest order for security for costs.

[Ashtiani & Kashi v. Kashi - Arrêt de Biens 9.9.86.]

#### 61. International co-operation

Convention: Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, concluded on 18.3.70, (Cmnd. 6727). - Provides for the issue and execution of letters of request between contracting States to obtain evidence or perform other judicial acts; makes provision as to the taking of evidence by diplomatic officers, consular agents and commissioners.

Extended to Guernsey by notification to the depository government. The notification

- (i) designates as competent authorities the Bailiff, Deputy Bailiff and Jurats of the Royal Court, the Chairman and of the Court of the Seneschal (or Deputy) of the Court of the Seneschal of Sark; and
- (ii) declares that Guernsey will not execute letters of request issued for the purpose of obtaining pre-trial discovery of documents.

In force 18.1.86.

#### 62. Judgments (Interest)

Order in Council: The Judgments (Interest) (Bailiwick of Guernsey) Law, 1985. - See 2.GLJ.49.

Registered on 18.2.86. In force 2 months after registration. (No. XVII of 1985).

Ordinance: The Judgments (Interest) (Repeal) Ordinance, 1986. - Repeals with savings for existing judgment debts, the Judgments (Interest) Ordinance, 1978, now suspended by the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985.

In force 17.4.86. (No. XI of 1986).

#### Vexatious litigants

See COURTS (paragraph 16).

## PUBLIC ASSISTANCE

63. Projet de Loi: The Public Assistance (Amendment) (Guernsey) Law, 1986. - Amends Article XVII(6) of the Public Assistance Law, 1937, as amended in 1963, by providing that notwithstanding any enactment or rule to the contrary, the provisions of Part V of the Reform (Guernsey) Law, 1948, shall apply, so far as the same is applicable, to elections to the offices of Procureur of the Poor and Overseer of the Poor in any Parish as the same apply to elections to the offices of Constables and Douzeniers. Approved by the States on 29.1.86.

Awaiting Royal Sanction.

## PUBLIC TRANSPORT

64. Ordinance: The Public Transport (Guernsey) Law, 1984 (Commencement) Ordinance, 1986. - Provides that the Public Transport (Guernsey) Law, 1984, shall come into force on 30.1.86. (No. II of 1986).

65. Ordinance: The Public Transport Ordinance, 1986. - Implements the Public Transport (Guernsey) Law, 1984, as regards public service vehicle licences and road service licences.

In force 30.1.86. (No. III of 1986).

66. Ordinance: The Road Traffic (Permits to Drive Public Service Vehicles) Ordinance, 1986. - Implements to the Public Transport (Guernsey) Law, 1984, as regards permits to drive public service vehicles.

In force 30.1.86. (No. IV of 1986).

## REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS

### Census

67. Ordinance: The Census Ordinance, 1985. - Provides for the taking of a census with regard to the population of the Islands of Guernsey, Herm and Jethou on the 23.3.86.

In force 27.11.85. (No. I of 1985).

### RENT CONTROL

68. Statutory Instrument: Rent Control (Variation) Order, 1986. - Increases variable items in recoverable rents of controlled dwellings by 6.5%.

In force 1.7.86. (S.I. No. 14 of 1986).

## ROAD TRAFFIC

### Construction and use

69. Ordinance: The Vehicle Noise, etc. Ordinance, 1986. - Makes it an offence to use a motor vehicle on a public highway in such a manner as to cause

avoidable excessive noise as well as to use a motor vehicle (or to cause or permit its use on a public highway in such circumstances as to cause excessive noise). To the latter charge there are statutory defences where the noise is unavoidable and caused by temporary or accidental circumstances or (in the case of causing or permitting use) by design, construction or maintenance defects. The Ordinance does not apply to duly authorised races or speed trials.

In force 29.1.86. (No. VI of 1986).

#### Driving under the influence of drink or drugs

70. Projet de Loi: The Road Traffic (Driving under the Influence of Drink or Drugs) (Guernsey) Law, 1986. - See 2.GLJ.65. - Provides for offences of driving or being in charge of a motor vehicle when under the influence of drink or drugs: driving or being in charge of a motor vehicle with a blood-alcohol concentration above the prescribed limit, which is 80 mg. of alcohol in 100 ml. of blood, or 107 mg. of alcohol in 100 ml of urine; also for the provision of specimens for analysis, with protection for hospital patients and for ancillary matters. There are also offences of cycling when under the influence of drink or drugs and being drunk in charge on a road of any carriage or livestock.

Approved by the States 26.2.86. Awaiting Royal Sanction.

#### Penalties

71. Ordinance: The Road Traffic and Highways Offences (Increase in Fines) Ordinance, 1986. - Increases the maximum fine which may be imposed upon conviction of an offence under a number of Ordinances relating to road traffic and highways.

In force 1.4.86. (No. IX of 1986).

#### Prohibited and one-way streets

72. Ordinance: The Prohibited and One-Way Streets (Amendment) Ordinance, 1986. - Replaces the weight restriction on the one-way portion of Havelet by a width restriction of 6 feet 6 inches and effects minor adjustments in the width restrictions on Rocque-ès-Cas Lane, Vale and Contrée Mansell, St. Peter Port.

In force 25.6.86. (No. XVII of 1986).

### SHIPPING

#### Passenger boats

73. Statutory Instrument: The Boats (Guernsey) Regulations, 1986, made by the Board of Administration, provide that for a period of 6 months from 1.4.86 boats which ply for hire from Guernsey require to be licensed and need to conform to certain safety standards.

In force 1.4.86. (S.I. No. 6 of 1986).

## Pilotage

74. States Resolution of 28.5.86. - Directing preparation of legislation to enable pilotage dues, fees and charges to be set by resolution of the States rather than by Ordinance.

(Billet d'Etat XI of 1986, p. 524).

## Wreck and Salvage

75. Projet de Loi: The Wreck and Salvage (Vessels and Aircraft) (Bailiwick of Guernsey) Law, 1986. Creates office of Receiver of Wreck and consolidates law as to wreck and salvage on similar lines to Part IX of Merchant Shipping Act, 1894. Part 1 (Vessels in Distress) specifies Receiver's powers and duties in cases of shipwreck in territorial waters. Part 2 (Wreck) seeks to protect shipwrecks in territorial waters. Lays down rules to be observed by persons finding wreck. Receiver is to take charge of wreck and attempt to trace owner. Wreck unclaimed for a year to be sold, proceeds passing to Crown. Low value wreck can be sold at once; proceeds must be claimed within a year. Receiver can remove wreck obstructing local waters; and prohibited areas can be designated around dangerous wreck. Part 3 (Historic Wreck) vests ownership of vessels wrecked in territorial waters before 1946 in the States. Sites of historic wreck can be protected. Licences to carry out exploratory and salvage operations to be granted by Ancient Monuments Committee. Part 4 (Salvage) empowers Royal Court to settle salvage disputes. Law applies to wrecks of aircraft.

Approved by States of Guernsey 30.4.86. States of Alderney 9.7.86.  
Awaiting approval of Chief Pleas of Sark.

## SOCIAL SECURITY

### General

76. States Resolution of 25.6.86. - Directing preparation of legislation for increased rates of contributions and benefits under the Family Allowances (Guernsey) Law, 1950, the Supplementary Benefit (Guernsey) Law, 1971, the Social Insurance (Guernsey) Law, 1978 and the Attendance and Invalid Care Allowances (Guernsey) Law, 1984.

### Attendance and Invalid Care Allowances

77. Regulations: The Invalid Care Allowance (Guernsey) Regulations, 1986. - Provides conditions of entitlement to an invalid care allowance and for claims, payment and appeals.

In force 6.1.86. (S.I. No. 2 of 1986).

## STATES EMPLOYEES

### Appointments

78. Order in Council: The Appointments to the Established Staff (Guernsey) Law, 1985. See 1.GLJ.59.

Registered and in force 18.2.86. (No. XVI of 1985).

## TRUSTS

### Variation of charitable trusts

79. Projet de Loi: The Saint Sampson's Church Institute (Variation of Trusts) (Guernsey) Law, 1986. - Permits monies held by the trustees of St. Sampson's Church Institute under trusts created by a conveyance in 1890 to be applied towards the maintenance, repair or improvement of any Anglican Church property in Sampson's used for the benefit of young people.

Approved by States on 30.4.86. Awaiting Royal Sanction.

80. Projet de Loi: The Saint Stephen's Church and School Law, 1986. - Transfers to the Vicar and Churchwardens of St. Stephen's Church, on specified trusts, the Church and St. Stephen's School; and transfers the right of patronage in respect of the Church to the Dean of Guernsey.

Approved by States on 28.5.86. Awaiting Royal Sanction.

## WATER

### Increase in charges

81. Ordinance: The Water Charges (Amendment) Ordinance, 1985. - See 2.GLJ.88.

In force 1.1.86. (No. XLI of 1985).

### Liability for Negligence and Branch of Statutory Duty

See NEGLIGENCE (paragraph 50).

## WILLS

### Case:

82. Will of Realty - Application to set aside - Testamentary capacity

On 21.10.82 Alfred Basil Chick, then aged 84 years, ("the Testator") executed a Will of Realty whereby the whole of his real property was devised to his elder daughter, Molly Elaine Trump (née Chick). The Testator died on 29.10.84. Raymond Alfred Chick and June Ann Hayes (née Chick), only son and younger daughter of the Testator ('PP') brought an action against Mrs. Trump ('D') before the Royal Court sitting as an Ordinary Court for a declaration that the said Will was null and void and of no effect, the Testator not being of sound disposing mind, owing to senile dementia, when the said Will was executed.

A video film of the Testator, taken in August 1983, was produced in evidence on behalf of 'D', and the medical and other witnesses produced by both parties were given an opportunity to comment on it.

THE DEPUTY BAILIFF HAVING DIRECTED THE JURATS as follows:-

- (i) that the burden of proof in civil matters normally lay upon he who alleges, but if the Jurats were satisfied that a serious challenge had been mounted to the capacity of the Testator the burden was upon 'D' to affirmatively prove his capacity, upon the balance of probabilities;
- (ii) the test as to 'sound disposing mind' to be applied by the Jurats was as set out in Halsbury's Laws of England, 4th Edition 1976, Vol. 17 paras. 895-904;

THE COURT DISMISSED the action, with costs.

[Chick and Hayes v. Trump 1986 Plaids de Meubles 944.]

ALDERNEY

ARBITRATION

83. Projet de Loi: The Arbitration (Amendment) (Alderney) Law, 1986. - See 2.GLJ.89.

Registered and in force 6.5.86. (No. VI of 1986).

HARBOURS AND MOORINGS

Fees, dues and charges

84. Ordinance: The Mooring Charges (Amendment) (Alderney) Ordinance, 1986. - Increases the charges payable for moorings in Alderney harbours.

In force 4.6.86.

LAND AND PROPERTY

Compulsory purchase

85. Order in Council: The Compulsory Purchase (Alderney) Law, 1986. - A petition against the Projet de Loi (see 2.GLJ.91) has been rejected and the new system of compulsory purchase is now in force in Alderney.

Under the Law the States of Alderney may not resolve that it would be in the public interest to acquire land, or an existing or new interest in land, without first giving 28 days' notice to the person concerned and considering in full public session any objections which that person raises. If, after following this procedure, the States pass such a resolution they may require the person concerned ("the vendor") to state, within 28 days, a price at which he will sell and upon such a requirement being made it must be noted in the Land Register and no valid disposition may then be made pending the outcome of the compulsory purchase procedure. The States must then obtain a valuation and may accept the vendor's stated price if that is lower or offer the valuation price if it is not; if, in the latter case, the States' offer is not accepted the matter must be referred to arbitration (as to the conduct and costs of which provision is made by the Law) and the States must thereafter decide whether or not to accept the arbitrator's award.

If the States do not agree or offer to make the purchase after obtaining a valuation or do not accept an arbitration award then -

- (i) compensation (determined by arbitration in default of agreement) is payable to the person concerned; and
- (ii) the procedure cannot be initiated again in relation to the relevant land or interest within three years.

The Law makes provision as to service of notices, confers powers of entry and inspection (subject to the payment of compensation for damage) and creates an offence of obstruction.

In force 6.6.86. (No. V of 1986).

## RATING

86. Projet de Loi: The Alderney (Applications of Legislation) (Amendment) Law, 1986. - Enables the occupier's rate in Alderney to be fixed with effect from 1987 by an Ordinance of the States of Alderney made before the end of the year preceding that in which the rate is to be levied; this will replace the present system under which the rate is calculated by reference to the average previous year's rate levied in the country parishes of Guernsey. Approved by States on 28.1.86. Awaiting Royal Sanction.

## REGISTRATION OF BIRTHS, MARRIAGES AND DEATHS

### Census

87. Ordinance: The Census (Alderney) Ordinance, 1986. - Provides for the taking of census with regard to the population of the Island of Alderney on the 23.3.1986.

In force 5.3.86.

### ROAD TRAFFIC

#### Fixed penalties

88. Ordinance: The Traffic Offences (Fixed Penalties) (Amendment) (Alderney) Ordinance, 1986. - Increases the fixed penalty from £3 to £5 and makes contraventions of the disc parking and taxi rank regulations susceptible to the fixed penalty system.

In force 9.6.86.

#### Traffic Regulations

89. Regulations: The Traffic Regulations, 1986, made by the Alderney Public Works Committee. - Repeal and replace the Traffic Regulations 1980 as amended. The main new features are -

- (i) the abolition of 15 mph and 20 mph speed limits on certain roads, leaving only the island-wide 35 mph speed limit;
- (ii) the introduction of disc parking regulations;
- (iii) rules concerning the use of mini roundabouts;
- (iv) the creation of a taxi rank; and
- (v) a power for police officers and other authorised persons to move or remove vehicles in certain specified circumstances.

In force 9.6.86.

## SARK

### FISHING

90. Ordinance: The Fishing (Amendment) (Sark) Ordinance, 1986. - Amends paragraph (j) of section 1 of the Fishing (Sark) Ordinance, 1958, by prescribing in metric measurements the minimum sizes for lobster and crawfish.

In force 2.4.86.

### HOUSING

91. Projet de Loi: The Housing (Temporary Provisions) (Amendment) (Sark) Law, 1986. - Provides that the period of continuous ordinary residence as a condition of the grant of permission or preliminary declaration in respect of the erection of a dwelling-house shall be 15 years in place of 10 years, but there is a saving for alterations or extensions to an existing dwelling-house or to the re-erection of a dwelling-house within the same curtilage.

Approved by Chief Pleas on 2.4.86. Awaiting Royal Sanction.

## HYPOTHEQUE - A SARK CURIOSITY

1. I was not necessarily the only Guernsey Advocate who did not know very much more about the rules as to realty peculiar to the Island of Sark than that some of them seemed to be very peculiar indeed. I have recently lighted on something extra special which is deserving of a wider audience, not so much for their further education or assistance, but as a light relaxation.

2. In 1796 the disciples in Sark of the then recently deceased John Wesley desired to acquire land in Sark on which to erect a Chapel. Edward Vaudin, the then owner of the tenement called La Ville Roussel, agreed that it could be erected on his land.

3. The document relating to the tenure by Trustees for the Methodist Church took the form of an Hypothèque. It was completed on the 12th day of November 1796 in the Royal Court of Guernsey and signed by the Bailiff and two Jurats. It was registered "pour la Date" in the Greffe in Guernsey on that same day. It recorded that:

Edward Vaudin "a reconnu et confessé devoir ... à cause de pur et loyal prêt d'argent par lui reçu à son contentement aux Sieurs ... (Trustees of the Methodist Church) ... la somme de 2520 livres tournois pour gage pleige usufruit et assurance de laquelle dite somme le dit Edouard Vaudin a hypothéqué et par ces présentes hypothèque aux dits Séquestres ... jusqu'au jour du remboursement de la dite somme savoir est un certain édifice ou chapelle avec le terrain ou petite pièce de terre sur lequel le dit édifice ou chapelle est bâti appartenant au dit Vaudin situé en la contrée de la Ville en la dite Ile de Serq le tout tel qu'il se pourporte avec ses issues et entrées murailles libertés franchises et servitudes tout et autant comme au dit Edouard Vaudin en peut compéter et appartenir."

There followed a page of covenants and conditions by the Trustees that "tout et aussi long temps comme la dite hypothèque subsistera" they would use the premises solely for Church purposes and according to the doctrines of John Wesley. For his part, Vaudin covenanted not to put on his land anything which would block the Chapel windows and to allow access on his land to carry out repairs to the Chapel.

4. It was some forty-three years later that the then Seigneur of Sark, Ernest Le Pelley, Esquire, took exception to this happy arrangement. He brought an action in the Court of the Sénéchal of Sark against Jean Vaudin, the then owner of the tenement of La Ville Roussel:

"à se voir adjudgé dans le temps qu'il plaira à la cour ordonner et sur la peine de confiscation au dit Seigneur du ténement ou héritage appelé La Ville Roussel appartenant au dit Vaudin, réunir et établir dans son légitime état le dit ténement ou héritage et le décharger de toutes rentes, hypothèques, morgages, engages, ou autres charges qui out été créés dessus par le dit Jean Vaudin ou ses ancêtres, feu Edouard Vaudin grand père du dit Vaudin ayant par contrat passé en l'île de Guernesey et signé de Justice en date du 12 Novembre 1796 hypothéqué aux Sieurs ... Sequestres de ... (Methodist Church) ... un certain édifice ou chapelle ... le dit démembrement et la dite hypothèque ayant été fait par le dit Edouard Vaudin en contravention aux dites Lettres Patentés de sa feue Majesté le Roi Jacques Premier en date du 12

août l'an neuvième de son Règne d'Angleterre, France et Irlande et d'Ecosse quarante-cinquième qui défendent tels démembrements et hypothèques. Et lui payer ses dépens."

5. The Sénéchal took an appropriately dim view of this alleged contravention of the provisions of the Letters Patent, and on the 19th October 1839 Vaudin was "amerçi réunir le dit héritage dans an et jour sur peine de confiscation et aux frais."

6. I am not informed as to what happened during the year following that judgment, but it does appear that at the end of it neither was the tenement confiscated by the Seigneur nor was the Church evicted from its Chapel.

7. It was by a conveyance registered on the Sark records on the 5th March 1923 that Mrs Mary Ann Elizabeth Guille (née Vaudin), presumably a successor by inheritance to the Jean Vaudin who was the owner in 1839 and defendant in the action brought by the Seigneur, sold the tenement to Duncan Henderson, O.B.E. The remainder of the story is recited in an Order in Council made on the 7th December 1924 (O-en-C vol VII p 301). It is there recited that "the Westeyan Methodist Chapel at La Ville Roussel erected in the year 1796 or thereabouts on land now belonging to the said Duncan Henderson is inconveniently sited for the present congregation and is inadequate ... besides requiring immediate extensive repairs." It went on to recite that the said Duncan Henderson had offered to give to the Trustees a parcel of land belonging to him in another location on condition that the Trustees would demolish and clear away the old Chapel and build a new one on the new site. It further recited that the Seigneur had given his consent to this and it ordered "that the said Duncan Henderson have leave and be permitted to give convey and alienate ... (the new site) ..." The "Especial License Full Power and Lawful and Absolute Authority" was given "By Warrant under the King's Sign Manual" under the Great Seal.

8. By a Donation completed in the Royal Court of Guernsey on the 28th March 1925, registered at the Greffe in Guernsey on the same day and on the Records of the Island of Sark on the 26th November 1925, pursuant to such Licence, Duncan Henderson conveyed the site for the new, and present, Chapel to Trustees of the Methodist Church.

9. I do not know how widely such a form of hypothèque was used in these Islands or when it ceased to be used. I have never met it before. But it appears that the draftsman of the 1796 document was well versed in what Terrien had said on "Gage" in Chapter X of Book VII (p 245).

10. Terrien there said:

"L'en doit savoir que terre est engagée en deux manières. Une manière est quand une terre est baillée pour autre terre en gage, ou pour deniers ou pour autre chose : et à la fin du temps doit à chacun la chose être rendue .... L'autre manière est, quand terre est baillée pour deniers, ou pour un cheval, ou pour telle chose, jusques à un terme, dedans lequel la rente (Dette) est acquittée des issues de la terre : tel gage doit être délivré quittement au terme ... Il y a une manière de gage que l'en appelle mort gage. Mort gage est qui de rien ne sera acquitté; si comme quand aucune terre est baillée en gage pour cent sols, par tel convenant que

quand cil qui l'engage le voudra avoir, il rendra les cent sols. L'en appelle vif gage qui s'acquitte des issues : si comme quand l'en baille en gage une terre pour cent sols jusques à trois ans, qui doit être rendue toute quitte en fin du terme."

11. Terrien would have recognised the 1796 Hypothèque as a mort gage. It was a grant of possession of land as security for a cash loan, which possession would end when the loan was repaid in full, and the debt would be in no way diminished by the use which the creditor had had of the land during the period that the loan was outstanding. A foot-note in Terrien says "Le susdit mort gage est une manière d'usure". That is in the sense that the use which the creditor had of the land was by way of interest on the money which the debtor was holding

12. Pothier wrote of two forms of hypothèque : the one where the creditor was given possession of the thing charged, and the other where the thing charged remained in the possession of the debtor. At p 177 of volume 20 (1831 Edition) Pothier wrote:

"L'hypothèque ou droit de gage est le droit qu'un créancier a dans la chose d'autrui, qui consiste à pouvoir la faire vendre, pour, sur le prix, être payé de sa créance. Ce droit d'hypothèque est un droit dans la chose, jus in re.

Il y a deux espèces d'hypothèques; cell qu'on appelle nantissement, pignus, et celle qu'on appelle proprement hypothèque.

Le nantissement est L'espèce d'hypothèque qui se contracte par la tradition qui est faite de la chose au créancier, et qui lui donne droit de la retenir pour sûreté de sa créance jusqu'au parfait paiement, et même de la faire vendre à défaut de paiement. L'hypothèque proprement dite est celle qui se contracte sans tradition. Outre ces deux principales espèces de droit de gage, il y en a encore deux autres."

13. Pothier would have called the 1796 document a nantissement, and he would have called our present form of Bond an hypothèque proprement dite.

14. How MM Terrien and Pothier would have reconciled the 1796 hypothèque with the Letters Patent of His late Majesty King James, the First of England France and Ireland, and the Sixth of Scotland, time does not permit me to speculate. I will not go further than to say that in law and in fact it all seems to have been extremely dicy. The sum of 2520 livres tournois was £180 in Old Guernsey currency. That was quite a large sum in those days and presumably what it cost to erect the building large enough to hold the expected congregation and with two rooms upstairs for the use of the preachers who would come over from Guernsey. (In the Guernsey Circuit Accounts for 1797 are the items : "Paid for beef and bread for brother de Quetteville in Sark, 5/10" and "coal for Sark, 1/4"). The owner of the tenement could terminate the Church's possession at any time by repaying the specified loan.

15. The 1796 hypothèque reposed great trust in the honour of Edward Vaudin and his heirs that they would not exercise their right thus to terminate the Church's possession. For the rest, one can only presume that the Trustees put their trust in the Almighty that somehow He

would protect and defend His faithful servants in the continued performance of their devotions. That trust was not misplaced. They were in fact able so to continue for 128 years and until the Chapel was almost falling to pieces.

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