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GUERNSEY LAW JOURNAL

FOURTH ISSUE

Introduction

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

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

While 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 (de V. G. Carey, Esq.), Advocate J. N. van Leuven, Advocate V. C. Ogier, H.M. Greffier (K. H. Tough, Esq.).

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 July to December, 1986.

28th August, 1987.

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

Citation:

References to this issue in future issues will be cited using the figure and letters 4.GLJ followed by the paragraph number.

In this and future issues the following authorities on the law of Guernsey will be cited thus:-

Laurent Carey:

'Essai sur les Institutions, Lois et Coûtumes de l'île de Guernesey', by Laurent Carey (1723-1769) 232 pp. (Guernsey, 1889).

Hilary Carré:

'De la Constitution de l'île de Guernesey, et de sa Réforme; ou Recherches sur la Nature de ses Principes, et sur leur Application pratique. Première Partie. Des Institutions paroissiales ou communales.', Hilary O. Carré (1802-1874) (Guernsey, 1843).

Gallienne:

'Traité de la Renonciation par Loi Outrée et de la Garantie; avec Quelques Remarques sur les Changements apportés dans ces Branches de la Législation, par l'Ordre du Conseil du 20 décembre, 1825, ainsi que les Formules de la Procédure, et les Ordonnances de la Cour Royale qui y ont Rapport', by James Gallienne (1818-1886) 346 pp., index (Guernsey, 1845).

Josué Le Marchant:

'Ebauche du Style de Procéder devant la Cour Royale de l'île de Guernesey', by Josué Le Marchant (from MS dated 1756) 55 pp. (Guernsey, 1804).

Thomas Le Marchant:

'Remarques et Animadversions, sur l'Approbation des Lois et Coustumier de Normandie usitées ès Jurisdictions de Guernezé, et particulièrement en la Cour Royale de la dite île', by Thomas Le Marchant (died 1662) Tome I 393 pp., Tome II 318 pp. (Guernsey, 1826).

Royal Commission, 1848:

'Second Report of the Commissioners appointed to enquire into the State of the Criminal Law in the Channel Islands - Guernsey', by Thomas Flower Ellis & Thomas Bros., Commissioners. Tome XLVI 340 pp., Index (London, 1848).

Terrien:

'Commentaires du Droict Civil tant public que privé, observé au Pays & Duché de Normandie', by Guillaume Terrien (flor. mid 16th century) 728 pp., Index (Rouen, 1574; New Edition 1654).

HEADINGS USED IN THIS ISSUE

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AGRICULTURE AND ANIMALS

1. Ordinance: The Protection of Animals (Amendment) Ordinance, 1986. - Empowers officers of police to take charge of injured, diseased or maltreated animals; States Veterinary Officer can destroy them if it would be cruel to keep them alive. Unclaimed animals become States property after 7 days.

In force 29.10.86. (No. XXVIII of 1986).

2. Statutory Instrument: The Live Poultry Importation Order, 1986. - Prohibits importation of live poultry from Jersey.

In force 1.12.86. (S.I. No. 36 of 1986).

3. Statutory Instrument: The Rabies (Amendment) Order, 1986. - Permits customs department dogs to board vessels on which animals are present without becoming subject to quarantine requirements.

In force 1.12.86. (S.I. No. 34 of 1986).

ARBITRATION

4. See EMPLOYMENT, paragraph 27.

BANKING, INSURANCE AND FINANCE INDUSTRIES

5. Bank Mergers and Re-organisations

Orders: The Trustee Savings Banks Act 1985 (Appointed Day) (No. 1), (No. 2), (No. 3) and (No. 4) Orders 1986. - Appoint 21.7.86 as the vesting day for the transfer of assets and liabilities under the Trustee Savings Banks Act 1985 (2.GLJ.9) and make detailed provision as to commencement of that Act's amending and repealing provisions.

Registered on 16.7.86.

Insurance Business

6. Order in Council and Ordinance: The Insurance Business (Guernsey) Law, 1986. - See 3.GLJ.7. Registered on 2.12.86. (No. XII of 1986).

Coming into force as follows:

Most provisions: 31.12.86.

Amendments to Income Tax Law: 1.1.87 and 1.1.88 in relation to existing insurers.

Sections 53 to 55 and Schedule 4 (certain requirements in relation to unregistered insurers): 31.12.86, but in relation to existing insurers 28.2.87 or 31.3.87 in certain circumstances.

Amendments to third-party Insurance Laws: 1.7.87.

Section 48(1)(a) (annual report of authorised insurance managers): 1.1.88.

Insurance Business (Guernsey) Law, 1986 (Commencement) Ordinance, 1986. (No. XXXIV of 1986).

Investment Business

7. States Resolution of 30.7.86. - Directing the preparation of legislation to control the carrying on of investment business. The legislation will initially cover the approval of collective investment schemes and permit the control through regulations of persons carrying on certain activities in relation to such schemes. It will, however, be capable of extension by Ordinance to other forms of investment business. It will be administered by the Financial Services Commission (see 3.GLJ.6) when that body is established and by the Advisory and Finance Committee in any interim period.
8. Agreement: Agreement between Her Majesty's Government and the Republic of Korea for the promotion and protection of investments. Extended to Guernsey with effect from 22.9.83.
9. Agreement: Agreement between Her Majesty's Government and Saint Lucia for the promotion and protection of investments. Extended to Guernsey with effect from 23.10.84.

BASTARDY AND LEGITIMATION

10. Maintenance for illegitimate children

Order in Council: The Illegitimacy (Amendment) (Guernsey) Law, 1986. - See 3.GLJ.10.

Registered on 16.12.86. (No. XX of 1986).

CHILDREN AND YOUNG PERSONS

11. Order in Council: The Children and Young Persons (Control of Intoxicating Liquor) (Guernsey) Law, 1986. - See 3.GLJ.12.

Royal Sanction 5.11.86. Registered and in force 16.12.86. (No. XIX of 1986).

Case:

Guardianship of minors - Application to the Royal Court sitting as an Ordinary Court - Whether the Royal Court has any power to vary an Order as to custody made by the Magistrate's Court under the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 - Need for social inquiry report

12. 'A', grandmother of the infant, applied to the Royal Court sitting as an Ordinary Court to be appointed guardian of the infant in place of the mother and to be granted custody of the infant in variation of an order of the Magistrate's Court made on 10.4.85 whereby the mother was granted custody of the infant.

THE BAILIFF DIRECTED THE JURATS as follows:-

- (i) that the Royal Court had only customary law powers as to custody and had no authority to vary the order granted by the Magistrate's Court under the 1978 Law. By way of analogy if a maintenance order were granted in the Magistrate's Court against a husband and subsequently a divorce were granted in the Matrimonial Causes Division of the Royal Court any application to cancel the Magistrate's Court maintenance order would have to be made to the Magistrate's Court;
- (ii) that although 'A' had no standing to make application for custody to the Magistrate's Court under the Law of 1978 in her capacity as grandmother, she would be able to make such application in the Magistrate's Court once she had been appointed guardian by the Royal Court;
- (iii) that if the Royal Court had been in a position to consider an application to transfer the custody of an infant from its mother, as opposed to guardianship, it would without hesitation have adjourned the hearing to enable a social inquiry report to be prepared.

THE COURT, with the consent of the mother and on the recommendation of the family council consisting of the grandfather of the infant and husband of 'A', an aunt of the infant and the separated husband of the infant's mother, appointed 'A' as guardian of the infant and 'A' was sworn accordingly.

[Re I., an infant - 1986 Tutelles et Curatelles 172.]

COMPANY LAW

13. See PRACTICE AND PROCEDURE (paragraph 66).

CONSTITUTIONAL LAW

Review Board System

14. Projet de Loi: The Administrative Decisions (Review) (Guernsey) Law, 1986. - See 2.GLJ.14.

Approved by the States on 24.9.86. Awaiting Royal Sanction.

States Committees

15. Order in Council: The States Committees (Special Provisions) (Amendment) (Guernsey) Law, 1986. - See 2.GLJ.15.

Registered and in force 15.7.86 (No. IX of 1986).

States of Deliberation

16. Projet de Loi: The Reform (Amendment) (Guernsey) Law, 1986. - Provides that notwithstanding paragraphs (1), (2) and (3) of Article 3 of the Reform (Guernsey) Law, 1948 (regarding a quorum) any resolution of the States of

Deliberation intended to repeal or vary any of the provisions of that Law which either (a) directs the preparation of the necessary legislation, or (b) approves a Projet de Loi and authorises the submission of a Petition to Her Most Excellent Majesty in Council for Sanction thereto, and which is carried by a majority of less than two-thirds of the members present and voting, shall not be deemed to have been carried until the expiration of the said seven days from the date of the resolution. The amendment, however, provides that where before the expiration of the said seven days an application in writing signed by not less than seven members of the States of Deliberation is made to the President such resolution shall be brought back before the States of Deliberation by the President as soon as may be after the expiration of three months from the date of the resolution whereupon such resolution shall be declared lost unless confirmed by a simple majority. The amendment also provides that the seven days' suspension of a resolution being deemed not to have been carried shall not apply to a resolution approving a Projet de Loi in respect of which the resolution directing the preparation of the necessary legislation had itself previously been confirmed in accordance with the new provisions.

Approved by the States on 29.10.86. Awaiting Royal Sanction.

CORPORATION TAX

17. **Projet de Loi:** The Corporation Tax (Amendment) (Guernsey) Law, 1986. - Amends the Corporation Tax Law of 1950 to the effect that a company having paid corporation tax in respect of any given calendar year which is later found to be resident in Guernsey during that year under the Income Tax Law be treated as having made a payment on account of any income tax payable.

Approved by the States 30.7.86. Awaiting Royal Sanction.

18. **Ordinance:** The Corporation Tax (Increase of Rate) Ordinance, 1986. - Increases the rate of corporation tax from £300 to £500 p.a. with effect from 1.1.87. (No. XXIX of 1986).

CRIMINAL LAW

Misuse of Drugs

19. **States Resolution of 24.9.86:** Directing legislation to increase sentences that may be imposed on persons convicted of offences under the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, and the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

Penalties

20. **Statutory Instrument:** The Criminal Justice Act 1982 (Guernsey) Order, 1986. - Extends certain provisions of the Criminal Law Act 1977, the Magistrates' Courts Act 1980 and the Criminal Justice Act 1982, specified in the Schedule to the Order, to the Bailiwick. The provisions extended relate to criminal penalties and, as so extended, have effect only in relation to penalties for an offence under an Act of Parliament which has itself been extended to Guernsey.

In force 1.12.86. (S.I. No. 1884).

Sexual Offences

21. Ordinance: The Sexual Offences (Bailiwick of Guernsey) Law, 1983 (Continuation) Ordinance, 1986. - Makes sections 1, 2, 4 and 7 of the Sexual Offences (Bailiwick of Guernsey) Law, 1983 permanent (the sections would otherwise have expired on 14.11.86).

In force 29.10.86. (No. XXVII of 1986).

Summary Offences

22. Order in Council: The Summary Offences (Amendment) (Bailiwick of Guernsey) Law, 1986. - Amends to the Law of 1982 to cover threatening behaviour and to provide protection from animals who attack members of the public and to allow a court following conviction to order the animal involved to be kept under control or destroyed.

Approved by the States 30.7.86. Royal Sanction 5.11.86. In force 16.12.86.

Case:

Criminal Trial - Témoins à Futur - Loi Par Rapport aux Procédures en Crime 1877 - Evidence heard by Bailiff sitting alone and in camera

23. 'D' was committed for trial on indictment before the Royal Court. The Law Officers of the Crown applied, pursuant to Article 2 of the Loi Par Rapport aux Procédures en Crime, 1877 (vol. II at page 169) for the evidence of a prosecution witness, who would be unable to be present at the trial, to be heard in advance by the Ordinary Division of the Royal Court.

THE BAILIFF RULED, as a matter of procedure:-

- (i) that in such circumstances the evidence should be taken not before the Bailiff and Jurats but before the Bailiff sitting alone and in camera; and
- (ii) that this was analogous to the position when a Judge of Law heard evidence in camera to decide whether or not it was admissible, and was still entitled to preside at the trial thereafter.

[Law Officers of the Crown v. Le Billon - 1986 Crime 240.]

Case:

Appeal to Court of Appeal against sentence - Suspended sentence imposed upon appeal from the Magistrate's Court to the Royal Court - Subsequently activated by the Royal Court - Whether appeal lies to the Court of Appeal

24. 'A' was convicted and sentenced in the Magistrate's Court on 2.1.85; on 15.4.85 the Royal Court, sitting as a Full Court, allowed an appeal against

sentence to the extent that two sentences totalling five months imprisonment were suspended for a period of two years and no order was made with respect to an earlier suspended sentence which the Magistrate had ordered should be served. During the period of two years suspension, on 7.3.86, 'A' was again convicted by the Magistrate's Court and was duly committed by that Court to the Royal Court to be dealt with in respect of the suspended sentences, in accordance with section (2)(1) of the Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey) Law, 1972. The Royal Court ordered that the suspended sentences which had been imposed by that Court on the 15.4.85 should be served in full.

'A' applied for leave to appeal against that order to the Court of Appeal.

THE COURT OF APPEAL (Criminal Division) HELD:-

- (i) that the criminal jurisdiction of the Court of Appeal was defined by section 24 of the Court of Appeal (Guernsey) Law, 1961, which provided that an appeal might in certain circumstances, be brought to the Court by "a person convicted on indictment or summarily convicted in the Royal Court", and in the instant case 'A' was a person convicted not in the Royal Court but in the Magistrate's Court. The language of section 24 was too clear to allow the interpretation urged on behalf of 'A', that is to say that the word "convicted" was wide enough to cover a case in which the conviction was recorded in the Magistrate's Court and sentence was subsequently passed in the Royal Court. It seemed clearly to have been the intention of the legislature that an appeal in a criminal case should lie to the Court of Appeal only when there had been a conviction in the Royal Court, and it was clear that in the instant case there had not.
- (ii) that the Magistrate's Court was obliged by the Law of 1972 to commit 'A' to the Royal Court for sentence and when the Royal Court passed the sentence, because the conviction had not taken place in the Royal Court, there could be no appeal to the Court of Appeal. It was possible that when the Law of 1972 was passed the legislature overlooked the fact that in these circumstances the Royal Court would pass a sentence from which no appeal would be possible; it was clear that as the Law stood the Court had no jurisdiction to entertain the application and therefore it had to be dismissed.

[Law Officers of the Crown v. Guille - Court of Appeal 9.7.86.]

Case:

Appeal to Court of Appeal against conviction and sentence - Committal proceedings in camera - Legal representation - Appointment of a Law Officer of the Crown - Requirement that all witnesses both for the defence and the prosecution be named at the beginning of the trial - Application for leave to call further witnesses - Conditions to be met - Standard of direction as to criminal intent

25. 'A' was convicted after trial on indictment before the Royal Court of one offence of obstructing a police officer in the execution of his duty and was sentenced to one month's imprisonment. On that same day he gave notice of appeal and was admitted to bail by the Court of Appeal pending the hearing

of that appeal. At that hearing 'A' submitted, in support of his appeal against conviction, that he had been refused legal representation in the committal proceedings, at the trial before the Royal Court and in the proceedings before the Court of Appeal; that the Royal Court should have granted his application for a Law Officer of the Crown to be appointed pursuant to the Bar Ordinance of 1949 to appear on 'A's behalf; and that 'A' had been denied the right to call witnesses at his trial. 'A' applied to the Court of Appeal for leave to call a number of unnamed witnesses. In support of his appeal against sentence 'A' submitted that the sentence of one month's imprisonment was excessive in all the circumstances.

THE COURT OF APPEAL (Criminal Division):-

(1) DISMISSED the appeal against conviction, HAVING HELD:-

- (i) that it was the practice of the Courts in this Island that committal proceedings, for very good reasons in a small community, were held in camera, but that any person who appeared before committal proceedings was entitled, at his own expense, to be legally represented by an Advocate of the Royal Court at those proceedings;
- (ii) that 'A' had been summoned to appear before the Royal Court on 28.4.86, as in the common course of proceedings, to choose an Advocate of the Royal Court to represent him at his forthcoming trial, and that 'A' had then refused to choose an Advocate and had eventually applied to the Royal Court by letter dated 16.5.86 for a Law Officer of the Crown to be assigned to him as his legal adviser;
- (iii) that section 12 of the Court of Appeal (Guernsey) Law, 1961 clearly stated that members of the Guernsey Bar shall alone have the right to practise in the Court of Appeal; and section 7 of the Bar Ordinance of 1949 (Tome X, p.39) stated that every person nominated by Her Majesty to be Her Majesty's Procureur or Her Majesty's Comptroller and who was not then an Advocate of the Royal Court should be deemed during the time of his appointment to be an Advocate of the Royal Court and therefore to have the right, inter alia, to practise in the Court of Appeal. However it was clearly totally illogical for 'A' to seek to argue that the Crown should appoint a Law Officer of the Crown to appear on his behalf;
- (iv) that the Deputy Bailiff, presiding at the trial before the Royal Court, behaved perfectly properly in asking 'A', the Defendant, whether he had any witnesses to call. The Court of Appeal was satisfied that 'A', at his trial, had hoped to obtain a tactical advantage by remaining totally silent when asked to name his witnesses and when the prosecution had finished their case to say that he would call witnesses. The law however required that all witnesses, both defence and prosecution, must be named at the beginning of the trial;
- (v) that before the Court of Appeal would allow an application to call further evidence, it had to be satisfied that such evidence was credible and that it could not with reasonable diligence have been

obtained before and for use at the trial. There was nothing before the Court to show that the evidence was credible or indeed what it might be and the Court was not satisfied that reasonable diligence had been employed to obtain that evidence before the trial and in any event 'A' could have made further application at the trial to call these witnesses but he did not do so; and

- (2) DISMISSED the appeal against sentence and ORDERED that the said sentence of one month's imprisonment be served in full with effect from that day.

[Law Officers of the Crown v. Kirk - Court of Appeal 27.10.86.]

CUSTOMS

Imports

26. Statutory Instrument: The Import and Export of Goods (Control) (Guernsey) (Amendment No. 4) Order, 1986. - Prohibits importation of marine anti-fouling paints containing organo-tin compounds from the British Islands.

In force 8.9.86. (S.I. No. 20 of 1986).

Open General Import Licence

27. Statutory Instrument: Amendment No. 6 to the Open General Import Licence of 1984. - Prohibits importation of marine anti-fouling paint containing organo-tin compounds.

In force 9.7.86. (S.I. No. 19 of 1986).

28. Statutory Instrument: Amendment No. 7 to the Open General Import Licence of 1984. - Prohibits importation of gold coins minted in or after 1961 originating in the Republic of South Africa.

In force 12.11.86. (S.I. No. 32 of 1986).

29. Statutory Instrument: Amendment No. 8 to the Open General Import Licence of 1984. - Updates licence in line with current U.K. Governmental Policy.

In force 10.12.86. (S.I. No. 38 of 1986).

DIVORCE AND MATRIMONIAL CASES

Case:

Court of Appeal - Matrimonial Causes Division of the Royal Court - Orders for maintenance of children, transfer of the matrimonial home and payment of costs - Appeals by the husband and by the wife respectively - Whether co-respondent's earnings should be taken into consideration - Order for costs would be set aside only in the most exceptional circumstances - Remission to the Royal Court to take into account additional real property owned by the wife

30. A final order of divorce was pronounced between the parties on 3.7.85. On 6.11.85 the Bailiff delivered his decision, following consideration of evidence both on affidavit and orally, on applications by the Wife for

ancillary relief, including maintenance for the two daughters of the marriage, aged at the time of appeal 14 and 12 respectively, both of whom remained with the Wife. The Bailiff ordered the husband to pay to the wife £50 per week for the maintenance and support for each of the said children, a total of £100 each week, and to pay the costs of the divorce; that each party should pay their own costs in respect of the application to the Court determined on that day and that the interest of the husband in the matrimonial home, which had been acquired by the wife and the husband for themselves, the survivor of them and the heirs of such survivor, should vest solely in the wife, in consideration of the wife assuming sole liability for any monies due under a bond consented to jointly by the husband and the wife.

Both parties appealed from these decisions to the Court of Appeal. The husband appealed against the orders made by the Royal Court on maintenance for the children and for the transfer of the house and the wife appealed against the order that each party should pay their own costs in respect of the applications to the Court determined on 6.11.85. It was argued for the husband that his income alone was in round figures £12,300 and that the award of maintenance for the children amounting to £5,200 constituted nearly half of his income. It was submitted that although the husband was now living with the co-respondent who had her own income, that income should for the purposes of this application be ignored. With regard to the vesting of the matrimonial home, it was submitted on behalf of the husband that if the whole interest in the house was to be vested in the wife, the husband should have received some sum to compensate him for his loss of half the value of the equity.

Subsequent to the proceedings before the Royal Court it transpired that the wife had inherited a half interest in certain real property in England.

THE COURT OF APPEAL (Civil Division) HELD:-

- (i) that in the circumstances of this case, in which the evidence showed that the husband and the co-respondent were now living together and pooling their resources, it was appropriate to take the co-respondent's income into account. This was in accordance with the decision of Mr. Justice Wood in *Macey v. Macey* (3 Family Law Review, 1981 at page 7, quoted in *Rayden on Divorce*, 14th edition at page 772). Following an increase the husband's income was now £13,500; the co-respondent's income, similarly in round figures, was £8,000 and together therefore they had an income exceeding £21,000. The wife's current income was £8,900, to which must be added children's allowance amounting to £300 per annum, giving her a total income of £9,200. The Order made by the Royal Court for maintenance at the rate of £100 per week was not an excessive Order for the husband to meet when consideration was given both to his income and to that of the co-respondent, nor was the Order excessive when the income of the husband and the co-respondent was compared with the income of the wife. In so far as the Order for the maintenance of the two children was concerned, therefore, the husband's appeal was DISMISSED;
- (ii) that with regard to the vesting in the wife of the husband's interest in the matrimonial home, it was clear that the Bailiff had decided that he would make no order for the maintenance of the

wife, and it was in the context of making no order for her maintenance that he decided that the whole interest in the house should vest in her without any order for compensation to the husband; it was obvious that a home was needed for the wife and the children and that it would have been difficult for the wife to buy another house with the sums of money which on the evidence before the Bailiff were available to her and in view of the condition of the younger of the two children, who suffered from a congenital disease, special care was an obvious consideration in this case; and that since December 1983 when the husband left the matrimonial home the sum of £8,000 had been due and had been paid on the bond by the wife with no contribution from the husband. On the material which was before the Bailiff, the Court of Appeal was satisfied that there was no ground for interfering with the Order which the Bailiff made with regard to the vesting of the matrimonial home;

- (iii) that it had now transpired that the wife had an asset which it was not possible for the learned Bailiff to consider at the time when he made his Order. No blame should be attributed to anybody for the absence of evidence on this matter before the Royal Court, but the value of the inheritance, amounting to £23,500, was not a matter which could be ignored when a decision was being reached as to a fair Order to make for the division of assets between the parties. In the absence of any evidence describing the nature and value of the asset, it was impossible for the Court of Appeal to decide whether any change in the Order made by the Royal Court would be appropriate. The Court therefore REMITTED the Order vesting the whole interest in the former matrimonial home to the wife for limited reconsideration by the Royal Court in the light of further evidence as to the nature and value of the wife's interest in a house in Bournemouth inherited from her grandmother, and the possibility of the wife raising money either by the sale of that interest or by borrowing on the security of that interest, to enable the Royal Court to decide whether it was appropriate to alter the said Order to provide for some payment to the husband in compensation for the loss of his interest in the former matrimonial home;
- (iv) that with regard to the wife's appeal against the Royal Court Order for costs, nothing was more clearly settled than the rule that an Order for costs was a matter for the discretion of the Court deciding the proceedings and that it was only in the most exceptional circumstances that an appellate court would interfere with the exercise of that jurisdiction. When the matter came before the Royal Court, some of the wife's claims succeeded, others failed, and it was only necessary to say that in the judgment of the Court of Appeal those parts of the wife's claim which the Court decided in the husband's favour could not all be said to have been unimportant or insignificant. The wife's appeal against the order for costs was therefore DISMISSED;
- (v) that with regard to costs of the present proceedings, on the husband's appeal there would be no order for costs up to that day; the costs of any subsequent proceedings in the Royal Court would be in the discretion of that Court; and the wife was ordered to pay the costs of her appeal.

[Domaille v. Domaille (cross appeals) - Court of Appeal 10.7.86.]

DRUGS

31. States Resolution of 24.9.86: Directing legislation to increase sentences that may be imposed on persons convicted of offences under the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, and the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

ECCLESIASTICAL LAW

Methodist Church

32. Projet de Loi: The Methodist Church (Bailiwick of Guernsey) Law, 1986. - Establishes a Board of custodian trustees called "The Trustees for the Bailiwick of Guernsey Methodist Church Purposes" to hold all Methodist Church property in the Bailiwick upon model trusts set up by the Methodist Church Act 1976.

Approved by States 24.9.86. Awaiting Royal Sanction.

ELECTRICITY

Power of forcible entry

33. Order in Council: The Electricity (Amendment) (No. 2) (Guernsey) Law, 1986. - See 3.GLJ.28.

Registered on 16.12.86. (No. XVII of 1986).

EMPLOYMENT

Arbitration

34. Order in Council: The Industrial Disputes and Conditions of Employment (Amendment) (Guernsey) Law, 1986. - See 3.GLJ.30.

Registered and in force on 16.12.86. (No. XVI of 1986).

FISHING

35. Ordinance: The Fishing (Amendment) (No. 2) Ordinance, 1986. - Amends further the Fishing Ordinance, 1969, as amended, by empowering the States Sea Fisheries Committee to control by order the importation of fish to prevent the spread of disease or pests.

In force on 26.11.86. (No. XXX of 1986).

FOOD

Food hazard emergencies

36. States Resolution of 26.11.86. - Directing the preparation of legislation to empower the States Emergency Council to declare a food hazard emergency when

a hazard to human health may arise as a result of any escaped substance, and to give directions and make regulations with a view to safeguarding human health in such circumstances.

GAMBLING

Channel Islands Lottery

37. States Resolution of 30.7.86: Provides for legislation to be prepared dealing with the conduct of computerised draws, for the creation of offences in connection with computer draws including computer fraud.
38. Ordinance: The Gambling (Channel Islands Lottery) (Bailiwick of Guernsey) (Amendment) Ordinance, 1986. - Amends the Gambling (Channel Islands Lottery) (Bailiwick of Guernsey) Ordinance, 1975 by changing the requirement of presence of certain people at every draw, also brings together in one section certain offences including computer fraud, and deletes the definition of "secretary".

In force 24.9.86. (No. XXVI of 1986).

HARBOURS AND MOORINGS

Fees, dues and charges

39. Order in Council: The Harbours, Moorings and Pilotage (Fees and Dues) Law, 1986. - Amends the Laws relating to Harbour Dues and Mooring Charges so as to permit these, in future, to be set by resolution of the States and amends the Pilotage Law so as to enable Ordinances thereunder to permit the same system in relation to pilotage fees and dues.

Registered on 15.12.86. (No. XXI of 1986).

40. Ordinance: The Harbour Dues Ordinance, 1986. - Increases the dues payable in respect of vessels entering or leaving the harbour of St. Peter Port or St. Sampson, or performing an act of trade in the roadstead, by an average of approximately 4 $\frac{3}{4}$ %.

In force 1.1.87. (No. XXXIII of 1986).

41. Ordinance: The Harbour Facilities Charges Ordinance, 1986. - Enables the States to fix by resolution the charges payable for the use of harbour facilities at St. Peter Port and St. Sampson harbours; specifies the information to be given by persons requiring such facilities; and provides for the recovery of charges.

In force 1.1.87. (No. XXIV of 1986).

HEALTH AND MEDICINE

Health Service (Pharmaceutical)

42. Statutory Instrument: The Health Service (Pharmaceutical) (Prescribed Appliances) (Amendment) (Guernsey) Regulations 1986. - Adjusts payments due to suppliers of prescribed appliances.

In force 1.9.86. (S.I. No. 22 of 1986).

43. Statutory Instrument: The Health Service (Pharmaceutical) (Payment of Approved Suppliers) (Amendment) (Guernsey) Regulations 1986. - Adjusts payments due to approved suppliers of pharmaceutical benefit.

In force 1.9.86. (S.I. No. 23 of 1986).

Penalties

44. Order in Council: The Public Health and Related Offences (Increase in Fines) (Guernsey) Law, 1986. (See 3.GLJ.35).

Approved by Privy Council 5.11.86. Registered and in force 16.12.86.

Reciprocal health care

45. Agreement: Agreement between Her Majesty's Government and New Zealand on Health Services (Cmnd. 8837).

Registered on 6.11.86.

46. Agreement: Agreement between Her Majesty's Government and Portugal on Health Services.

Registered on 6.11.86.

HORTICULTURE

47. Statutory Instrument: The Iris (Control of Importation from Jersey) Order, 1986. - Prohibits landing of Iris bulbs from Jersey without a phytosanitary certificate.

In force 24.11.86. (S.I. No. 33 of 1986).

HOUSING

48. Case: GILLOW v. U.K. See HUMAN RIGHTS paragraph 50.

HUMAN RIGHTS

Data Protection

49. Projet de Loi: The Data Protection (Bailiwick of Guernsey) Law, 1986. - Establishes a system for regulating the use of automatically processed information relating to individuals, and the provision of services by computer bureaux in respect of such information; and enables individuals who are the subject of such "data" to obtain access to it, to have it corrected or erased if it is inaccurate, and to be awarded compensation in some cases; thereby enabling the Bailiwick to comply with the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Data users and computer bureaux will be required to register with the Advisory and Finance Committee and specified details, including sources, uses and disclosure of personal data will have to be recorded and honoured. The Committee is given power to ensure compliance with the Law and with the Convention's data protection principles, which are set out in a schedule to the Law, but there will be a right of appeal against the Committee's decisions to the Royal Court.

The unauthorised disclosure of personal data is in general prohibited and subjects of such data will be entitled in general to gain access to it and in some circumstances to secure, through the courts, its rectification or erasure and financial compensation. Data held for certain specified purposes is, however, exempted in varying degrees from some of the above requirements and restrictions.

Approved by the States of Guernsey on 30.7.86, by the States of Alderney on 3.9.86, by the Chief Pleas of Sark on 1.10.86 and by the Privy Council on 16.12.86. Not yet in force.

European Court of Human Rights

Housing (Control of Occupation) (Guernsey) Law, 1975.

Case:

50. On the 24th November, 1986, the European Court of Human Rights delivered judgment in the Gillow case, which concerns the restrictions placed by legislation in the Island of Guernsey on the right of two joint owners (Mr. and Mrs. Joseph Gillow) to occupy their house. In its judgment, the Court unanimously held that there had been a breach of Article 8 of the Convention as far as the application of the contested legislation in the case of Mr. and Mrs. Gillow was concerned, but not as far as the legislation itself was concerned; that there had been no breach of Articles 6 and 14 of the Convention; and that Protocol No. 1 was not applicable to the case.

[The texts of the Articles considered in the judgment are:

Convention

Article 6, paragraph 1

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 18

"The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

Article 50

If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the present Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party.

Protocol No. 1

Article 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."]

BACKGROUND TO THE CASE

I. Principal facts

In April 1956, Mr. Gillow was appointed Director of the States of Guernsey Horticultural Advisory Service and moved to Guernsey with his family. In 1957, he bought a plot of land there, on which he had a house built. At that time, the applicants had, under the Housing Control (Extension and Amendment) (Guernsey) Law, 1957, residence qualifications entitling them to live on the Island without a licence.

In 1960, the applicants left Guernsey and lived overseas until Mr. Gillow's retirement in 1978. In the meantime, they retained ownership of the house and let it to persons approved by the Housing Authority.

The applicants subsequently decided to return to and live in Guernsey. However, they were informed by the Authority that they had lost their residence qualifications by virtue of the Housing Control (Guernsey) Law, 1969 and that they required a licence from the Authority to occupy their house. All their licence applications were rejected, and they were prosecuted for unlawful occupation of their property. They finally sold the house in April 1980.

II. Proceedings before the European Commission of Human Rights

The application was lodged with the Commission on 25th January, 1980 and declared admissible on the 9th December, 1982.

Having attempted unsuccessfully to achieve a friendly settlement, the Commission drew up a report establishing the facts and stating its opinion as to whether or not the facts found disclosed a breach by the United Kingdom of its obligations under the Convention. In its report of 3rd October, 1984, the Commission concluded that there had been a breach of Article 8 of the Convention and of Article 1 of Protocol No. 1 (unanimously), but not of Article 6 (ten votes to one) or of Article 14 (unanimously).

The Commission referred the case to the Court on the 19th December, 1984.

SUMMARY OF THE JUDGMENT

I. Alleged violation of Article 8 of the Convention

The Court observed that the Government of the United Kingdom had no longer disputed before it the existence of a violation of Article 8. It nonetheless considered that the responsibilities assigned to it by the Convention system extended to pronouncing on the non-contested allegation of violation of Article 8.

A. Was "Whiteknights" Mr. and Mrs. Gillow's "home"?

Although the applicants had been absent from Guernsey for almost nineteen years, the Court found that, in the circumstances, they had retained sufficient continuing links with "Whiteknights" for it to be considered their "home", for the purposes of Article 8 of the Convention, at the time of the disputed measures.

B. Was there any interference by a public authority with the exercise of the applicants' right to respect for their home?

In the opinion of the Court, the facts of the case revealed various interferences with the exercise of the applicants' right to respect for their home.

C. Were the interferences justified?

1. "In accordance with the law"

The applicants contended that the Housing Laws were immigration laws in disguise which were outside the legislative powers of the States of Guernsey. The Court noted that these laws were duly sanctioned by the Sovereign in accordance with the normal legislative procedure, registered in the records of the Island of Guernsey and published. There could accordingly be no doubt as to their constitutional validity and accessibility.

The terms of the Housing Laws leave the Housing Authority a certain degree of discretion. However, this was not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise were indicated with sufficient clarity to give the individual adequate protection against arbitrary interference. In the present case, the Court found that these conditions had been fulfilled.

The Court held that the interferences in question were "in accordance with the law".

2. Legitimate aim

Although the statistics supplied both by the Government and by the applicants disclosed that the population and housing situation could be said to have improved in Guernsey in some respects, this did not alter the fact that the Island was very limited in area. It was therefore legitimate, in the Court's opinion, for the authorities to try to maintain the population within acceptable limits and also to show a certain preference for persons with strong attachments to the Island or engaged in essential employment. The Court thus concluded that the relevant legislation was designed to promote the economic well-being of the Island, and did not find it established that it pursued any other purpose (see Article 18 of the Convention).

3. "Necessary in a democratic society"

The Court noted first that the notion of necessity implied a pressing social need; in particular, the measure in question had to be proportionate to the legitimate aim pursued. In the instant case, the economic well-being of Guernsey had to be balanced against the applicants' right to respect for their "home". In the Court's view, the importance of such a right to the individual had to be taken into account in determining the scope of the margin of appreciation allowed to the Government.

The obligation imposed on the applicants by the Housing Laws to seek a licence to occupy their house was found to comply with these principles. In particular, when considering whether to grant a licence, the Housing Authority could exercise its discretion so as to avoid any disproportionality in a given case. The Court therefore held that there had been no breach of Article 8 as far as the terms of the legislation in question were concerned.

The Court next reviewed the manner in which the Housing Authority had exercised its discretion in the applicants' case, namely by refusing a licence to occupy "Whiteknights". Against the background of the population and housing situation on the Island, the Court considered that insufficient weight had been given to Mr. and Mrs. Gillow's particular circumstances. They had built the house as a residence for themselves and their family. At that time, they possessed "residence qualifications" and continued to do so until the entry into force of the Housing Law 1969, so that during that period they were entitled to occupy the house without a licence. The property was Mr. and Mrs. Gillow's place of residence for two years before they left Guernsey in 1960. Thereafter, they had retained ownership of the house and left furniture therein. By letting it over a period of eighteen years to persons approved by the Housing Authority, they contributed to the Guernsey housing stock. On their return in 1979, they had no other "home" in the United Kingdom or elsewhere; "Whiteknights" was vacant and there were no prospective tenants. Furthermore, it needed repairs after eighteen years of rented use, with the result that it could not be occupied in the meantime by anyone other than the applicants.

The Court held that the decisions by the Housing Authority to refuse them a licence, as well as the conviction and fining of Mr. Gillow, were disproportionate to the legitimate aim pursued and that there had accordingly been a breach of Article 8 as far as the application of the legislation to the particular circumstances of the applicants' case was concerned.

II. Alleged violation of Article 1 of Protocol No. 1

By a letter of 10th October, 1986, the Government informed the Court - while expressing their profound regret for doing so at so late a stage - that the United Kingdom had not extended the application of Protocol No. 1 to the Bailiwick of Guernsey in accordance with Article 4 of this Protocol.

The Court noted first that the letter was not in the form of a preliminary objection. However, the existence of a declaration under Article 4 was a matter for examination ex officio by the Court since it concerned the very applicability of Protocol No. 1 to the Island of Guernsey. According to a statement issued by the Government of the United Kingdom on 16th October, 1950 and communicated to the Secretary General of the Council of Europe on the same date, the Island of Guernsey should be regarded as a "territory for the international relations of which the United Kingdom was responsible" for the purposes of Article 4, and this practice had been followed with regard to treaties concluded within the framework of the Council of Europe, including the European Convention on Human Rights. It thus resulted from the text of Article 4 that an express declaration was required for the application of Protocol No. 1 to the Island of Guernsey, but no such declaration had been made. The Court accordingly found that Article 1 of Protocol No. 1 was not applicable in the present case and that therefore it had no jurisdiction to entertain the applicants' complaint under this provision.

III. Alleged violation of Article 14 in conjunction with Article 8 of the Convention

The discrimination alleged did not relate to a measure taken in exercise of the Housing Authority's discretionary powers, but to the preferential treatment accorded by the Housing Law 1975 to specified groups of persons who do not need any licence to occupy a house, namely those with strong attachments to the Island and the owners of houses over a certain rateable value.

With regard to the first group, the Court had already held that the preferential treatment was legitimate for the purposes of Article 8 para. 2 of the Convention, and saw no cause for arriving at a different finding under Article 14.

As to the introduction of rateable value limits, this reflected, in the opinion of the Court, the Government's desire to exclude from the control of the Housing Authority the small percentage of expensive houses (10 per cent) likely to be sought after by better-off persons not considered to be in need of protection, while providing necessary protection for tenants of more limited means who had strong connections with Guernsey.

The Court therefore found that there was no breach of Article 14, taken in conjunction with Article 8.

IV. Alleged violation of Article 6 para. 1 of the Convention

The appeal lodged by Mrs. Gillow with the Royal Court against the refusals of licences concerned the applicants' right to occupy their home, which is a civil right within the meaning of Article 6; on the other hand, the prosecution of Mr. Gillow involved the determination of a criminal charge. Article 6 was therefore applicable in these two respects.

With regard to the civil proceedings, the Court pointed out that the requirement of a lawyer to lodge an appeal before a higher court is common to several member States of the Council of Europe. Although in the applicants' case their lawyer did not properly perform his duty, the Royal Court nevertheless entertained the appeal even though it had been lodged out of time. Finally, the Court did not see how the applicants' right of access to court had been interfered with by the refusal to allow them to occupy their house pending the appeal.

As to Mr. Gillow's prosecution for unlawful occupation, the decision of the Magistrate not to adjourn the criminal hearing was not open to criticism. On the facts, the refusal to allow Mr. Gillow access to the tape recording of the first instance proceedings had not resulted in any unfairness, the Registrar having checked the transcript and found it to be accurate.

The Court also rejected the applicants' complaints regarding the impartiality of the Royal Court.

It was held that there had been no violation of Article 6 on these counts, and further that it was not necessary to examine various other complaints concerning the Royal Court, which had not been pursued at the hearings.

V. Application of Article 50

The Court decided that the question whether the applicants should be granted just satisfaction under Article 50 of the Convention was not yet ready for decision, and reserved the matter.

GILLOW v. UNITED KINGDOM
Case number 13/1984/85/132.

(Publications of the European Court of Human Rights Series A Volume 109. - A copy of which is now in the Royal Court Library.)

IMMIGRATION

51. Order: The Immigration (Guernsey) (Amendment) Rules, 1986. - Amend the Immigration (Guernsey) Rules, 1983 in respect of overseas doctors and dentists seeking to work in the Bailiwick by ending permit-free entry; imposing a visa requirement for certain citizens of Sri Lanka; and extending the right to be joined by a husband or male fiance to all settled women, subject to the primary purpose and other tests. Also, following the accession of Spain and Portugal to the European Community on 1.1.86 these Rules extend the entitlement of Spanish and Portuguese nationals, subject to certain considerations, to enter the Bailiwick to set up in business, become established in self employed occupation or otherwise to provide or receive services for remuneration for a 7 year period (until 1.1.93). They will however continue to be subject to the work permit scheme where they wish to be employed in the Bailiwick.

In force 23.7.86. (S.I. No. 21 of 1986).

52. Order: The Immigration (Guernsey) (Amendment No. 2) Rules, 1986. - Further amendment to Immigration (Guernsey) Rules, 1983.

In force 5.11.86. (S.I. No. 31 of 1986).

53. Order: The Immigration (Guernsey) (Amendment No. 3) Rules, 1986. - Imposes visa requirements on certain nationalities.

In force 3.12.86. (S.I. No. 37 of 1986).

INDIRECT TAXATION

Impôts

54. Ordinance: The Indirect Taxes, Duties and Impôts (Increase of Rates) (Budget) (Amendment) Ordinance, 1986. - Implements the budget proposals to increase tax on tobaccos.

In force 10.12.86. (No. XXXII of 1986).

LAND LAW

Case:

Appeal to the Court of Appeal - Determination of boundary between adjoining properties - Whether conveyance should have been construed without regard to extrinsic evidence - Accompanying plan "by way of identification and not of limitation" - Whether nevertheless the plan could be examined to assist in understanding the verbal description of the boundary contained in the conveyance

55. 'PP' and 'DD' owned neighbouring properties situate at Rue Godfrey in the Parish of the Vale. 'PP' brought an action against 'DD' alleging interference with a right of way enjoyed by 'PP' over the property belonging to 'DD'; on 14.12.84 the Royal Court sitting as an Ordinary Court awarded judgment in favour of 'PP' and ordered 'DD' to pay to 'PP' the sum of £150 by way of damages and to reinstate the right of way. 'DD' appealed to the Court of Appeal from the finding of the Royal Court that the boundary between the two adjoining properties over a particular length described by reference to the plan attached to the conveyance registered on 10.12.71 followed a straight line rather than a curve as argued by 'DD'. The Deputy Bailiff, presiding over the Royal Court, had decided as a matter of law that the terms of the conveyance were such that the boundary should be determined not by reference to the plan but solely by reference to the physical state of the ground at the time of the conveyance in 1971, and for that purpose extrinsic evidence was admissible. At the hearing of the appeal the Court of Appeal invited argument from Counsel for both parties as to this aspect of the case, recognising that in the event of the Court's concluding that the Deputy Bailiff could and should have construed the conveyance without regard to extrinsic evidence it would not be necessary for the Court to hear submissions as to the decisions on fact in favour of 'PP' by the Jurats, relating as they did to the physical condition of the ground as it stood in 1971.

THE COURT OF APPEAL (Civil Division) DISMISSED THE APPEAL, with costs, HAVING HELD:-

- (i) that the conveyance of 1971 provided that the "premises hereby conveyed are by way of identification but not of limitation shown coloured pink on the plan hereto annexed" and in describing the

boundaries of those premises stated that they were bounded "on or towards the North by a cartway (coloured green on the said plan) owned by the Vendors, the demarcation line being as indicated on the said plan.";

- (ii) that it was common for a plan incorporated into and accompanying a conveyance to be described as being by way of identification and not of limitation; in the English Court of Appeal in *Wigginton & Milner Ltd. v. Winster Engineering Ltd.* (1978) 1W.L.R.1462, Lord Justice Buckley said at p.1473

"the process of identification is in fact the process of discovering what land was intended to pass under the conveyance, and that is the precise purpose which the plan is said to serve. Accordingly, so long as the plan does not come into conflict with anything which is explicit in the description of parcels, the fact that it is said to be "for the purposes of identification only" does not appear to me to exclude it from consideration in solving problems which are left undecided by what is explicit in the description of any parcel."

In applying this principle to the particular wording of the conveyance of 1971 the Court concluded that there was a clear grant of the property conveyed by reference to one of the lines drawn on the plan referred to; it was to be observed that the plan was not described in a general sense as by way of identification and not of limitation, but rather it was the area coloured pink on the plan which was the subject of such description. The Court therefore concluded that the words "the demarcation line as being indicated on the said plan" are a clear, specific and particular identification of one of the boundaries of the property and must be given effect to;

- (iii) the Court had also been referred to a quotation from a judgment of Lord Justice Romer in the unreported case of *Webb v. Nightingale*, which was quoted in *Willson v. Greene*, (1971) 1W.L.R.635, at p.639:-

"Now it seems to me that the words "for the purpose of identification only" are virtually meaningless in the context in which they are found in this particular document, and I have the greatest doubt as to whether the draftsman had the smallest idea of what he meant by putting them in. Words of that kind are, of course, frequently used in conveyances in which the parcels are described in the body of the deed. In such cases the plan is merely to assist identification, and, in the event of any inconsistency arising, is subordinate to the verbal description."

In the present instance the Court found the plan had been brought in as a part of the specific description of the property without qualification and that it formed the equivalent to the verbal description and was incorporated into the verbal description, as described by Lord Justice Romer in the passage cited.

THE APPEAL WAS ADJOURNED in so far as it related to the order for reinstatement of the right of way made by the Royal Court on 14.12.84, to enable the parties to consider the impact of the Court of Appeal's decision on the major issue between them; and the Court AWARDED COSTS in favour of 'PP', the respondents to this appeal.

[Payne and Payne v. Walsh and Walsh - Court of Appeal 30.10.86.]

POLICE

56. Order in Council: The Police Force (Guernsey) Law, 1986. - See 3.GLJ.53.
Registered and in force 19.8.86. (No. XII of 1986).

POST OFFICE

57. Order: The Post Office (Inland Post) (Amendment) (No. 2) Order, 1986. - Increases several miscellaneous service fees, increases compensation payable in certain cases and provides for mail to the Republic of Ireland being charged and treated in accordance with other European countries consequent upon the Republic's decision to charge the British Post Office for receiving mail.
In force 3.11.86. (S.I. 28 of 1986).
58. Order: The Post Office (Overseas Parcel Post) (Amendment) (No. 2) Order, 1986. - Increases the rates of some overseas parcel post services.
In force 3.11.86. (S.I. 29 of 1986).
59. Order: The Post Office (Overseas Letter Post) (Amendment) (No. 2) Order, 1986. - Increases the postal rate on overseas letters.
In force 3.11.86. (S.I. 30 of 1986).

PRACTICE AND PROCEDURE

International co-operation

60. Convention: Accession to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters (3.GLJ.61) of Monaco (with effect from 18.8.86) and Anguilla (with effect from 1.9.86).

Case:

Commission Rogatoire - Disclosure by Bank - Action by witness to set aside - Appeal to Court of Appeal - Application by appellant for adjournment of hearing or leave to withdraw

61. The Securities and Exchange Commission of the United States (S.E.C.) gave notice of appeal to the Court of Appeal from the decision of the Deputy Bailiff sitting in Chambers on 11.3.86 (see 3.GLJ.59). On 10.7.86, the date fixed for the hearing of the appeal, S.E.C. applied to the Court for an adjournment of the hearing until the next sitting of the Court on 22.9.86, on the ground, inter alia, that although a decision had been reached by the Judge of the U.S. District Court by whom the letter of request had been issued, proceedings in that Court were not quite at an end and it would therefore be possible for any new evidence which might be obtained pursuant to the Commission Rogatoire proceedings in Guernsey to be received by the U.S. Court. In the alternative S.E.C. applied for leave to withdraw the appeal. Both applications were opposed by Counsel for the Managing Director of Rea Brothers (Guernsey) Limited (the Witness).

THE COURT OF APPEAL (Civil Division) REFUSED THE APPLICATION AND DISMISSED THE APPEAL with costs, HAVING HELD:-

- (i) that it was not even clear, from the arguments which had been put before the Court, whether the letter of request, if granted, would be required, and even if an appeal was entered before the Court of Appeal in America, the letter of request might not necessarily even then be granted or required. [The action brought by the S.E.C. before the U.S. Court, in relation to which the letter of request had been issued, had been dismissed by that Court on 3.6.86, although it was not known whether the final decree or judgment setting out that decision had yet been perfected]. The whole matter was so vague that the application for an adjournment had to be dismissed;
- (ii) that the application for leave to withdraw the appeal had to be dismissed; S.E.C. would always be at liberty to apply to the Royal Court for a fresh letter of request at a future date on the facts then at issue depending upon the outcome of a possible appeal in the United States from the decision of the U.S. District Court, or such other proceedings as might be commenced by S.E.C. in the United States;
- (iii) that the legal principles postulated by the Deputy Bailiff in the Court below would continue to be binding unless reversed by the Court of Appeal.

[Rea Brothers (Guernsey) Limited v. S.E.C. - Court of Appeal 10.7.86.]

Case:

Prerogative writs of Habeas Corpus and of Mandamus - Whether the Royal Court has power to issue - Whether in the circumstances alleged it was appropriate for such writs to be issued

62. 'A' applied to the Royal Court for a writ of Habeas Corpus to be served by the Court on the Prison authorities requiring them to produce 'A' before a competent court to consider why the prison was:-
- "(1) refusing to allow him full access to his legal papers concerning pending cases;
 - (2) refusing to transfer him to the Court of Appeal in the U.K;
 - (3) refusing to transfer him to a competent court for an application for bail pending the appeal, the Royal Court on the 17.7.86 having stated that they do not have the power to deal with the matter.

'A' also applied for an Order of Mandamus to be served on the prison to release 'A's letters detained on the advice of the Crown Officers as they were required for litigation."

THE BAILIFF, sitting alone and in Chambers gave the following judgment and directed that it could be made public:-

- (i) that Habeas Corpus was defined in Halsbury's Laws of England, 4th Edition, Volume XI at para. 1452, as follows:-

"a writ of Habeas Corpus ad subjiciendum, which is commonly known as as the writ of Habeas Corpus, is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention whether in prison or in private custody".

The question before him was whether it formed part of the Law of Guernsey, that is to say whether the Royal Court had power to issue such a writ.

- (ii) that he knew nothing in the customary law of Guernsey giving power to the Royal Court to issue such a writ;
- (iii) that there were however two relevant statutes which had been registered in Guernsey. The Habeas Corpus Act 1816 provided in section 1 that writs of Habeas Corpus might be issued by Judges of the Coif or Justices of the Bench in respect of persons imprisoned in, inter alios, "the isles of Jersey, Guernsey or Man " and by the Supreme Court of Judicature Consolidation Act 1925 these powers were now vested in the High Court of Justice in London. The Habeas Corpus Act 1862 provided, in section 1, that "no writ of Habeas Corpus shall be issued out of England by authorities or any judge or Court of Justice therein, into any colony or foreign dominion of the Crown where Her Majesty has lawfully established Court or Courts of Justice having authority to grant and issue the said writ, and to ensure the due execution thereof throughout such colony or dominion." Guernsey was clearly not a colony. (See Halsbury's Laws of England, 4th Edition, Volume VI paragraph 869.) Neither was it a foreign dominion as it was part of the Crown possessions and part of the British Islands in the same way as the Isle of Man, which was held not to be a foreign dominion of the Crown under the Habeas Corpus Act in ex parte Brown, (1833) Q.B.193. As Guernsey was neither a colony nor a foreign dominion under the Crown the Act of 1862 did not apply;
- (iv) that the Royal Court had no jurisdiction to issue the writ of Habeas Corpus which was applied for;
- (v) that if the Court had the power, on the facts before it, they did not show grounds for the issue of the writ;
- (vi) that the same principles applied as regards the writ of Madamus and that here again there was no power in the Royal Court to issue such a writ; and

DISMISSED both applications, granted leave to appeal to the Court of Appeal and requested that the hearing of the appeal be expedited, should 'A' so desire.

[Ex parte Kirk - 1986 Plaids de Meubles 98.]

Case:

Court of Appeal - Application for the issue of prerogative writs of Habeas Corpus and of Mandamus - Whether, assuming the Royal Court had such jurisdiction, the circumstances would justify the issue of such a writ or writs

- 63. 'A' appealed from the decision of the Bailiff sitting alone and in Chambers on 1.8.86 (see paragraph 62).

THE COURT OF APPEAL (Civil Division) HELD:-

- (i) that it was unable to determine the matter as to whether the Royal Court had jurisdiction or not without hearing the issues very fully argued and that therefore the Court would assume that everything was in the favour of the applicant and that the Royal Court had jurisdiction to make the orders he sought. The Court of Appeal was not deciding the issue of law and therefore heard 'A's application on the merits;
- (ii) that as to the application for a writ of Habeas Corpus, 'A' had indeed been produced to a competent Court in the person of the Bailiff and he had subsequently come to the Court of Appeal;
- (iii) that as to the application by 'A' to be allowed full access to his legal papers pending certain litigation, that matter had been dealt with in greater detail before the Royal Court on 7.8.86 when that Court had, inter alia, refused an application by 'A' to order the release of certain papers but had granted leave to 'A' to appeal to the Court of Appeal against that judgment; therefore that was a matter which in due course, if 'A' proceeded, would be dealt with by a single judge of the Court of Appeal;
- (iv) that even if the Court had power to order that 'A' be transferred to the United Kingdom, there was no reason why 'A' could not obtain the services of an agent in forma pauperis in the United Kingdom and the Court did not consider that 'A' was prejudiced by not being able to appear before the Privy Council in person;
- (v) that there was no reason for interfering with the decision of the Bailiff to refuse to order that 'A' be transferred to a competent Court for an application for bail pending the hearing of his appeal following the decision of the Royal Court on 7.7.86 that they did not have power to deal with this matter. 'A' had already been produced before a competent Court in respect of his application, that is to say before the Bailiff, and he had had the matter dealt with by the Court of Appeal this day;
- (vi) as to the application for an order for Mandamus to be served on the prison, similar considerations applied and, assuming that the Court of Appeal had the jurisdiction to make the orders that 'A' sought, the Court had not heard sufficient reason to exercise its discretion and make those orders; and

DISMISSED the appeal.

[Ex parte Kirk - Court of Appeal 14.8.86.]

Case:

Action alleging breach of contract - Action placed on the Rôle des Causes en Preuve - Application by the defendant for the action to be dismissed for want of prosecution - Péremption d'instance - interrupted by an application by the defendant to the Court for a date to be fixed

64. 'P' brought an action against 'D' claiming damages for breach of contract and the action was placed on the Rôle des Causes en Preuve on 19.9.85. On

1.7.86 'D' applied to the Court for a date to be fixed for the hearing of the said action; on 2.10.86 'D' actioned 'P' to see 'D' apply to the Court to dismiss the action for want of prosecution on the ground that the action had been périmée by reason of the lapse of a year and a day since its inscription on the Rôle des Causes en Preuve, pursuant to the Ordinance of 1848 (Tome III p.123).

THE BAILIFF sitting alone HELD:-

- (i) that péremption d'instance was interrupted, inter alia, "lorsque le défendeur "fournit des défenses et fait quelques autres procédures"";-
(Gallienne, p.313);
- (ii) that péremption had been interrupted by the application by the Defendant to the Court for a date to be fixed for the hearing of the said action;
- (iii) that the said action was therefore not périmée by reason of the lapse of a year and a day since its inscription on the Rôle des Causes en Preuve;

AND DISMISSED THE ACTION BY THE DEFENDANT WITH COSTS.

[Tostevin v. Vekaplast Windows (C.I.) Limited - 1986 Plaids de Meubles 233.]

[The original action was subsequently determined by the Royal Court sitting as an Ordinary Court and on 18.12.86 judgment was awarded in favour of the Plaintiff in the sum of £2,986.74 with costs. 1986 Plaids de Meubles 395.]

Case:

Court of Appeal - Application for leave to call further evidence - Objection to a judge sitting - Excusation du prison - Whether appellant's situation came within that rule - Whether application to call further evidence should be dealt with before a date for the hearing of the substantive appeal is fixed

65. On 1.7.86 'A' applied to a single judge of the Court of Appeal, inter alia, for leave to call further evidence at the hearing of his appeal from a judgment of the Royal Court sitting as an Ordinary Court on 26.9.86. The application was refused, and 'A' subsequently made a similar application to the full Court of Appeal. At the outset of the application to the Court of Appeal, 'A' raised four preliminary issues. First he objected to the Bailiff of Guernsey sitting as a member of the Court on the ground that the Bailiff had adjudicated on a previous matter in which 'A' had been concerned, and, in particular, proceedings relating to a Clameur de Haro which he had raised; second, 'A' stated that the Bailiff was a Defendant in proceedings raised by 'A' arising from that Clameur de Haro; and third, that the Bailiff was involved in certain Chambre de Discipline proceedings raised or instigated by 'A'. It was not however suggested that the Bailiff had any personal pecuniary interest in any matters involving 'A'. 'A' also applied for an adjournment of the hearing on the ground that he had not been able to prepare adequately for the appeal, and also pursuant to the rule of "excusation du prison", which was stated in Terrien in the following terms:

"Si aucun est tenu en prison il n'est pas tenu à répondre des querelles devant qu'il soit delivré de prison."

This rule was repeated in almost the same terms in Thomas Le Marchant. 'A' further expressed dissatisfaction with the order in which matters were being heard by the Court of Appeal, and in particular at the hearing of the application in connection with further evidence being heard before the hearing of the substantive appeal.

THE COURT OF APPEAL (Civil Division) RULED as follows on these preliminary matters:-

- (a) that it was in the discretion of the court to decide whether it was appropriate for the Bailiff to sit on this appeal, given that it was not suggested by 'A' that the Bailiff had any personal pecuniary interest in any matters involving the appellant. The fact that an appellant came before a court which had previously adjudicated against him, or whose decision was or might be liable to be upset by appeal or other proceedings, was not a ground for disqualification of the court. Having considered this and other observations made by 'A', the Court was satisfied that it was duly constituted according to the law of Guernsey;
- (b) that there was no reason why 'A' should not have been properly prepared for the hearing because he was at liberty until the day that the hearing began and had been able to provide himself with a large number of documents and other materials for the appeal;
- (c) that, without expressing any opinion on the general applicability of the rule of excusation du prison in modern conditions, the Court considered that 'A's present situation did not come within the rule as so stated; the substantive appeal against the decision of the Royal Court was 'A's appeal and it was his application to allow further evidence to be adduced; the proceedings with which the court was concerned were therefore proceedings at his instance and not against him and did not come within the rule as it was stated in the authorities;
- (d) that, as to the order in which matters were to be heard, it was proper that any application to adduce further evidence should be dealt with before a date for the hearing of the substantive appeal was fixed.

THE COURT OF APPEAL DISMISSED the substantive application and appeal, HAVING HELD as follows:-

- (i) that under Rule 12(2) of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964 the Court had full discretionary power to receive further evidence upon questions of fact either by oral examination, by affidavit or by deposition; the power so stated was in similar terms to the powers of the Court of Appeal in England and the rule on which the Court of Appeal proceeded in applications to admit further evidence was stated in Halsbury's Laws of England, 4th Edition, Volume 37, paragraph 693 as follows:

"The Court of Appeal has power to receive further evidence on questions of fact. Before further evidence will be admitted, (1) it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; (2) the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; and (3) the evidence must be apparently credible, although it need not be incontrovertible."

The Court of Appeal was satisfied that its powers should be exercised in accordance with the same principles.

- (ii) that none of the applications in relation to the production of further documents fell within the principles above set out. The documents were, or could with reasonable diligence have been, available at the trial. Some of the documents were documents which had been sought to be introduced at the trial before the Royal Court, and leave to introduce them had been refused by that Court. Accordingly this was not a proper subject for an application for leave to adduce further evidence and if any issue arose in connection with those documents it could be raised by way of appeal against the decision to refuse to admit them in the course of the substantive appeal;
- (iii) that in relation to the witnesses named by 'A' who appeared to be in a position to give evidence about the substantive issues arising in the original action, the identity of all these witnesses was known at the time of the trial and even if, in the course of the trial, some issue had been raised and it was thought necessary to obtain evidence from these witnesses, the Advocate acting for 'A' could have applied for leave to call the witnesses and for any necessary adjournment to enable that to be done; any evidence which those witnesses could give was therefore evidence which would have been available at the time of the trial and no sufficient reason had been advanced why they should not have been called if it was thought desirable to do so. There was no evidence before the Court that any of the other witnesses in respect of which application was being made by 'A' would be able to give any material evidence on the issues in dispute;
- (iv) that in relation to 'A's difficulties with the Prison and other Authorities, and in particular to references by 'A' to interference with his correspondence while he was in custody after 16.6.84, the Court was satisfied that if these matters had caused any material difficulty in the preparation for or conduct of the trial, application could and would have been made for an adjournment to enable those difficulties to be resolved.

And THE COURT AWARDED COSTS in favour of the respondent, expressed the opinion that in the interests of all parties the substantive appeal should be heard as soon as possible, and refused an application by 'A' for leave to appeal to Her Majesty in Council.

[Kirk v. Blackwell - Court of Appeal 31.10.86.]

Case:

Civil Appeal to Court of Appeal - Limited liability company - Confirmation of arrest of shares - Petition for compulsory winding-up order - Failure to summon registered shareholder - Whether confirmation of arrest and subsequent winding-up order a nullity

66. On 4.2.85 Mr. Eric Morgan, respondent in the present appeal, obtained judgment against Patrick Donaldson in the sum of £21,155.66 with leave to distrain on the effects of the Defendant. It appeared from the pleadings in the action that Mr. Donaldson had control of a company called Seaview Estate Agency Limited ('Seaview') although at the trial of the action he gave evidence that he had no beneficial interest at that date in that company. H.M. Sheriff proceeded to arrest "all shares which the defendant (that is Mr. Donaldson) owns or may own" in a number of companies including Seaview. At the time of the arrest it appeared from the company file on Seaview held at the Greffe that Mr. Donaldson had ceased to be a shareholder by the beginning of 1984 and that the shares which he had previously held were then held by his wife Mrs. Joan Donaldson. On 18.7.85 Mr. Morgan applied to the Royal Court for confirmation of the arrest by the Sheriff; the Court made an order purporting to confirm the arrest of "the shares beneficially owned by the defendant, Mr. Donaldson, in Seaview Estate Agency Limited" that is to say the shares which were registered in the name of Mrs. Donaldson. An application for permission to sell those shares was adjourned for a week and then granted. No appeal was entered against the order confirming the arrest but no further steps appeared to have been taken under 1.10.85 when a petition to wind-up Seaview was presented to the Royal Court at the instance of Mr. Morgan. In the meantime Seaview had sold its only major asset and the sum of £34,489 out of the proceeds had been arrested, again at Mr. Morgan's instance. It appeared that the sale had taken place without consultation with the Sheriff who had at that time held the shares in respect of which the confirmation order had been made, and for that and other reasons the Royal Court had concluded that it would be just and equitable that Seaview should be wound up.

An order for compulsory winding-up was made on 12.12.85 and that order was the subject of the present appeal at instance of Seaview and Mrs. Donaldson. It was submitted on behalf of the appellants that Mrs. Donaldson was on the face of the public records the legal owner of the shares and that the failure to summon her to the confirmation hearing on 18.7.85 was a fundamental defect which rendered the Act of Court of that date a nullity.

THE COURT OF APPEAL (Civil Division) SET ASIDE the order for the compulsory winding-up of Seaview, made on 12.12.85, HAVING HELD:-

- (i) that no question arose as to the sufficiency of the evidence before the Royal Court to reach the conclusion that Mr. Donaldson was the beneficial owner of the shares in Seaview registered in the name of Mrs. Donaldson, or as to the correctness of the directions in law given by the Bailiff; consequently there did not appear to be any ground upon which Mr. Donaldson could impugn the the validity of the Act of Court of 18.7.75;
- (ii) that the claim of Mr. Morgan to be entitled to present a winding-up petition as "an interested party" pursuant to Article LXXIII of the Companies (Guernsey) Law, 1908 was founded upon his rights under the arrest effected by H.M. Sheriff and subsequently confirmed by the Royal Court on 18.7.85; if that confirmation order were a nullity, the subsequent proceedings could not stand;

- (iii) that with regard to the practice which was normally followed in arrest and confirmation proceedings in cases where third parties' rights might be affected, it was normal, where the subject arrested was a debt due to the judgment debtor, such as a bank account, to summon the bank to state by one of its officers whether any sum was owed to the judgment debtor, and if the sum was less than the amount in the judgment, to state what that sum was. This practice was in accordance with the following authorities; Josué Le Marchant, p.12 and Thomas Le Marchant p.119. In the present case it was alleged that the shares registered in Mrs. Donaldson's name truly belonged to Mr. Donaldson, and if so she would be obliged to make those shares available to him if required. The arrest of those shares was an arrest in Mrs. Donaldson's hands of assets due by her to Mr. Donaldson and the Court saw no distinction between her possession and that of any other third party, such as a bank, in the instance given above;
- (iv) that the proper practice would therefore require that Mrs. Donaldson be summoned to the confirmation hearing and that the failure to summon her was a substantial defect in procedure rendering the confirmation order invalid as against her; in circumstances such as those of the present case there was every reason to suspect that Mrs. Donaldson may well have been fully aware of what was taking place, but the Court did not consider that such suspicion could make up for the lack of proper notice;
- (v) that no authority had been cited to the Court in support of the argument on behalf of the appellants that the arrest itself was invalid because the shares bore to be registered in Mrs. Donaldson's name in the public register; the Court could see no reason why property which truly belonged in beneficial ownership to a debtor should not be arrested even though it stood in the name of another person; therefore the shares in question remained subject to the arrest and if Mr. Morgan wished to pursue the matter further, new confirmation proceedings would be required to which Mrs. Donaldson as well as Mr. Donaldson would require to be summoned;

AND THE COURT, having set aside the winding-up order, DECLINED at this stage to dismiss the petition, and in view of the peculiar circumstances of the company, which was not trading and whose affairs appeared to be in some disorder, appointed Colin William McGregor as provisional liquidator of Seaview, pursuant to Article LXXIV of the Companies (Guernsey) Law, 1908 in order to ensure that any assets of the company were not dissipated pending resolution of the outstanding question of the beneficial ownership of the shares held by Mrs. Donaldson; and the said McGregor was sworn accordingly;

AND THE COURT AWARDED COSTS in favour of the appellants and made no order as to costs in the winding-up proceedings.

[Seaview Estate Agency Limited and Joan Eileen Donaldson v. Eric Lynn Morgan - Court of Appeal 31.10.86.]

[On 18.6.87, at the instance of Mr. Morgan and with the consent of Seaview, the Royal Court dismissed the petition and discharged the liquidator.]

Case:

Civil action - Claim for interest - The Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 - No retrospective effect

67. 'P' brought an action against his former employer, 'D', alleging that his employment had been terminated summarily and without reason and claiming that he had suffered loss and damage thereby in the sum of £2,799.91, together with interest and costs. On 9.12.86 the Royal Court sitting as an Ordinary Court awarded judgment in favour of 'P' in the sum claimed with costs. On behalf of 'P' application was made to the Court for an award of interest preceding judgment pursuant to section 1 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985.

HAVING BEEN DIRECTED BY THE BAILIFF that the said section did not empower the Court to award interest prior to the date of registration and coming into force of the law, namely 18.4.86, THE COURT awarded interest on the judgment debt at the rate of 10% per annum with effect from the said 18.4.86.

[Wren v. Millsea Limited - 1986 Plaids de Meubles 375.]

PRISON

Prison Administration

68. Ordinance: The Prison Administration (Amendment) (Guernsey) Ordinance, 1986. - Amends the Prison Administration (Guernsey) Ordinance, 1959 deleting obsolete disciplinary awards: imposing duties of keeping fuller records: increasing certain disciplinary awards: clarifying the Governor's powers therewith and miscellaneous administrative matters.

In force 24.9.86. (No. XXIII of 1986).

69. States Resolution of 26.11.86: Directing preparation of legislation to provide a framework for setting up a parole scheme in Guernsey and requesting the Prison Board to report back to the States with detailed recommendations with regard to the constitution of the Parole Review Committee and the provisions to be contained in the Ordinance designed to establish a parole scheme.

PUBLIC ASSISTANCE

Central Outdoor Assistance Board

70. Ordinance: The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 1986. - Approves the Central Outdoor Assistance Board (Amendment) Regulations, 1986.

In force on 26.11.86. (No. XXXI of 1986).

Procureurs and Overseers of the Poor

71. Order in Council: The Public Assistance (Amendment) (Guernsey) Law, 1986. - See 3.GLJ.63.

Registered and in force on 19.8.86. (No. XI of 1986).

ROAD TRAFFIC

Driving Under the Influence of Drink or Drugs

72. Order in Council: The Road Traffic (Driving under the Influence of Drink or Drugs) (Guernsey) Ordinance, 1986. - See 3.GLJ.70.

Royal Sanction 5.11.86. Registered and in force 16.12.86. (No. XV of 1986).

International carriage

73. Order in Council: The Carriage of Goods by Road (Guernsey) Order 1986. - Extends to the Bailiwick with modifications the Carriage of Goods by Road Act 1965 as amended, principally by the Carriage by Road and Air Act 1979. The 1965 Act gives effect to the 1956 Geneva Convention on the Contract for the International Carriage of Goods by Road and the 1979 Act gives effect to a 1978 Protocol to that Convention substituting references to special drawing rights on the International Monetary Fund for the previous references to gold francs.

Registered on 16.12.86. In force 7.1.87.

Prohibited and one-way streets

74. Ordinance: The Prohibited and One-Way Streets (Amendment) (No. 2) Ordinance, 1986. - Makes the road at the top of the market one-way in the direction of The Bordage/Fountain Street.

In force 24.9.86. (No. XXV of 1986).

SHIPPING

Collision Rules

75. Orders in Council: The Merchant Shipping (Distress Signals and Prevention of Collisions) (Guernsey) Order 1986 requires ships registered in the Bailiwick, and masters and seamen employed in such ships, to comply with the International Regulations for Preventing Collisions at Sea, 1972, as amended, prescribes powers to detain non-complying ships in certain circumstances and penalties for failure to comply. The Collision Rules (Seaplanes) (Guernsey) Order 1986 applies most of the requirements of the international convention to seaplanes on the water in the Bailiwick and adjacent territorial waters.

Registered (together with the English regulations extended by the orders, the Order in Council extending to the Bailiwick the provision of the Civil Aviation Act 1982 which confers to make collision rules for seaplanes and the Act of 1982 itself) on 16.12.86.

Distress Signals and Prevention of Collisions Order in force 1.10.86.
Seaplanes Order in force 1.1.87.

Maritime claims

76. Orders: The Merchant Shipping Act 1979 (Commencement No. 10) Order 1986 and The Merchant Shipping (Liability of Shipowners and Others) (Calculation of Tonnage) Order 1986. - Bring into force on 1.12.86 certain provisions of the 1979 Act (which have been extended to the Bailiwick) relating to liability for maritime claims and make provision as to the calculation of tonnage for connected purposes.

Registered on 19.8.86.

Pilotage

77. Order in Council: The Harbours, Moorings and Pilotage (Fees and Dues) Law, 1986. See paragraph 39.

Registration

78. States Resolution of 10.12.86. - Directing the preparation of legislation empowering the Board of Administration to direct the refusal of registration or removal from the register of any specified ship, unless satisfied that it has a clear economic connection with the Bailiwick and that its registration is not detrimental to the interests of the Bailiwick or of international merchant shipping; and to make orders requiring registrations of prescribed descriptions of ships to be refused and/or cancelled.

SOCIAL SECURITY

Attendance and Invalid Care Allowances

79. Order in Council: The Attendance and Invalid Care Allowances (Amendment) (Guernsey) Law, 1986. - See 2.GLJ.74.

Registered on 15.7.86. In force retrospectively on 6.1.86. (No. X of 1986).

80. Ordinance: Attendance and Invalid Care Allowances (Guernsey) Ordinance, 1986. - See 3.GLJ.76.

In force 10.11.86. (No. XIX of 1986).

Family Allowances

81. Ordinance: The Family Allowances (Guernsey) Ordinance, 1986. - See 3.GLJ.76. Increases figure for Family Allowances to £4 per week.

In force on 11.11.86. (No. XXXV of 1986).

Social Insurance

82. Projet de Loi: The Social Insurance (Amendment) (No. 2) (Guernsey) Law, 1986. - Increases the amount of fines for offences under the Social Insurance (Guernsey) Law, 1978 and inserts a new provision that if any Class I contribution is not paid to the Authority by the prescribed date, the employer responsible for making such payment shall, in addition, pay a

penalty equivalent to 2½% of the outstanding contribution together with interest thereon at the rate of 2½% per month from the aforesaid prescribed date until payment.

Approved by the States on 24.9.86. Awaiting Royal Sanction.

83. Order: The Social Insurance (Increase of Benefit) (Guernsey) Regulations, 1986. - Increases the reduced rates of widow's benefits, old age pension, unemployment benefit, sickness benefit, invalidity benefit, maternity allowance and death grant payable under the Social Insurance (Guernsey) Law, 1978, and revises the rates of increase disablement benefit where constant attendance is required.

In force 10.11.86. (No. 27 of 1986).

84. Order: The Social Insurance (Contributions) (Amendment) (No. 2) (Guernsey) Regulations, 1986. - Specifies the lower weekly earnings limit and the lower monthly earnings limit for the contribution year 1987.

In force 1.1.87. (No. 25 of 1986).

85. Order: The Social Insurance (Classification) (Amendment) (Guernsey) Regulations, 1986. - Amends the Social Insurance (Classification) (Guernsey) Regulations, 1978, to provide that an insured person who is employed under a contract of service from which he derives weekly earnings of less than £18 or monthly earnings of less than £78 shall be treated as a non-employed person.

In force 1.1.87. (No. 26 of 1986).

86. Statutory Instrument: The Social Insurance (Residence and Persons Abroad) (Amendment) (Guernsey) Regulations, 1986. - Enables persons resident outside of or temporarily absent from Guernsey and in receipt of certain social insurance benefits to receive the same increase in benefit as those persons resident in Guernsey.

Made 25.11.86. In force 5.1.87. (S.I. No. 35 of 1986).

87. Ordinance: The Social Insurance (Rates of Contributions and Benefits, etc.) (Guernsey) Ordinance, 1986. - See 3.GLJ.76.

In force - certain provisions on 10.11.86, other provisions on 1.1.87. (No. XX of 1986).

Supplementary Benefit

88. Ordinance: The Supplementary Benefit (Implementation) (Amendment) Ordinance, 1986. - See 3.GLJ.76.

In force 14.11.86. (No. XXI of 1986).

89. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) Ordinance, 1986. - Provides that the Supplementary Benefit (Implementation) Ordinance, 1986, shall have effect in the Island of Alderney as it has effect in the Islands of Guernsey, Herm and Jethou.

In force 14.11.86. (No. XXII of 1986).

TRUSTS

Variation of charitable trusts

90. Order in Council: The Saint Sampson's Church Institute (Variation of Trusts) (Guernsey) Law, 1986. - (See 3.GLJ.79).

Registered and in force 3.2.87. (No. XXV of 1986).

VIDEO LICENSING

91. States Resolution of 30.7.86: Directing preparation of legislation to empower the Video Works Licensing Authority to fulfil its mandate under the Video Works Licensing Law, 1985. The States Resolution provides for an Ordinance to deal with the detailed matters of licensing set out in the report of the Committee dated 2nd June, 1986 and set out in Billet d'Etat XVI of 1986 at pp.881-888.

WATER

92. Ordinance: The Watercourses Ordinance, 1986. - Subjects certain watercourses discharging at Vazon to the "Loi relative aux Douits" of 1936.

In force 30.7.86. (No. XVIII of 1986).

93. Projet de Loi: The States Water Supply (Amendment) (Guernsey) Law, 1986. - Increases fines under various laws relating to the States water supply.

ALDERNEY

BUILDING AND DEVELOPMENT CONTROL

Self-catering tourist accommodation

94. Projet de Loi: The Building and Development Control (Amendment) (Alderney) Law, 1986. - Enables Alderney's Building and Development Control Committee to grant permission for the erection or use of a building as self-catering tourist accommodation. Gives the States of Alderney power to control the use and occupation of such buildings. Makes it clear that such premises are not within the annual "dwellings quota" but that their use as private dwellings does involve a material change of use requiring the permission of the Committee.

Approved by the States of Alderney on 3.9.86.

Awaiting Royal Sanction.

HEALTH AND MEDICINE

Nursing and Residential Homes

95. Projet de Loi: The Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1986. - Provides controls, through a registration system, over the standards of staffing, equipment and management of private nursing establishments and homes for the aged or infirm; and regulates, through a licensing system, the occupation of such premises by such persons.

Homes will have to be registered with Alderney's Health and Welfare Committee; they will be subject to inspection; and their conduct will be controlled by Ordinance. There are provisions for representations and appeals.

With certain specified exceptions, patients and residents will require a licence to occupy nursing or residential homes and the factors to which the Committee is to have regard in considering applications are specified, as are the circumstances in which licences (which are to be personal and may be subject to conditions) may be withdrawn. Again, the Projet makes provision for representations and appeals.

Nursing and residential homes are not within the annual "dwellings quota" but it is made clear that their use as private dwellings does involve a material change of use requiring the permission of Alderney's Building and Development Control Committee.

Approved by the States of Alderney on 5.11.86. Awaiting Royal Sanction.

HOUSING

Control of Occupation

96. The Building and Development Control (Amendment) (Alderney) Law, 1986. See paragraph 94.

97. The Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1986. See paragraph 96.

RATING

98. Order in Council: The Alderney (Application of Legislation) (Amendment) Law, 1986. (See 3.GLJ.86).

Registered on 2.12.86. In force 1.1.87.

99. Ordinance: The Occupier's Rate (Level for 1987) Ordinance, 1986. - Sets the the Alderney occupier's rate for 1987 at 35 pence in the pound.

In force 1.1.87.

ROAD TRAFFIC

Public Vehicles

100. Ordinance: The Alderney Road Traffic and Public Highways (Amendment) Ordinance, 1986. - Amends section 11 of the Alderney Road Traffic and Public Highways Ordinance, 1966 so as to make it clear that Alderney's Public Works Committee may make regulations governing the conduct of a person in charge of a public vehicle whether or not he is driving it.

In force 5.11.86.

101. Regulations: Public Vehicle Regulations, 1986. - Prescribe maximum taxi fares, and requirements as to the use of taxis, in Alderney.

In force 1.1.87.

Traffic Regulations

102. Regulations: The Traffic (Amendment) Regulations, 1986. - Extend the disc parking zone in Victoria Street and effect a number of other minor amendments to the Traffic Regulations 1986.

In force 12.12.86.

SARK

CONSTITUTIONAL LAW

103. Order in Council: The Reform (Amendment) (Sark) Law, 1986. - Provides that the Michaelmas sitting of Chief Pleas shall be the sitting for fixing the "direct tax" for the purpose of the Douzaine and also imposes an obligation on the Douzaine to submit a complete account for the financial year past at the January sitting.

Royal Sanction. Registered and in force. (No. XXIV of 1986).

HOUSING

104. Order in Council: The Housing (Temporary Provisions) (Amendment) (Sark) Law, 1986. - See 3.GLJ.91.

Royal Sanction 5.11.86. Registered and in force 16.12.86. (No. XXIII of 1986).

TOURISM

105. Order in Council: The Tourism (Amendment) (Sark) Law, 1986. - Seeks to amend section 8 of the Tourism (Sark Law of 1982 by the addition of three paragraphs based on section 5(d), (e) and (f) of the Guernsey Tourist Law, 1948, thereby adding new requirements to be taken into consideration when accommodation permits are applied for.

Approved by Chief Pleas on 6.8.86. Awaiting Royal Sanction.