

GUERNSEY LAW JOURNAL

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GUERNSEY LAW JOURNAL

EIGHTH ISSUE

Introduction

This edition covers the six-month period from 1st July, 1989 to 31st December, 1989. Included in this issue is an article on Disclosure of Confidential Information under Guernsey Law by Advocate S. W. F. Howitt. The Editorial Committee would welcome contributions on other subjects of local legal interest for future publication and it is suggested that any person considering embarking on such a project should in the first instance refer to the Committee to agree the subject matter to avoid the possibility of duplication.

There are two innovative features in this edition. Firstly, Guernsey Statutory Instruments will no longer be digested in detail as a matter of course. Instead, a list in numerical order (see page 30) will be published and only those considered to be of particular interest will be described in the main text of the Journal. Secondly, the initials of counsel involved in cases reported in the Journal have been appended to the citation of each case to enable persons interested in obtaining further information in relation to that case to refer to the relevant advocate.

A cumulative index of, and tables of cases and Orders in Council included in, Issues 1 to 8 of the Journal will be published shortly under separate cover.

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

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

Citation:

References to this issue in future issues will be cited using the figure and letters 8.GLJ followed by the paragraph number.

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Compiled 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 1989.

25th April, 1990.

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ADVOCATES

Accounts

1. Order of the Royal Court: The Advocates' Accounts Rules, 1989. - Impose obligations on Advocates to keep clients' money totally separate from other moneys and prescribe detailed rules as to how their accounts must be kept. Supervisory powers are vested in H.M. Procureur who may invoke the assistance of Inspectors in appropriate cases. Ultimately, supervision is a matter for the Chambre de Discipline of the Guernsey Bar.

Made 5.12.89. In force 1.1.90. (Order of the Royal Court No. XI of 1989).

2. Order of the Royal Court: The Advocates' Trust Accounts Rules, 1989. - Impose similar obligations to those contained in the Advocates' Accounts Rules, 1989 in respect of trust moneys held by Advocates.

Made 5.12.89. In force 1.1.90. (Order of the Royal Court No. X of 1989).

3. Order of the Royal Court: The Advocates' Accounts (Deposit Interest) Rules, 1989. - Provide that Advocates who hold money for clients must pay the client interest thereon if "interest ought in fairness to the client to be earned for him". The Chambre de Discipline may issue a certificate stating whether or not that is the case.

Made 5.12.89. In force 1.1.90. (Order of the Royal Court No. XII of 1989).

Qualifications

4. Ordinance: The Bar Ordinance, 1989. - Amends the principal Ordinance of 1949 to provide for two Advocates in place of one to sit with the Bailiff and the Procureur on the examining Committee for the Guernsey Bar Examinations.

Made and in force 27.9.89. (No. XX of 1989).

AGRICULTURE AND ANIMALS

5. Ordinance: The Protection of Game (Amendment) Ordinance, 1989. - Increases fines for contraventions of the "Ordonnance pour la Protection du Gibier" of 1884, as amended.

In force 27.9.89. (No. XIX of 1989).

ARBITRATION

6. Arbitration proceedings - governing law - power of parties to exclude domestic procedural law

The parties to arbitration proceedings conducted in Alderney agreed to adopt English law instead of Alderney law as the law governing the

proceedings. HELD by the Deputy Bailiff, in a subsequent appeal from the Court of Alderney, that there was nothing contrary to public policy in the acceptance of the English court to review the Arbitrator's decision given the prior agreement of the parties.

(Glendale Limited v. Slinn - Requetes and Appeals to the Royal Court 1.12.89 (NJB/MJSE)).

BANKING, INSURANCE AND FINANCE INDUSTRIES

Control of borrowing

7. Ordinance: The Control of Borrowing (Amendment) (Bailiwick of Guernsey) Ordinance, 1989. - Exempts from the requirement to obtain the Advisory and Finance Committee's consent under the Control of Borrowing Ordinances,
- (a) borrowing by authorised collective investment schemes, and collective investment schemes which are authorised in a designated country or territory, within the meaning of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (see 5.GLJ.5); and
 - (b) circulation of prospectuses in relation to the units of or shares in such schemes.

Further, increases the general limit below which borrowing control does not apply from £10,000 to £50,000 and the special annual limit in specified cases from £50,000 to £500,000; re-introduces control over circulation of prospectuses in relation to unit trusts not benefitting from the new exemption referred to above; and updates the Control of Borrowing Ordinances in minor respects.

In force 14.12.89. (No. XXVIII of 1989).

Investment business

8. Statutory Instrument: The Investor Protection (Designated Countries and Territories) Regulations, 1989. - Designate the U.K., Jersey and the Isle of Man under section 29(1)(c) and 29(2) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (see 5.GLJ.5) as places where laws afford adequate protection to investors in relation to specified descriptions of collective investment schemes and their promotion. The effect is that such schemes can now be promoted by Guernsey licensees authorised for promotion purposes; and by people authorised in the foreign scheme's jurisdiction who meet the requirements specified in that respect in the Law, notify the Commission of their intentions in accordance with the regulations and (except in the case of Jersey) pay a £500 notification fee per scheme.

In force 1.11.89. (S.I. No. 30 of 1989).

9. Statutory Instrument: The Licensees (Notification) Rules, 1989. - Require all licensees under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (see 5.GLJ.5)
- (a) to notify the Financial Services Commission immediately of changes in and in relation to specified key personnel, relevant convictions and insolvency proceedings in relation to the licensee or its employees, foreign licence applications, disciplinary measures, material legal proceedings, certain changes in group structures, proposed changes in restricted activities, any change of business name or relevant address;
 - (b) to submit audited accounts within 3 months of their accounting reference dates;
 - (c) to establish complaints procedures and report annually on complaints; and
 - (d) to report to the Commission at least once every 12 months any change in information provided on their application form which has not been the subject of an immediate notification.

In force 1.1.90. (S.I. No. 41 of 1989).

BASTARDY AND LEGITIMATION

10. **Maintenance of illegitimate child - reciprocal enforcement**

In an application under section 5(1) of the Maintenance Orders (Facilities for Enforcement) (Guernsey) Law, 1955 for confirmation of a provisional order for maintenance of an illegitimate child made by the Greenwich Magistrate's Court the Magistrate HELD that the provisional order of the Greenwich Court was, for the purposes of the Law of 1955, an order of affiliation therefore it was not a maintenance order within the meaning of that Law and accordingly the Magistrate's Court did not have power to confirm the order. The application would be dismissed.

(H.M. Procureur v. Flynn - Domestic Proceedings 4.10.89 (VCO/GTAB)).

BUILDING

Bornements

11. Order in Council: The Bornements (Modification) (Guernsey) Law, 1989. - See 7.GLJ.10.

Royal Sanction 1.11.89. Registered and in force 5.12.89. (No. XXII of 1989).

CHILDREN AND YOUNG PERSONS

12. Illegitimate children - maintenance order - reciprocal enforcement

See H.M. Procureur v. Flynn, paragraph 10.

States Children Board

13. Projet de Loi: The States Children Board (Amendment) (Bailiwick of Guernsey) Law, 1989. - See paragraph 14.

CONSTITUTIONAL LAW

States Committees

14. Projets de Loi:

The Education (Amendment) (Guernsey) Law, 1989

The Electricity (Amendment) (Guernsey) Law, 1989

The Island Development (Amendment) (Guernsey) Law, 1989

The Ladies' College (Amendment) (Guernsey) Law, 1989

The Police Committee (Amendment) (Guernsey) Law, 1989

The Post Office (Amendment) (No. 2) (Bailiwick of Guernsey) Law, 1989

The Public Assistance (Amendment) (Guernsey) Law, 1989

The Public Thoroughfares (Amendment) (Guernsey) Law, 1989

The Reform (Amendment) (Guernsey) Law, 1989

The States Children Board (Amendment) (Bailiwick of Guernsey) Law, 1989

The Telecommunications (Amendment) (Bailiwick of Guernsey) Law, 1989

Respectively amend the principal Orders in Council so as to amend the constitution of the various States Committees and to provide that thereafter the constitution of those Committees shall be as prescribed from time to time by the States.

Approved by the States of Guernsey 27.9.89. Awaiting Royal Sanction.

CORPORATION TAX

15. Order in Council: The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989. - Abolishes corporation tax with effect from 1.1.90. (See also paragraph 54.)

CRIMINAL LAW AND PROCEDURE

16. Appeals - appeal to Court of Appeal - admission of further evidence - conduct of defence counsel at trial

'A' was convicted in the Royal Court of causing grievous bodily harm with intent. At his trial his counsel had omitted to call medical evidence the substance of which was that the nature of the wound was equally consistent with the prosecution case and the defence case. He appealed to the Court of Appeal on the ground (inter alia) that there had been a material irregularity in the conduct of the defence in that his counsel had failed to use that evidence contrary to his express instructions. He applied as a preliminary issue for leave to call such evidence.

HELD, reviewing the English authorities on the construction of section 9 of the Criminal Appeal Act, 1907, the text of which was identical to the language in section 32(1)(b) of the Court of Appeal (Guernsey) Law, 1961, and in particular following Parks (1962) 46 Cr. App. R. 29, the principles upon which the court would exercise its discretion to allow further evidence to be called were as follows:

1. the evidence must be evidence which was not available at the trial;
2. it must be evidence relevant to the issues;
3. it must be evidence which was capable of belief;
4. the court must consider whether, if that evidence had been given at trial, there might have been a reasonable doubt in the minds of the jury as to guilt.

In the present case, the evidence had been available to the defence at the trial and there had been a deliberate decision by defence counsel not to call such evidence. Furthermore, the evidence did not contradict in a vital respect the medical evidence called for the Crown at trial nor did it put forward a new theory or explanation which nobody had considered at the trial. It was not of sufficient materiality, the critical issue at trial being the rival theories of deliberate injury or accident. Accordingly, the application to call further evidence would be dismissed.

On the question whether defence counsel's conduct of the trial amounted to a material irregularity such that there was a substantial miscarriage of justice and that the conviction was unsafe and unsatisfactory, the Court stated that although the conduct of counsel is capable in some instances of giving rise to a ground for setting aside a conviction such cases were rare. The principle that emerged from the authorities was that flagrantly incompetent advocacy could lead to such injustice that the court would feel bound to intervene. However, counsel's decision not to call the evidence was a reasoned and sensible one and the conflict between 'A's recollection of the discussions between himself and counsel and what the evidence showed had actually happened cast considerable doubt on whether counsel had acted in contravention of 'A's instructions. The appeal would be dismissed.

(Law Officers of the Crown v. Collins - Court of Appeal 6.7.89 (HMC/JPG)).
(See also paragraph 27).

Appeals from Magistrate's Court

17. Ordinance: The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 (Commencement) Ordinance, 1989. - Appoints 4.9.89 for the commencement of the Law of 1988 (see 6.GLJ.59).

Made 27.7.89. (No. XII of 1989).

18. Orders of the Royal Court: The Magistrate's Court (Criminal Appeals) Rules, 1989 and (Amendment) Rules, 1989 - Lay down the procedural requirements for lodging appeals under the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 (see 6.GLJ.59), with a 14 day general time-limit, provisions for transcripts, service etc. and a Schedule containing forms to be used in connection with such appeals.

In force 4.9.89 and 28.11.89 respectively. (Orders of the Royal Court Nos. VI and VIII of 1989).

Compensation

19. Projet de Loi: The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1989. - Empowers courts when sentencing to make compensation orders (whether on application or otherwise) in respect of personal injury, loss or damage resulting from the offence (but excluding death and road traffic accidents). The maximum compensation in the Magistrate's Court is £2,000, which may be changed by Ordinance, and compensation shall take priority over a fine. Orders may be reviewed and shall be taken into account when assessing damages in civil actions. Provision is made for payment by parents in respect of offenders under the age of 17. Part II of the Criminal Damage (Bailiwick of Guernsey) Law, 1983 dealing with compensation orders is repealed.

Approved by the States 28.9.89. Awaiting Royal Sanction.

Criminal law reform

20. Resolutions of the States of 28.9.89 and 27.12.89. - Directing the preparation of legislation to effect various changes in criminal evidence and procedure and to create an offence of torture in order that the Island may adhere to the U.N. Convention on the subject.

Misuse of drugs

21. Ordinance: The Misuse of Drugs (Bailiwick of Guernsey) Law 1974 (Modification) Ordinance, 1989. - Amends the First Schedule to the 1974 Law by inserting various additional substances in Parts I, II and III of the Schedule (which lists "controlled drugs" subject to the penalties in the 1974 Law).

Made and in force 27.9.89. (No. XIII of 1989).

22. Ordinance: The Misuse of Drugs (Amendment) (Bailiwick of Guernsey) Ordinance, 1989. - Amends the Second, Third and Fourth Schedules to the Misuse of Drugs (Bailiwick of Guernsey) Ordinance 1976 and substitutes a new Sixth Schedule (exemptions from section 20 of the Ordinance of 1976), so that various additional substances are now included in those Schedules.

Made and in force 27.9.89. (No. XIV of 1989)

Obscene publications

23. Order in Council: The Obscene Publications (Amendment) (Bailiwick of Guernsey) Law, 1989. - See 6.GLJ.74 and 7.GLJ.24.

Royal Sanction 13.6.89. Registered and in force 18.7.89. (No. XV of 1989).

Permitting mischievous or ferocious animals to wander

24. Resolution of the States of 14.12.89. - Directing the preparation of legislation to amend the Summary Offences (Bailiwick of Guernsey) Law, 1982 in relation to offences of permitting mischievous or ferocious animals to wander.

Police - related offences

25. Order in Council: The Police Offences (Bailiwick of Guernsey) Law, 1989. - See 7.GLJ.26.

Royal Sanction 1.11.89. Registered and in force 5.12.89. (No. XX of 1989).

Post office

26. Projet de Loi: The Post Office (Amendment) (Guernsey) Law, 1989. - See paragraph 14.

27. **Sentence - causing grievous bodily harm - "glassing"**

'A' was convicted in the Royal Court of causing grievous bodily harm with intent having struck the complainant in the throat with a glass. He had spent three months in custody before his trial and was sentenced to four years' imprisonment. On appeal to the Court of Appeal, HELD, that the consequences of "glassing", namely disfigurement, blinding or death, were such that the courts should and do take a very serious view of such offences. However, in this case there had been an element of provocation and the court took the view that it was probable that 'A' was put in fear by what took place. Nor did 'A' have a previous record. The only precedent for a sentence of four years in a similar case involved a man

with a violent record. In all the circumstances, a period of two years' imprisonment from the date of conviction would be substituted.

(Law Officers of the Crown v. Collins - Court of Appeal 6.7.89 (HMC/JPG)).
(See also paragraph 16).

Young offenders

28. Projet de Loi: The Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1989. - Abolishes imprisonment for persons under 21 years of age and substitutes a system of "youth detention" similar to the U.K. sentence of "youth custody". Youth detention shall be subject to the same maximum periods as imprisonment and may be suspended. Section 2 lays down the criteria necessary before youth detention can be imposed, including the consideration of reports. There is also to be a compulsory period of supervision after release and provision is made for appeals and the making of ordinances to vary periods of time mentioned in the Law.

Approved by the States 30.11.89. Awaiting Royal Sanction.

CUSTOMS

Import control

29. Resolution of the States of 8.11.89. - Directing the preparation of legislation to increase penalties under the Import and Export (Control) (Guernsey) Law, 1946.

Law reform

30. Resolution of the States of 30.11.89. - Directing the preparation of legislation to amend various provisions of the Customs and Excise Law, 1972.

DIVORCE AND MATRIMONIAL CAUSES

31. Divorce - financial provision - division of real property - provision of stable home for children - effect on division of proceeds

Pursuant to divorce proceedings the Matrimonial Causes Division ordered that a plot of land jointly owned by the parties should be vested in 'H' in consideration of the payment to 'W' of £18,000. Its value was assessed at between £30,000 and £40,000. 'H' argued on appeal that the consideration payable should be reduced to £4,000 on the ground that he intended to erect on the plot a home for the children of the marriage. 'W' cross-appealed for an increase in the sum payable to £22,500, having successfully applied for leave to adduce further evidence as to the increase in the value of the plot since the original order was made. Although 'W' had originally been granted care and control of the children she had subsequently voluntarily surrendered it to 'H'. The children were, in fact, living with their paternal grandparents at the date of both hearings and the evidence was such that neither parent appeared likely to be able to provide the children with a stable home. HELD, in those circumstances, although the Court had to

give attention to the importance of providing the children with a stable home, the best it could do was to see that for the time being the children remained with their grandparents and there was no justification in this case for departing from the division of the proceeds in such a way as would work financial fairness between the two parties. Taking account of all the material available to the Royal Court, and of the additional material produced by 'W' to the Court of Appeal, there was no reason to disturb the Order made by the Royal Court. Both appeals would be dismissed.

(Ogier v. Ogier - Court of Appeal 25.9.89 (IHB/NJB))

Magistrate's Court proceedings

32. Ordinance: The Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 (Commencement) Ordinance, 1989. - Appoints 5.12.89 for the commencement of the Law (see 6.GLJ.88).

In force 30.11.89. (No. XXIV of 1989).

33. Order of the Royal Court: The Domestic Proceedings and Magistrate's Court Rules, 1989. - Made under the 1988 Law (see paragraph 32). Prescribe forms to be used for applications to the Magistrate's Court for orders under the Law. Applications (and, where appropriate, statements of means in the prescribed form) are to be filed at the Greffe. The form of summons to be used is prescribed. Applications for domestic violence orders are to be made ex parte unless the Magistrate orders otherwise. Provision is also made as to service and appeals to the Ordinary Court.

Made and in force 5.12.89 (Order of the Royal Court No. IX of 1989).

Maintenance payments - computation of income tax

34. Order in Council: The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989. - See paragraph 52.

Matrimonial Causes Division - applications for financial provision and custody - Practice Direction

35. Except in exceptional circumstances, no dates will be fixed for the hearing in Chambers of applications for maintenance, custody of children and vesting of property until all affidavits have been filed and Counsel have signed and lodged at the Greffe a certificate to that effect.

(Practice Direction of 1.11.89).

36. Separation order - maintenance - discharge of order - application by divorced person - whether court's power may be exercised retrospectively

On an application by a father for the discharge of an order for the maintenance of a child made under the Separation Laws 1930-1984, the Magistrate held:-

1. following the decision of the Royal Court in In re Quevatre's Appeal (1.3.83), the words "married man" and "married woman" in the

Separation Laws should be given an extended meaning and should include persons who have been divorced, therefore the fact that applicant was divorced did not preclude him from making an application under section 5; and

2. following Ruther v. Ruther (1903) 2 KB 270, as explained in Outerbridge v. Outerbridge (1927) 1 KB 368, the Court could not retrospectively discharge or cancel an order for maintenance.

(Falla v. Falla - Domestic Proceedings 9.9.89 (NJB/RPO)).

(Note:- In a petty debt action heard in the same court session the Respondent in the above application (the mother) was granted judgment for arrears of maintenance (see paragraph 70). The father's appeal against judgment, on the ground that throughout the period in respect of which arrears of maintenance were claimed the child was in the care of the Children Board and the mother no longer had custody of him, was dismissed by the Bailiff sitting alone on 22.11.89).

DOCUMENT DUTY

37. Ordinance: The Document Duty Ordinance, 1989. - Reduces the rate of document duty payable in respect of documents prescribed in the Document Duty (Guernsey) Law, 1973.

In force 13.12.89. (No. XXVII of 1989).

DWELLINGS PROFITS TAX

38. Order in Council: The Dwellings Profits Tax (Amendment) (Guernsey) Law, 1989. - See 7.GLJ.39.

Royal Sanction 1.11.89. Registered and in force 5.12.89. (No. XXI of 1989).

EDUCATION

States Education Council

39. Projet de Loi: The Education (Amendment) (Guernsey) Law, 1989. - See paragraph 14.

Ladies' College - Board of Governors

40. Projet de Loi: The Ladies' College (Amendment) (Guernsey) Law, 1989. - See paragraph 14.

ELECTRICITY

States Electricity Board

41. Projet de Loi: The Electricity (Amendment) (Guernsey) Law, 1989. - See paragraph 14.

EVIDENCE

42. Admissibility - previous judgment between parties - "quasi-criminal" proceedings

In proceedings under section 7 of Article III of the Public Health Ordinance, 1936, alleging wilful failure to abate a nuisance, the question arose whether evidence of the finding of the Court in previous proceedings relating to the same land - that there was a nuisance but that the failure to abate had not been wilful - was admissible for the purpose of the present proceedings. HELD, by the Bailiff in the absence of the Jurats, that in proceedings under section 7 a finding of liability would result in the imposition of a fine and therefore the proceedings were quasi-criminal in nature. In those circumstances the rules applicable to criminal proceedings would apply and evidence of the earlier finding would not be admitted.

(States Board of Health v. Gaudion - Plaids de Meubles 3.3.89 (HER/unrep)).

FIRE SERVICES

43. Order in Council: The Fire Services (Guernsey) Law, 1989. - See 7.GLJ.42.

Royal Sanction 2.8.89. Registered 2.10.89. In force on a day or days to be appointed. (No. XIX of 1989).

FISHING

44. Projet de Loi: The Fishing (Bailiwick of Guernsey) Law, 1989. - Enables the enforcement within fishery limits (12 miles) of EEC regulations relating to sea fishing. Provides for fines of up to £50,000, and confiscation of catch and gear, on summary conviction (unlimited fine on indictment). Powers are conferred on sea-fishery officers to board boats, examine papers and bring boats back to port for detention.

Approved by States 27.9.89. Awaiting Royal Sanction.

GAMBLING

Betting

45. Ordinance: The Gambling (Betting) (Amendment) Ordinance, 1989 - Increases fees for Bookmakers' Permits with effect from 1990.

Made and in force 14.12.89. (No. XXXII of 1989).

46. Resolution of the States of 8.11.89. - Directing the preparation of legislation increasing the fees payable under the Gambling (Betting) Ordinance, 1973 and the Gambling (Crown and Anchor) Ordinance, 1983.

Lottery

47. Resolution of the States of 28.9.89. - Directing the preparation of legislation amending the Gambling (Channel Islands Lottery) (Bailiwick of Guernsey) Ordinance, 1975 in relation to the payment of prizes.

HIGHWAYS

Bornements

48. Order in Council: The Bornements (Modification) (Guernsey) Law, 1989. - See paragraph 11.

Cutting of hedges

49. Ordinance: The Cutting of Hedges (Amendment) Ordinance, 1989. - Amends the principal Ordinance of 1953 so as to increase to level 3 on the uniform scale the maximum fine for failure to comply with its provisions.

In force 30.11.89. (No. XXVI of 1989).

HOUSING

50. Control of occupation - application for housing licence - duties of Housing Authority

'A' came to Guernsey in 1985 with her husband ('B') and three year old child. They occupied a property, which 'A' and 'B' owned jointly, by virtue of a licence granted by the Housing Authority to 'B' on the ground that his employment was essential to the community under section 5(1) of the Housing (Control of Occupation) (Guernsey) Law, 1982. In late 1987 the marriage broke up and 'B' left the matrimonial home. 'A's application for a housing licence to continue to occupy the matrimonial home was refused on the ground that her connections with Guernsey were "not strong enough to justify granting her a licence in the current housing situation". She appealed unsuccessfully to the Royal Court. Upon further appeal to the Court of Appeal it was HELD that there were two defects which vitiated the decision:-

1. The Housing Authority did not provide 'A' with a proper statement of their reasons for refusing to grant her a licence as required by section 4(b) of the Housing Law. The Authority should have told 'A' what were the features of the current housing situation which, in the Authority's opinion, made the grant of a licence to 'A' unjustifiable and what view the Authority took of the relevant

factors of section 5 of the Housing Law. Further it had emerged at the Court of Appeal hearing that the Housing Authority's decision was also based on their belief that 'A's circumstances were of very frequent occurrence: it was therefore their duty to tell 'A' this. Such full information was necessary to enable 'A' to exercise her right of appeal effectively. On both matters evidence should have been given to the Royal Court to show that the Housing Authority's views were reasonable.

2. It also appeared that the Housing Authority had failed to take into consideration some relevant circumstances and had failed to make those circumstances known to the Royal Court. Firstly, the Housing Authority and the Royal Court had supposed that 'A's occupation of the matrimonial home became unlawful when 'B' left. In fact, the combined effect of section 20(1) of the Housing Law and the definition of "spouse" in section 52(1) (subsequently repealed) was that her occupation continued to be lawful, 'B's licence never having been cancelled (uncertainty being expressed by the Court of Appeal as to whether the Housing Authority could cancel a licence without the holder's consent). Further, the Housing Authority failed to take into account the fact that 'B' had been accommodated by a qualified resident and that his departure from the matrimonial home had thus not led to any increased demand upon the island's housing stock.

For these reasons the decisions of the Authority and the Court would be set aside and 'A's position would fall to be determined by the proper operation of the Housing Law. Accordingly, no finding as to the reasonableness of the Housing Authority's decision was made.

The Court of Appeal also observed that the Housing Law placed great and unusual powers in the hands of the Housing Authority and called for meticulous care in its exercise and scrupulous balancing of the conflicting interests which it affected.

(Ward v. States Housing Authority - Court of Appeal 28.11.89 (JPG/HMC))

Control of occupation - registered dwelling

51. Ordinance: The Housing (Control of Occupation) (Addition of another Dwelling) Ordinance, 1989. - Adds one dwelling to the list in the First Schedule to the Housing (Control of Occupation) (Guernsey) Law, 1982, as amended.

Made and in force 30.11.89. (No. XXIII of 1989).

INCOME TAX

Computation of income

52. Order in Council: The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989 (see also paragraph 54). - Under the Income Tax (Guernsey) Law, 1975 maintenance paid under a court order to a wife or former wife is treated as the latter's income and allowed as a deduction in computing the husband's income, but no similar rule applied to maintenance so payable to a husband or former husband. Section 2 of this Law removes that difference.

Approved by the States 27.7.89. Royal Sanction 1.11.89. Registered 5.12.89. In force in this respect 6.12.89. (No. XXIII of 1989).

Employees Tax Instalment Scheme

53. Resolution of the States of 8.11.89. - Directing the preparation of legislation to restrict the opportunities for abuse of the E.T.I. Scheme by "gangers" who collect wages on behalf of a gang of labourers and are thus required to operate the E.T.I. Scheme in respect of those labourers.

Exempt bodies

54. Order in Council: The Income and Corporation Taxes (Amendment) (Guernsey) Law, 1989 (see also paragraph 52). - Extends, with effect from the 1989 year of charge, the States' powers to exempt companies and other bodies which have only a limited presence in Guernsey and pay a prescribed annual fee from liability to income tax. Under the package of measures contained in this Law, and in the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989 (see paragraph 55), the utility of old-style "corporation tax companies" disappears when the holding of board meetings in Guernsey no longer, in itself, renders a company liable to income tax; and the Law accordingly provides that, after a 12 month transitional period during 1989, corporation tax is abolished and, in addition to any company which is controlled in Guernsey, all Guernsey-incorporated companies will become resident in Guernsey (and accordingly liable to tax on their world incomes) with effect from 1.1.90 unless they are eligible for, and are granted, an exemption from income tax.

The States' powers to exempt from tax by Ordinance are extended by the new Law to any form of business undertaking (in place of companies and trusts).

A payment made by an "exempt" body to a non-resident is not to be regarded as Guernsey source income (and accordingly is not taxable) in the recipient's hands unless the recipient carries on business in Guernsey through a permanent establishment (the meaning of which is revised by the Law) but such payments are not allowed as deductions in computing the payer's Guernsey source income.

Because the restriction on Guernsey residents participating in exempt investment schemes has been lifted (see paragraph 55) tax is required to be deducted and remitted to the Administrator when an exempt body pays a dividend or distribution to a Guernsey resident.

If the directors of an exempt company are non-residents they are not liable to tax on any emoluments derived from attending board meetings even if these are held in Guernsey.

Approved by the States 27.7.89. Registered 5.12.89. Abolition of corporation tax and new definition of corporate residence in force 1.1.90; remaining provisions on exemption from tax deemed in force 1.1.89. (No. XXIII of 1989).

55. Ordinance: The Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989. - Provides for business undertakings of specified descriptions to be granted exemption from tax in any year of charge on their income from non-Guernsey sources, and accordingly for them to be treated (whether or not board meetings are held in Guernsey) as not being resident in Guernsey in that year of charge. Four categories of undertaking are eligible to apply for such an exemption, on payment of a prescribed fee and subject to the fulfilment of different conditions.

Category A, B and C bodies (unit trusts and investment companies) have been eligible for "exempt status" in certain circumstances since 1984 and the only material eligibility changes introduced in respect of these are that -

- (i) the previous prohibition on their shares/units being beneficially owned by Guernsey residents is lifted;
- (ii) non-Guernsey investment schemes may qualify for exemption if they are constituted in the U.K. or Jersey as well as elsewhere in the world;
- (iii) a non-Guernsey scheme may take the form of a limited partnership, as defined by the Ordinance.

The new category - Category D - comprises any other company (wherever incorporated) except registered or exempt deposit takers and insurers and authorized insurance managers. As well as having paid all income tax (and corporation tax) payable for previous years, such a company, in order to be eligible for exemption in any year of charge, has to satisfy the Authority that (with certain limited exceptions) no individual solely or principally resident in Guernsey, and no company resident in Guernsey, has any beneficial interest (as defined by the Ordinance) in the company; and that (subject to a saving for existing Guernsey companies until 1.1.91) disclosure has been made to the Financial Services Commission as to the ultimate beneficial owners and, if the Commission so requests, as to everyone who has a beneficial interest in the company. Since an exemption relates only to Guernsey source income no bar is imposed on such companies deriving income from Guernsey sources, but any such income is taxable in the ordinary way and it is a further condition of eligibility that it is disclosed to the Administrator. A category D exempt company must fulfill these conditions throughout the relevant year of charge or it will lose its exemption unless the Authority is satisfied that the circumstances were beyond its control and agrees to allow exemption to continue whilst it takes all necessary steps to return to compliance. Application for continuation of an exemption, together with the information specified in the Ordinance and the appropriate fee, must normally be made by 31st March in each year

(although the Authority has a discretion to extend the time limit). An initial application by a new Guernsey company may be made within three months of its registration and any other body may apply within 3 months of its first board meeting held in Guernsey during the year of charge concerned. The fee, payable annually with the application, is now £500 (or the appropriate proportion of £500 for new applicants in Category D). For category A, B and C bodies this represents a reduction of £500 or £800. The fee is refundable in the event that the application is refused. The Authority will continue to assess, and retains its previous discretion in relation to, Category A, B and C applications; but Category D cases, where there is no discretion if he is satisfied of compliance with the relevant conditions, can be dealt with by the Administrator. A Guernsey company applying for category D exemption may submit its application through H.M. Greffier. Reasons must be given for any refusal (which may be appealed from the Administrator to the Authority and thence by case stated to the Royal Court) and a renewal application may not be refused until inquiries have been instituted.

Any exempt body may be required to provide any information considered necessary to show its continued compliance with all relevant exemption conditions (except that the Authority may not insist on having the information on beneficial owners etc which a category D company must disclose to the Financial Services Commission). Also, now that Guernsey residents are allowed to participate in category A, B and C investment schemes the Authority may require such a scheme to tell it the names, addresses and nature and extent of interests of all participating Guernsey residents.

Deemed in force from 1.1.89. (No. XXX of 1989).

Penalty provisions

56. Resolution of the States of 8.11.89. - Directing the preparation of legislation to amend the penalty provisions of the Income Tax (Guernsey) Law, 1975 to increase specified penalties imposed on persons failing to comply with the Law and in relation to the powers of the Administrator to prosecute a person making a false statement or representation to avoid tax.

Pensions

57. Resolution of the States of 13.12.89. - Directing the preparation of legislation to amend the Income Tax (Guernsey) Law, 1975 and related legislation so as to improve the provisions therein relating to pensions.

Taxation of offshore insurers

58. Order in Council: The Income Tax (Amendment) (Guernsey) Law, 1989. - See 7.GLJ.50.

Registered and in force 18.7.89. (No. XIV of 1989).

INDIRECT TAXATION

59. Ordinance: The Impot on Beer (Amendment) Ordinance, 1989. - Amends the principal Ordinance of 1931 by providing that the payment by brewers of impot under Article 15 can be deferred if the brewer has given security for the payment to the satisfaction of the Chief Revenue Officer. The mode of providing security will be prescribed by order of the Board of Administration.

In force 14.12.89. (No. XXXI of 1989).

ISLAND DEVELOPMENT

60. Developed Glasshouse Area - application to convert barn to dwelling-house - construction of Detailed Development Plan

'A' appealed against the Committee's decision refusing permission for the change of use to a dwelling-house of a barn in a Developed Glasshouse Area. The Committee contended that it was precluded from granting the application by virtue of the Written Statement attached to DDP No. 4, paragraph 8 of which provided that development for purposes other than horticultural purposes would not be permitted. 'A's contention that the wording of paragraph 9, which provided that "in considering applications for change of use the Committee will have due regard to encouraging the provision of extra residential accommodation", contemplated that the Committee had power to consider such an application was upheld by the Bailiff sitting alone. The application would be remitted to the Committee for a decision on its merits.

(Coker v. Island Development Committee - Requetes 3.11.89 (RAP/HMP)).

Law reform

61. Projet de Loi: The Island Development (Amendment) (Guernsey) Law, 1989. - Amends the constitution of the Island Development Committee (see paragraph 14); requires the Advisory and Finance Committee to prepare for States' approval a plan (to be known as the Strategic and Corporate Plan) setting out the strategic, economic and social objectives to be followed by the I.D.C. when preparing Detailed Development Plans and (although it cannot grant permission which would be precluded by a D.D.P.) when considering applications for development permission; extends the validity of permissions under the Island Development Law to 3 years (but permits the I.D.C. to restrict any particular permission's validity to a period of not less than 1 year); removes the mandatory obligation to visit sites in certain cases; revises maximum penalties for offences under the Island Development Law; and gives statutory recognition to the validity of functions performed under delegated powers by the I.D.C.'s members and officers.

Approved by the States 27.9.89. Awaiting Royal Sanction.

LANDLORD AND TENANT

Eviction - procedures

62. Order of the Royal Court: The Eviction Procedures Rules, 1989. - Transfer functions previously exercised by the Island police as to execution of eviction orders to H.M. Sheriff. The Sheriff is to put personalty into store if the tenant does not remove it at the time of eviction. If it remains unclaimed after 14 days a notice is to be inserted in La Gazette Officielle. If it is still unclaimed 21 days thereafter, the Sheriff may dispose of it. The person claiming such personalty must pay the storage charges. The Royal Court (Costs and Fees) Rules are also amended to take account of the Sheriff's other costs.

Made 5.12.89. In force 1.1.90. (Order of the Royal Court No. XIII of 1989).

63. Eviction - stay of execution - commercial lease

In eviction proceedings relating to laundry premises the Royal Court granted a stay of execution of the eviction order thus affirming the principle that the provisions of the "Law giving the Court increased power to stay execution in actions for eviction" of 1946 applied in the case of commercial leases.

(Sarnia Marketing Ltd. v. Normandy Laundries Ltd. - Plaids de Meubles 3.8.89 (MJR/JDL)).

64. Eviction - stay of execution - stay during lifetime of tenant

Eviction proceedings were brought against two tenants who occupied separate accommodation in the same cottage. "K", who was aged 87, had occupied the cottage for 47 years and "S" had lived there for 8 years. Although the tenancy agreements were entirely separate the evidence revealed a degree of mutual dependence between the two tenants. Medical and other evidence sought to prove the detrimental effect that eviction would have on "K"s health. Harassment of "K" and "S" by the landlord, who had recently acquired the property, was alleged. The Court granted eviction orders subject to a stay of execution in each case during the lifetime of "K", and further ordered that neither tenant should be harassed during that period.

(Motor Developments Limited v. King; Motor Developments Limited v. Smith - Plaids de Meubles 27.7.89 (MJR/MGF)).

65. Eviction - stay of execution - tenants registered with Housing Authority - effect of eviction order on priority - whether relevant consideration

"BB", aged 76 and 81 years, had been tenants of premises for 22 years. The premises were unsuitable for them on health and comfort grounds and they wished to be rehoused by the Housing Authority. In eviction proceedings against them their counsel asked for a stay of execution of eviction of one year in view of their ages and the state of the premises, whilst acknowledging that the circumstances would normally have justified a lengthy stay of execution. HELD by the Deputy Bailiff that the Court must

guard against making orders which were in effect a conspiracy to house people ahead of the housing queue thus usurping the function of the Housing Authority. The Court ordered a stay of execution of two years.

(Whitehall Developments Ltd. v. Baigent - Plaids de Meubles 6.7.89 (JDL/SRM)).

POLICE

Island Police Committee

66. Projet de Loi: The Police Committee (Amendment) (Guernsey) Law, 1989. - See paragraph 14.

Offences

67. Order in Council: The Police Offences (Bailiwick of Guernsey) Law, 1989. - See paragraph 25.

POST OFFICE

Offences

68. Projet de Loi: The Post Office (Amendment) (Guernsey) Law, 1989. - Substitutes section 19 of the Post Office (Guernsey) Law, 1969 dealing with the offence of sending dangerous, noxious, indecent or menacing, threatening etc. postal packets. The Schedule increases various penalties for offences under the Law of 1969.

Approved by the States 27.7.89. Awaiting Royal Sanction.

States Post Office Board

69. Projet de Loi: The Post Office (Amendment) (No. 2) (Bailiwick of Guernsey) Law, 1989. - See paragraph 14.

PRACTICE AND PROCEDURE (CIVIL)

70. Civil action in Magistrate's Court - amendment of cause - date at which amount of claim calculated

In a petty debt action for arrears of maintenance, the Magistrate held:-

1. that the Magistrate has a discretion to allow the amendment of the cause in a petty debt action at any time before final judgment; and
2. that a Plaintiff may only claim for sums accrued due to him as at the date he initiates the action by giving to H.M. Sergeant the information and account required by Article 1 of the Petty Debts Ordinance and by paying the prescribed fee.

(Falla v. Falla - Petty Debts 9.8.89 (RPO/NJB)). (See also paragraph 36).

Civil Rules

71. The Royal Court Civil Rules, 1989. - Codify certain existing rules of procedure (both customary and statutory) in the Royal Court; modify other rules; and introduce certain new procedures based on selected parts of the Rules of the Supreme Court. Part I deals with service of documents. Parties can now, in advance of litigation, elect an address for service in a document executed by them. Absentee proceedings are abolished. Part II is entitled "Commencement of proceedings". The only substantive change is that a summons for defences must now be served 4 days ahead. Part III ("Summary Judgment") enables a plaintiff to apply for summary judgment on the ground that the defendant has no defence to his claim. The defendant can also apply for summary judgment on a counterclaim. Part IV deals with counterclaims (which may be set up in a party's defences); consolidation of actions (e.g. where some common question of law arises); and the severance of actions where the Court considered that there should be separate trials. Part V ("parties to proceedings") makes provision as to actions by or against infants; representative proceedings in which numerous persons have the same interest; the representation of a class whose members are unascertained; third party proceedings; and the removal or joinder of parties. Part VI ("General Conduct of Proceedings") deals with the amendment of pleadings; clarifies powers to strike out; provides for the furnishing of further and better particulars; enables the service of interrogatories which must be answered by affidavit; and provides for the discovery and inspection of documents, orders for directions, discontinuance and withdrawal of actions and payments into court. Part VII (Requetes Civiles") provides that petitions are in general to be presented to the Ordinary Court. Requetes are not to be presented except with leave of the Court granted ex parte. Part VIII contains general provisions. Notice of certain applications to the Court is now to be given by signification. Security for costs can be ordered against persons within the jurisdiction. Costs can be awarded on a full or partial indemnity basis if, for example, a party has pursued an action frivolously or vexatiously. Either party can apply for restoration of a perime action. A default judgment procedure is available for "terre a l'amende" penalties. Power is also given to extend or abridge time-limits; and to order any proceedings or stage thereof to be dealt with summarily. Various orders and ordinances are repealed.

Made 18.7.89. In force 1.10.89. (but not applicable to actions on the witness list on 18.7.89). (Order of the Royal Court No. VII of 1989).

Eviction procedures

72. Order of the Royal Court: The Eviction Procedures Rules, 1989. - See paragraph 62.
73. Judgment - peremption d'instance - renewal of Act of Court - whether renewable after expiration of peremption period

'P' was granted judgment by default in the Royal Court against 'D' in relation to a simple debt. After the judgment had become perime, but

before the expiration of the prescription period, 'P' sought the renewal of the Act of Court. 'D' did not consent to the application. HELD by the Bailiff, dismissing the application, that the principle that the duration of validity of an Act of Court could be extended did not apply where the peremption period had already expired.

(States of Guernsey v. G. L. Roussel & Son Limited - Plaids de Meubles 24.8.89 (VCO/unrep)).

PRISON

74. Order in Council: The Parole Review Committee (Guernsey) Law, 1989. - See 6.GLJ.177.

Royal Sanction 13.6.89. Registered 18.7.89. (No. XVI of 1988). In force 1.12.89 : The Parole Review Committee (Guernsey) Law, 1989 (Commencement) Ordinance, 1989 (No. XXI of 1989).

75. Resolution of the States of 14.12.89. - Directing the preparation of legislation making provision for the constitution of the Parole Review Committee and establishing a Parole Scheme for Guernsey.

PUBLIC ASSISTANCE

76. Projet de Loi: The Public Assistance (Amendment) (Guernsey) Law, 1989. - Amends the Public Assistance Law, 1937, as amended, so as (inter alia) to transfer the powers and duties of the Central Outdoor Assistance Board and the Stranger Poor Assistance Committee to a newly-constituted States Public Assistance Authority and to make provision for the powers and duties of such Authority and any sub-committees appointed by it.

Approved by the States 27.9.89. Awaiting Royal Sanction.

77. Ordinance: The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 1989 - Approves the (Amendment) Regulations (S.I. No. 27 of 1989), made by the Central Outdoor Assistance Board on 5.9.89, which increase the limit of weekly income to £100.

In force 30.11.89. (No. XXII of 1989).

ROAD TRAFFIC AND PUBLIC TRANSPORT

Car-sharing

78. Resolution of the States of 28.9.89. - Directing the preparation of legislation to enable drivers to accept financial contributions as part of a car-sharing arrangement without prejudicing their insurance cover.

Driving test - fees

79. Resolution of the States of 28.9.89. - Directing the preparation of

legislation increasing the fee payable by an applicant for a driving test and providing that when applicants fail to attend such tests without good reason and adequate notice such fee shall be forfeit.

Driving test - transfer of functions

80. Resolution of the States of 28.9.89. - Directing the preparation of legislation transferring the powers and responsibilities in respect of the conduct of driving examinations from the Island Police Committee to the Island Traffic Committee.

Driving under the influence of drink or drugs

81. Projet de Loi: The Road Traffic (Drink Driving) (Guernsey) Law, 1989. - Provides for a prescribed limit of 35 microgrammes of alcohol in the breath which can be measured by a device approved by the Island Police Committee. The Road Traffic (Driving under the Influence of Drink or Drugs) Law, 1986 (see 3.GLJ.70) is repealed. Specimens of blood or urine can still be required if medical reasons prevent the taking of a breath sample or a reliable device for breath-testing is not available or drugs are suspected. The provisions of the law of 1986 on procedure and offences are substantially re-enacted.

Approved by the States 27.7.89. Awaiting Royal Sanction.

Fixed penalties

82. Resolution of the States of 28.12.89. - Directing the preparation of legislation amending the Traffic Offences (Fixed Penalties) Ordinance, 1989 (see 7.GLJ.67) in certain administrative particulars.

Foreshore - riding and driving

83. Resolution of the States of 26.10.89. - Directing the preparation of legislation amending the Foreshore (Riding and Driving) Ordinance, 1951 so as to clarify and extend the periods and times during which vehicles and horses are prohibited from foreshores.

International Driving Permits - fees

84. Resolution of the States of 30.11.89. - Directing the preparation of legislation to increase the fee for an International Driving Permit or an International Certificate for a Motor Vehicle and to enable such fees in future to be prescribed by Order of the Board of Administration.

Prohibited and one-way streets

85. Ordinance: The Prohibited and One-Way Streets Ordinance, 1989. - Amends and consolidates existing legislation relating to prohibited and one-way streets. Functions relating to the grant of permits for vehicles to use prohibited or one-way streets are transferred from the Chief Officer of Police to the Island Traffic Committee; the one-way directions in Park Street and Upper Mansell Street are reversed; Market Street and Market Square cease to be prohibited streets; La Ruelle de la Petite Hougue,

Castel, becomes a one-way street from east to west; and the permitted direction of travel on Rue St. Germain, Castel, is reversed to become east to west during school holidays.

In force 18.12.89. (No. XXIX of 1989).

States Public Thoroughfares Committee

86. Projet de Loi: The Public Thoroughfares (Amendment) (Guernsey) Law, 1989. - See paragraph 14.

Third-party insurance

87. Order in Council: The Road Traffic (Compulsory Third-Party Insurance) (Amendment) (Guernsey) Law, 1989. - See 7.GLJ.72.

Royal Sanction 2.8.89. Registered and in force 2.10.89. (No. XVIII of 1989).

SAISIE

Procedure

88. Order of the Royal Court: The Saisie Procedure (Simplification) (Bailiwick) (Amendment) Order, 1989. - Amends the principal Order of 1952, as amended, in relation to the calculation of time limits set by that Order.

Made 5.12.89. In force 1.1.90. (Order of the Royal Court No. XIV of 1989.)

SHIPPING

Registration

89. Projet de Loi: The Merchant Shipping (Registration) (Amendment) (Bailiwick of Guernsey) Law, 1989. - Extends the power of the Board of Administration concerning refusals of registration and removals from the register (which previously related only to Part I of the Merchant Shipping Act register) to cover any register kept in accordance with the Merchant Shipping Acts.

Approved by the States of Guernsey 27.9.89; by the States of Alderney 4.10.89 and by the Chief Pleas of Sark 4.10.89. Awaiting Royal Sanction.

SOCIAL SECURITY

Attendance and invalid care allowances

90. Ordinance: The Attendance and Invalid Care Allowances (Guernsey) Ordinance, 1989. - Increases the annual income limits beneath which attendance and invalid care allowances are payable under the 1984 Law; and increases the rates of those allowances.

In force 6.11.89. (No. XVII of 1989).

Social insurance

91. Ordinance: The Social Insurance (Rates of Contributions and Benefits, etc.) (Guernsey) Ordinance, 1989. - Increases, for the purposes of the Social Insurance (Guernsey) Law, 1978, the rates of social insurance contributions; upper weekly earnings limits for the payment of such contributions; the rates and amounts of benefit; and the allocation to the Guernsey Health Service Fund.

In force (as to part) 6.11.89. In force (as to remainder) 1.1.90. (No. XVIII of 1989).

92. Statutory Instrument: The Social Insurance (Contributions) (Amendment) (Guernsey) Regulations, 1989. - Increase for 1990 the lower weekly and monthly earnings limits below which a person is treated as non-employed for the purposes of the principal Regulations.

In force 1.1.90. (S.I. No. 35 of 1989).

93. Statutory Instrument: The Social Insurance (Classification) (Amendment) (Guernsey) Regulations, 1989. - Increase, for insured persons employed under contracts of service, the weekly and monthly earnings limits beneath which they are to be treated as non-employed for the purposes of the principal Regulations.

In force 1.1.90. (S.I. No. 36 of 1989).

94. Statutory Instrument: The Social Insurance (Increase of Benefit) (Guernsey) Regulations, 1989. - Increase reduced rates of widows' benefits, old age pension, unemployment benefit, sickness benefit, invalidity benefit, maternity allowance and death grant payable under Social Insurance (Guernsey) Law, 1978; and revise rates of industrial disablement benefit where constant attendance is required.

In force 6.1.89. (S.I. No. 37 of 1989).

Supplementary benefit

95. Ordinance: The Supplementary Benefit (Implementation) (Amendment) Ordinance, 1989. - Further amends the principal Ordinance of 1971 so as to provide that weekly amounts of supplementary benefit of less than £1 are not to be paid; increases weekly income limits, and

monetary requirements, for various classes of person; stipulates certain types of income and payments to be wholly disregarded; and provides for the calculation of income from capital resources.

In force 10.11.89. (No. XV of 1989).

TELECOMMUNICATIONS

States Telecommunications Board

96. Projet de Loi: The Telecommunications (Amendment) (Bailiwick of Guernsey) Law, 1989. - See paragraph 14.

TOURISM

Self-catering accommodation - control of occupation

97. Resolution of the States: At July 1989 meeting of the States, proposals were approved to control the occupation of certain named units of self-catering accommodation, in complexes which had been specifically built as such, to prevent such units being occupied by persons other than tourists. On 8.11.89 the Projet de Loi intended to give effect to such Resolution was rejected (see Billets d'Etat XIV and XX of 1989).

TRADE AND INDUSTRY

Hawkers and non-resident traders

98. Order in Council: The Hawkets and Non-Resident Traders (Amendment) (Guernsey) Law, 1989. - See 7.GLJ.79.

Royal Sanction 2.8.89. Registered and in force 2.10.89. (No. XVII of 1989).

Trading stamps

99. Resolution of the States of 8.11.89. - Directing the preparation of legislation to bring into force, with amendments, the Trading Stamps (Guernsey) Law, 1966.

WASTE DISPOSAL

100. Ordinance: The Refuse Disposal (Amendment) Ordinance, 1989. - Amends the principal Ordinance of 1959 by increasing the maximum fines payable upon conviction of the various offences created by that Ordinance.

In force 30.11.89. (No. XXV of 1989).

101. Ordinance: The Refuse Disposal (Amendment) (No. 2) Ordinance, 1989.
- Further amends the principal Ordinance of 1959 by providing that the depositing etc. of refuse in a quarry does not require the permission of the Constables of the relevant parish if the depositing is done by or on behalf of the States and under the authority of a Resolution of the States. The Ordinance will expire on 31.12.95.

In force 13.12.89. (No. XXXIII of 1989).

WEIGHTS AND MEASURES

102. Projet de Loi: The Weights and Measures (Bailiwick of Guernsey) Law, 1989. - Replaces all previous legislation governing weights and measures. Makes provision similar to that contained in the U.K. Weights and Measures Act 1985. Defines units of measurement; governs weighing and measuring for trade (including the weights and measures that may lawfully be used for trade) and public weighing and measuring equipment; regulates transactions in certain goods (e.g. vegetables, liquor and solid fuel) and the packaging of goods.

Approved by the States of Guernsey 25.10.89. Awaiting approval by the States of Alderney and Chief Pleas of Sark.

WILLS AND SUCCESSION

Will of realty - application for declaration of nullity - testamentary capacity

103. 'AA's claim for a declaration of nullity of a will of realty on the ground that the testator had not been of sound disposing mind was dismissed by the Royal Court (see 3.GLJ.82). They appealed to the Court of Appeal on the ground that there was no evidence before the Jurats upon which they could reasonably have arrived at their decision, arguing, inter alia,
- (i) that great weight should have been given to the medical evidence adduced by 'AA' as to the testamentary capacity of the testator and
 - (ii) that the evidence given by the husband of the Respondent (beneficiary under the will) as to the circumstances of the execution of the will should have been regarded with suspicion in that indirectly he had an interest in the validity of the will.

HELD, dismissing the appeal, that the Jurats were entitled to weigh all the evidence in the case, including the medical evidence and the evidence of the circumstances surrounding the execution of the will, and to conclude, if they thought fit, that such doubts as there were had been resolved to the effect that the testator was of sound disposing mind at the relevant date. The Court of Appeal also expressed doubt that the rule, accepted by the parties and adopted by

the Deputy Bailiff in his direction to the Jurats, that there was a burden upon the Defendant to prove that the testator was of testamentary capacity at the date of the will, was necessarily part of the law of Guernsey where the execution of wills of realty and the vesting of property thereunder differ from the English principles from which that rule may have proceeded.

(Chick & Hayes v. Trump - Court of Appeal 7.7.89 (RPO/JM1eP)).

GUERNSEY STATUTORY INSTRUMENTS

104. The following Statutory Instruments were made during the period covered by this issue. Except where otherwise indicated they have not been digested in detail but copies are available from the Greffe.

| | S.I. Number |
|--|-------------|
| The Data Protection (Fees) Regulations, 1989 | 21. |
| The Immigration (Guernsey) (Amendment) Rules, 1989 | 22. |
| The Health Service (Pharmaceutical) (Prescribed Appliances) (Amendment) (Guernsey) Regulations, 1989 | 23. |
| The Health Service (Pharmaceutical) (Payment of Approved Suppliers) (Amendment) (Guernsey) Regulations, 1989 | 24. |
| The Post Office (Overseas Letter Post) (Amendment) Order, 1989 | 25. |
| The Post Office (Inland Post) (Amendment) (No. 2) Order, 1989 | 26. |
| The Central Outdoor Assistance Board (Amendment) Regulations, 1989 | 27. |
| The Road Traffic (Prohibited and One-Way Streets) (No. 2) Regulations, 1989 | 28. |
| The Import and Export of Goods (Control) (Guernsey) (Amendment No. 10) Order, 1989 | 29. |
| The Investor Protection (Designated Countries and Territories) Regulations, 1989 (see paragraph 8). | 30. |
| The Post Office (Inland Post) (Amendment) (No. 3) Order, 1989 | 31. |
| The Misuse of Drugs (Designation) Order, 1989 | 32. |
| The Road Traffic (Prohibited and One-Way Streets) (No. 3) Regulations, 1989 | 33. |
| The Road Traffic (Prohibited and One-Way Streets) (No. 4) Regulations, 1989 | 34. |

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|---|-----|
| The Social Insurance (Contributions) (Amendment) (Guernsey) Regulations, 1989 | 35. |
| The Social Insurance (Classification) (Amendment) (Guernsey) Regulations, 1989 | 36. |
| The Social Insurance (Increase of Benefit) (Guernsey) Regulations, 1989 | 37. |
| The Parking Places (Amendment) Order, 1989 | 38. |
| The Post Office (Inland Post) (Amendment) (No. 4) Order, 1989 | 39. |
| The Income Tax (Guernsey) (Retirement Annuity Schemes and Retirement Annuity Trust Schemes) Regulations, 1989 | 40. |
| The Licensees (Notification) Rules, 1989 (see paragraph 9). | 41. |

ALDERNEY

AGRICULTURE AND ANIMALS

Dogs

105. Ordinance: The Dogs (Controlled Places) (Amendment) Ordinance, 1989. - Amends the Dogs (Controlled Places) Ordinance, 1989 (see 7.GLJ.86) so as to clarify the definition of "owner" for the purposes of that Ordinance.

In force 7.9.89. (Ordinance of the States of Alderney of 6.9.89).

CRIMINAL LAW AND PROCEDURE

106. Ordinance: The Uniform Scale of Fines (Alderney) Law, 1989 (Commencement) Ordinance, 1989. - Appoints 1.10.89 for the commencement of the Law of 1989 (see 7.GLJ.91). (Ordinance of the States of Alderney of 6.9.89).

GUARDIANSHIP

Guardianship of minors

107. Projet de Loi: The Guardianship of Minors (Alderney) Law, 1989. - Follows the provisions of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, Part II and allows orders for custody, access and maintenance of minors to be made by the Court of Alderney.

Approved by the States of Alderney 15.12.89. Awaiting Royal Sanction.

INCOME TAX

Exempt bodies/computation of income

108. Order in Council and Ordinance: The Income and Corporation Taxes (Guernsey) Law, 1989 (see paragraphs 52 and 54) and the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989 (see paragraph 55). - Apply in Alderney by virtue of the Alderney (Application of Legislation) Law, 1948.

LAND AND PROPERTY

109. Ordinance: The Alderney Conge Fee Ordinance, 1989. - Increases the fee payable in lieu of treizieme upon change of ownership of real property in Alderney by 1% to 4% of the consideration.

In force 16.12.89. (Ordinance of the States of Alderney of 15.12.89).

LIQUOR LICENSING

110. Ordinance: The Alderney Liquor Licensing (Amendment) Ordinance, 1989. - Adds a new section 37A to the Alderney Liquor Licensing Ordinances 1966 and 1977 which creates an offence of causing or permitting excessive noise to emanate from licensed premises.

In force 15.12.89. (Ordinance of the States of Alderney of 15.12.89).

MILK

111. Ordinance: The Milk (Retail Price) (No. 2) Ordinance, 1989. - Increases the ceiling price for retail sales of milk.

In force 7.9.89. (Ordinance of the States of Alderney of 6.9.89).

RATING

112. Ordinance: The Occupier's Rate (Level for 1990) Ordinance, 1989. - Sets the Alderney occupier's rate for 1990 at 45 pence in the pound.

(Ordinance of the States of Alderney of 6.9.89).

ROAD TRAFFIC

Hired vehicles

113. Projet de Loi: The Hired Motor Vehicles (Alderney) Law, 1989. - Requires people carrying on the business of hiring motor vehicles for reward to be licensed by the Alderney Public Works Committee. The States are empowered to set by Resolution a maximum on the number of vehicles, in total and/or of any specified category, which the Committee may generally allow to be operated at any one time. The Committee can only allow such quotas to be exceeded in exceptional circumstances and must take into account, when considering an application, the unfilled proportion of any quota and other received and anticipated applications, as well as the effect on traffic, alternative modes of transport, tourism, the environment and Alderney's economic interests. Licences (for which a fee may be

prescribed by Ordinance) are annual, but must be renewed in the absence of a major change in circumstances, and may be revoked (inter alia) if the operator has failed repeatedly or chronically to operate all the vehicles covered by his licence. There is a review procedure and a right of appeal.

The States are empowered to regulate by Ordinance the manner in which licenced operators are to carry on their business and to set out rules for the examination, maintenance and registration of hired vehicles.

Approved by the States of Alderney 6.9.89. Awaiting Royal Sanction.

SOCIAL SECURITY

Supplementary benefit

114. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) Ordinance, 1989. - Applies the Supplementary Benefit (Implementation) (Amendment) Ordinance, 1989 (see paragraph 95) to Alderney.

In force 10.11.89. (No. XVI of 1989).

WATER

Increase in charges

115. Ordinance: The States Water Supply (Rates of Charge) (Alderney) Ordinance, 1989. - Increases rates of charge under section 14 of the Alderney Water Supply Law, 1954, as amended.

In force 30.9.89. (Ordinance of the States of Alderney of 6.9.89).

Prevention of pollution

116. Ordinance: The States Water Supply (Prevention of Pollution) (Amendment) (Alderney) Ordinance, 1989. - Amends the principal Ordinance of 1973, as amended, so as to prohibit the pollution of reservoirs.

In force 6.9.89. (Ordinance of the States of Alderney of 6.9.89).

SARK

CRIMINAL LAW AND PROCEDURE

117. Ordinance: The Uniform Scale of Fines (Sark) Law, 1989
(Commencement) Ordinance, 1989. - Appoints 1.11.89 for the
commencement of the Law of 1989 (see 7.GLJ.96)

DISCLOSURE OF CONFIDENTIAL INFORMATION UNDER GUERNSEY LAW

By S. W. F. Howitt, Advocate

Neither the professional nor the client for whom he acts will normally wish the professional to disclose information held by the professional concerning that client's affairs. There are, however, under Guernsey law, a number of ways in which a person holding information about another can be forced to disclose it. This article is divided into four Sections, one on disclosure of confidential information for use in proceedings before Guernsey courts, one on disclosure of such information for use in proceedings in courts outside Guernsey, one on miscellaneous statutory provisions whereby confidential information can be obtained and one on the relevance of foreign laws to information held in Guernsey.

1. Disclosure of confidential information for use as evidence in legal proceedings before the Guernsey courts.

A distinction must be made between the obtaining of confidential information at the trial of a matter, which is dealt with in paragraph (A), and the obtaining of such information prior to trial, which is dealt with in paragraph (B).

(A) Competence and compellability of witnesses to give evidence at trial in a Guernsey court

Notwithstanding the contractual, or professional, duty which a professional may have to his client to retain information as confidential, such a professional may not normally refuse to give evidence, which may consist of such confidential information, at the trial of civil or criminal proceedings in a Guernsey Court. The general rule is that any person is able to give evidence (1) and that no person able to give evidence is permitted to refuse to do so (2). The information which it is sought to elicit must, however, be relevant to the matter being tried.

The only exception of note to the general rule is that of "legal privilege" whereby a client of a lawyer is entitled to, and the lawyer must, subject to the client's right to allow otherwise, refuse to give evidence as to communications which have passed between lawyer and client for the purpose of the obtaining by the client of legal advice on any matter. This principle has been adopted by Guernsey law (3).

(B) Obtaining information prior to trial of a matter in Guernsey

The general rule in Guernsey is that, where proceedings have been commenced, one party cannot force another party to the action (4) or a third party, such as a bank, which holds information relevant to the proceedings to produce information or evidence which may be of use to the first party in the trial of the proceedings or for other purposes. To this rule there are, however, certain exceptions. These are as follows:-

(i) Bankers' Books Evidence (Guernsey) Law 1954 (5)

Section 9 of this Law provides that:-

"(1) On the application of any party to a legal proceeding before any court in the Islands of Guernsey and Alderney, the appropriate court may order that for any of the purposes of such proceeding such party be at liberty to inspect and take copies of any entries in a banker's book which is within the said Islands.

(2) An order under this section may be made either with or without summoning the bank or any other party and shall be served on the bank three clear days before the same is to be obeyed unless the appropriate Court otherwise directs."

At first sight it might appear that this section could be used by someone wishing to make general, and unjustifiable, investigations into the banking affairs of another, speaking as it does of "liberty to inspect and to take copies of any entries." It is clear, however, that the reference to "any" does not mean that the Court can only make an order to inspect and take copies generally. It means, effectively, "any entries specified in the order of the Court".

The power of the Court is, furthermore, discretionary. There is little Guernsey authority as to how the Court here would exercise this discretion. However, the section is in very similar terms to Section 7 of the English Bankers' Books Evidence Act 1879 (6). There is much authority in English cases on how the discretion given by that section should be exercised. It seems likely that this authority would be applied in Guernsey. The test in criminal cases is that laid down in Williams -v- Summerfield (7) where Lord Widgery C.J. compared the making of an order under Section 7 to the issue of a search warrant and went on to say that it was a:-

"very serious interference with the liberty of the subject. It can be a gross invasion of privacy; it is an order which clearly must only be made after the most careful thought and on the clearest grounds".

Later in his judgment he states that the Court:

"should always recognise the care with which the jurisdiction should be exercised; should take into account amongst other things whether there is other evidence in the possession of the prosecution to support the charge; or whether the application under Section 7 is a fishing expedition in the hope of finding some material on which the charge can be hung".

In England, and, by analogy, in Guernsey, the test in civil cases is different from that in criminal cases and varies according to whether the bank account which it is proposed to examine is that of a party to the proceedings pursuant to which the order is sought or that of a third party.

(a) Where the bank account is that of a party to the proceedings

It has been stated that the primary effect of the English Act was to amend the existing law of evidence relating to proof of matters recorded in bankers' books (8). The intention of the States in approving the Guernsey Law appears to have been the same. The resolution of the States made at its meeting of 20th May, 1953 (9), pursuant to which the 1954 Law was

prepared was:

"that subject to provisions like unto those of the Bankers' Books Evidence Act 1879 a copy of any entry in a Bankers' Book should in all legal proceedings be received as prima facie evidence of such entry and of the matters transactions and accounts therein recorded".

There was clearly no intention to introduce a new wide rule enabling one party to proceedings to look into the bank account of another prior to trial. In the circumstances, it is submitted that the Guernsey Courts ought to, and would, apply the English ruling in respect of Section 7 of the 1879 Act that:

"Where inspection is asked for, the conduct of the Court in the exercise of this jurisdiction ought to be regulated by the general rules laid down by the decisions in relation to inspection of documents before the trial (10)".

Applying this rule to Guernsey, and thus saying that the conduct of the Guernsey courts ought to be regulated by the Guernsey rules relating to pre-trial discovery of documents, one would, in the past, have had a problem in that, for many years, it was generally thought that there were no rules in Guernsey relating to such discovery. This belief was eroded somewhat by the judgment in Le Marquand -v- L.C. Holdings et al (11) which concerned the interpretation of "l'Ordonnance Relative a la Production des Pieces" of 1860 (12). This Ordinance relates primarily to the ability of one party to summon another to produce at the trial of a cause a document which the party summoned has in his possession. However, the last paragraph of the Ordinance states that:-

"Cette Ordonnance ne porte point prejudice aux cas ou la production d'une Piece peut etre ordonnee par la Cour."

On the basis of this passage the Royal Court decided that it had power to order one party to produce documents to another party prior to trial. The extent of this power was, however, never made clear.

Matters have changed further with the introduction of the Royal Court Civil Rules 1989 (13) which introduce Rules as to discovery and inspection of documentation similar to those in force in England. These Rules provide that one party to proceedings may apply to the Royal Court for an order that another party furnish the applicant with a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the proceedings (14). The party ordered to make such a list may claim that certain of the documents listed are privileged from disclosure. The party ordered to make the list must allow the applicant to inspect the documents listed other than those which are claimed to be privileged from production on the basis, for instance, that they tend to incriminate the party with the documents in his possession, or are the subject of legal professional privilege. Applying these principles to the making of an order under Section 9 of the 1954 Law, it seems that the Court would not make an order if the person on whose bank account it was sought to obtain information, being a party to the substantive action, stated by affidavit that the information in the relevant bankers' books would be, if it were documentation held by the party himself, privileged from production (15). It seems, also, that the Court would not make an order if the party whose bank account it was sought to inspect were to claim by affidavit that the books sought to be inspected

were not relevant to the substantive proceedings (16). In England, where a person against whose account a Section 7 Order is required makes an affidavit to the effect that the information is either privileged or irrelevant the Court will not look further into the matter (17) on the basis that to do so would lead to interminable procedural wrangling and that, at any rate, the person giving the affidavit may, if it is found that he has lied in that affidavit, be subject to a prosecution for perjury. It seems likely that the same principles as apply in England would be applied in Guernsey.

(b) Where the bank account is that of a third party

The English courts have stated (18) that where it were sought to inspect a bank account which was not the account of a party to the main action, an order would only be made:-

"if the Court were satisfied that the account which purported to be that of a third person was the account of a party to the action against whom the order was applied for, or that, though not his account it was one with which he was so much concerned that items in it would be evidence against him at the trial, and there were no reason for refusing inspection".

Lord Esher M.R., in the same case, went on to say that:

"I think that the party asking for the inspection ought to be able to shew the Court very strong grounds for suspicion, almost amounting to certainty, that there are items in the account which would be material evidence against the Defendant upon the matters in issue".

It seems likely that the same principles would apply in Guernsey. Generally, both in cases where the bank account is that of a party to an action and where it is that of a third party, it seems likely that the Guernsey Courts would apply the English rule that if proceedings are brought with a view to investigating a suspect bank account, to "fish" for information, an application under Section 9 should be refused (19). The Royal Court has shown, in other areas (20), its unwillingness to grant an order where it would constitute a "fishing expedition".

(ii) Interim injunctions

One of the devices of a person wishing to find out details of another's affairs, and particularly of his financial dealings, which has caused the most worry to the Guernsey finance industry is the interim injunction. Normally, in the field of disclosure, such injunctions take the form of an order to a bank or similar institution to disclose to a specified person details of a client's financial dealings. Often such an order will be accompanied by an arrest of the assets of the person whose financial dealings it is sought to disclose. Injunctions of this type are often, indeed normally, obtained before any proceedings have been instituted and ex parte (21). The Court will normally rely on the affidavit evidence of the person seeking the order.

The Law on interim injunctions is now contained in the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 (22). Section 1 (1) of this Law states that:-

"If proceedings have been or are to be instituted before the Court, the

Court may by order, at any time before it makes a final judgment in the proceedings or before the proceedings are otherwise concluded, on the application of any person who is, or as the case may be will be, a party to the proceedings (such person being referred to in this Part of this Law as "the applicant"), grant an injunction addressed to another person (such other person being referred to in this Part of this Law as "the respondent") requiring the respondent to do or not to do any thing."

This provision, in so far as it relates to injunctions ordering disclosure, merely extends a pre-existing power of the Guernsey courts (23). The main changes which the 1987 Law has made are:

- a) prior to the coming into force of the 1987 Law it was necessary for an order for disclosure to be ancillary to an arrest of assets (24). If there were no assets capable of being arrested in the jurisdiction then an arrest order would not be made or, if made in the belief that there were such assets, would be set aside upon the Court being shown a lack of such assets (25). Upon the arrest order being set aside any ancillary order, such as an order for disclosure, fell. An order for disclosure need not now be accompanied by an arrest of assets;
- b) the wording of Section 1 (1) (26) may give the Court power to make an order where the intention of the applicant is to start proceedings in another jurisdiction and then enforce them in Guernsey, whether pursuant to the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 (27) or the common law right to sue on a foreign judgment. An order prior to the introduction of the 1987 Law could only be made where there was a cause of action triable in Guernsey (28).

Apart from the above, there seems no reason why the Court should not, in respect of disclosure, apply its powers under the new Law in the same way as it did prior to its coming into force. On that basis, the pre-1987 Law judgments of the Court are still extremely relevant. The main case on how the Court will exercise its discretion is Management Services of Guernsey Limited -v- P.C.W. Underwriting Agencies Limited (29) where the Court made it clear that it:

"Would not order disclosure in advance of judgment except where precedent shows that disclosure is the correct course".

By "precedent" the Deputy Bailiff was clearly referring to English precedent. He also stated in his judgment that:

"Considerable guidance can be obtained by the Guernsey Court from the manner in which the English Judges exercise their discretion".

The main English Judgment in this area is that of Bankers Trust Co. -v- Shapiro and Others (30) to which the Deputy Bailiff in the Management Services case made specific reference. In that case money had been obtained by fraud from the Plaintiff bank by the Defendants and paid into another bank, the Discount Bank. The Plaintiff obtained a Mareva Injunction, similar in effect to a Guernsey arrest. They also sought information from the Discount Bank. Lord Denning summed up the reasons why disclosure of information was sought, reasons which also apply in perhaps the majority of the cases where disclosure is sought in Guernsey:

"They want to know how much money is now in the account. Money has

been taken out in the last six months. They want to know what has happened to the money in the account. It may have been paid over to third persons; and they may want to follow the money into the hands of those third persons. So they have asked for discovery of the documents relating to the monies which Discount Bank had, and what has happened to them."

The Judgment goes on to say that the Court should grant the order requested on the basis of the principle, laid down in the case of Norwich Pharmaceutical Co. -v- Customs and Excise Commissioners (31) that:

"If through no fault of his own a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing he may incur no personal liability but he comes under a duty to assist the person who is being wronged by giving him full information and disclosing the identity of the wrongdoers".

Notwithstanding this, however, Lord Denning went on to say that:

"This new jurisdiction must, of course, be carefully exercised. It is a strong thing to order a bank to disclose the state of its customer's account and the documents and correspondence relating to it. It should only be done when there is a good ground for thinking the money in the bank is the Plaintiff's money, as for instance when the customer has got the money by fraud, or other wrongdoing, and paid it into his account at the bank".

2. Disclosure of confidential information for use as evidence in proceedings before a court situated outside Guernsey

By Guernsey Law, a summons or demand that a person appear as a witness in foreign proceedings is of no effect. There are, however, occasions when Guernsey Law will allow a person bringing legal proceedings elsewhere than in Guernsey to obtain evidence from a person in Guernsey for use in those proceedings. These are as follows:-

(A) Insolvency Act 1986 (32)

This piece of U.K. legislation has recently been in part extended to Guernsey by statutory instrument. The relevant provisions are sub sections (4) and (5) of section 426 which, as amended for use in Guernsey, read as follows:-

- "(4) The courts having jurisdiction in relation to insolvency law in any part of the Bailiwick of Guernsey shall assist the courts having the corresponding jurisdiction in any other part of the Bailiwick of Guernsey or any relevant country or territory.
- (5) For the purposes of sub section (4) a request made to the court in any part of the Bailiwick of Guernsey by a court in any other part of the Bailiwick of Guernsey or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction.

In exercising its discretion under this sub section a court shall have regard in particular to the rules of private international law."

"Relevant country or territory" means the United Kingdom, Bailiwick of Jersey or Isle of Man (33).

The effect of the section as regards Guernsey is to give the courts here exercising jurisdiction in relation to insolvency law (34) power to assist a court having the corresponding jurisdiction in any "relevant country or territory". The court giving assistance may make any order which either it or the court requesting assistance would have power to make with regard to comparable matters within its own jurisdiction.

Sub section (4) provides that the court which has asked for assistance "shall assist" the court making the request for assistance. This appears to impose an obligation on the court to which a request for assistance is made to provide such assistance, provided that the condition in sub section (5) regarding the power of one of the courts to make the order requested is met. There is no authority as yet on this point as regards section 426 of the 1986 Act. There is, however, much authority on the predecessor to section 426, section 122 of the Bankruptcy Act 1914 (35), which was substantially similar to sub-sections (4) and (5) of section 426 and, in particular, contained provision that the courts mentioned "shall severally act in aid" in matters of bankruptcy. In the case of In re Roy Clifford Tucker (a bankrupt) (36) the Guernsey Court of Appeal held that this provision imposed an obligation upon the court to which a request for aid was made to give such aid. It seems likely that the same approach would be taken under the new legislation.

In the Tucker case it was held that the court to which a request was made was obliged to comply with that request even where to do so would have the effect of enforcing a foreign revenue law. Normally a court will refuse to enforce a foreign revenue judgment on the basis of the principles, which have been accepted as applying in Guernsey, set out in Rule 3 of "Dicey and Morris on the Conflict of Laws" (37) to the effect that:

"English courts have no jurisdiction to entertain an action:

- (1) for the enforcement, either directly or indirectly, of penal, revenue or other public law of a foreign state; or
- (2) founded upon an act of state."

The Court of Appeal in Tucker said that the rule did not apply with regard to section 122, although it was conceded that:

"there may be circumstances in which considerations of public policy require the recipient court, as a matter of jurisdiction, to refuse aid sought under section 122 of the Bankruptcy Act 1914."

The Court did not go on to discuss when such circumstances would arise.

It is not entirely clear whether a court here would reach the same conclusion with regard to section 426 as with regard to section 122 regarding the enforcement of foreign revenue judgments, since one of the major reasons given in the Tucker case for saying that the rule against enforcing such judgments did not apply was that the legislature would, if it had intended the rule to apply, have made provision to that effect. Sub section (5) of section 426 provides in the last paragraph that the court from which assistance is requested should "have regard in particular

to the rules of private international law". These rules include the rule against the enforcement of foreign revenue judgments. It is possible, therefore, that a Guernsey court might decide in future proceedings that the aspect of the Tucker judgment concerning the enforcement of foreign revenue claims is no longer applicable and that a request for assistance will be refused where its effect would be to enforce such a claim. Rather confusingly, the last paragraph of section 426 (5) refers to the court having regard to the rules of private and international law when exercising its "discretion". If the judgment in Tucker is to be followed, the court does not have a discretion. As previously stated, it is obliged to give assistance. It is not altogether clear what the repercussions of this apparent contradiction may be.

(B) "Commissions Rogatoires" or Letters of Request

The Evidence (Proceedings in other Jurisdictions) Act 1975 (38), as amended for use in to the Bailiwick of Guernsey (39), provides a facility whereby evidence can be obtained in Guernsey for use in proceedings in Courts outside the Island. The procedure involves the making of an order by the Court here upon application being made to it and differs according to whether the proceedings in question are civil or criminal.

(i) Civil proceedings

Section 1 of the 1975 Act, as amended for use in the Bailiwick, states that:

"Where an application is made to the appropriate court (40) for an order for evidence to be obtained in the part of the Bailiwick in which it exercises jurisdiction, and the court is satisfied:

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal ("the requesting court") exercising jurisdiction in any other part of the Bailiwick or in a country or territory outside the Bailiwick; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated, the appropriate court shall have the powers conferred on it by the following provisions of this Act".

Section 2 provides that:

"(1) Subject to the provisions of this Section, the appropriate courts shall each have power, on any such application as is mentioned in Section 1 above, by order to make such provision for obtaining evidence in the part of the Bailiwick in which it exercises jurisdiction as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made, and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.

(2)

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this sub-section shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court."

It should be noted that the evidence must be for the purposes of "civil proceedings" before the requesting court. Section 9 (1) defines "civil proceedings" as "proceedings in any civil or commercial matter". There has been much dispute in the English Courts on the meaning of this provision, revolving around whether the concept of "civil or commercial" proceedings should be construed by reference to an internationally acceptable meaning or in accordance with the laws of the requesting court and the court before which the application is made. The question is one of great importance from the point of view of the obtaining by the courts of foreign countries of information for use in proceedings brought by the revenue authorities of such countries for the payment of tax. Such proceedings are, under both Guernsey and English law, "civil" in nature, not being "criminal". In some Civil Law countries (41), however, they would not fall within the meaning of "civil and commercial" proceedings as understood by the laws of those states as they are of a "public" rather than a "private" law nature. It was held by the House of Lords in re State of Norway's Applications (Nos. 1 and 2) (42) that in determining whether a matter is "civil or commercial" in nature the court to which a request is made is required to determine how the proceedings would be classified under the law and practice of the requesting court and then to determine according to the law of the court to which the request is made whether the proceedings are civil proceedings. Only if they are civil proceedings under both the laws can the order be made. The relevance of this is that, in cases brought for recovery of tax, whether or not the Guernsey Court is able to make an order for evidence to be given will depend on in which country the original proceedings are brought. If they are brought in a civil law country the proceedings may not be civil or commercial according to the classification of that state's laws (43) so the Guernsey Court will not have jurisdiction to make any order. If, on the other hand, they are brought in one of the common law family of countries they will normally be civil proceedings according to the laws of that country, so the Guernsey Court will be able to make an order.

It was argued in the Norway case that, even if the court to which the request was made had jurisdiction to make the order requested (an order for evidence to be given in a case brought in Norway by the Norwegian Tax Authorities for the recovery of unpaid tax) the court ought to refuse to make the order on the basis of the rule against the enforcement of foreign revenue judgments (44). Lord Goff, however, negated this argument, stating that:

"I cannot see any extra-territorial exercise of sovereign authority in seeking the assistance of the courts of this country in obtaining evidence which will be used for the enforcement of the revenue laws of Norway in Norway itself."

The principles set out in the Norway case, which would almost certainly be

followed in Guernsey (45), give a potentially very wide scope for the making of enquiries, by foreign revenue authorities in particular, into the affairs of clients of Guernsey banks and similar bodies. This scope is limited, however, by the principle that the Guernsey Courts will not make an order pursuant to a letter of request if they consider that to do so would be to allow a "fishing expedition" (46). Effectively the Court will only make the order requested if satisfied that the evidence obtained would be used to back up an existing prima facie case. The order will not be made if the Court believes that an applicant is "fishing" for evidence on which to found a case or that the order sought constitutes a search for Defendants.

It should also be noted that no order, except an order requiring a person to give testimony other than on oath, can be made unless the equivalent order could be made by the court making the order in civil proceedings brought in its own jurisdiction.

(ii) Criminal proceedings

Section 5 of the 1975 Act provides that the rules relating to letters of request in civil proceedings extend also to criminal proceedings, subject to certain differences.

The main such differences are that one Court in the Bailiwick cannot request evidence from another in the Bailiwick in criminal matters, whereas it can in civil matters, and that an Order can only be made if the proceedings in the requesting court have already been commenced.

(C) Extradition Act 1873 (47)

Section 5 of this English Act, which applies to Guernsey (48), gives the U.K. Secretary of State power to require a "police magistrate or a justice of the peace to take evidence for the purposes of any criminal matter pending in any court or tribunal in any foreign state". The section goes on to say that the person taking the evidence should take it in the same way as from a witness against a defendant charged with an indictable offence and that a witness may be compelled "to attend and give evidence and answer questions and produce documents, in like manner and subject to the like conditions as he may in the case of a charge preferred for an indictable offence".

In practice there is little difference in the power given by this provision and that given in respect of criminal matters under the Evidence (Proceedings in other Jurisdictions) Act 1975. The procedures for obtaining and carrying out orders under each Act are almost identical. Although the 1873 Act refers to police magistrates and justices of the peace, no such offices exist in Guernsey. The practice in recent years has been for the Secretary of State to address such requests to the Bailiff and for the matter to be brought before the Court by the Law Officers who seek the appointment of a Jurat to act as Commissioner to hear the evidence. No case has come before a Guernsey Court where the propriety of executing the Secretary of States' Order has been considered. It seems probable that, if such a question were to arise, the Court here would approach the matter in the same way in which the English Courts have. In this respect there is little difference between the approach of the English Courts in matters brought under the 1873 Act and those brought under the 1975 Act.

The only notable difference, in practice, between the two procedures is that orders under the 1873 Act are normally used where a foreign court makes its request for evidence to the U.K., which then passes the matter on to Guernsey by means of an order under section 5 of the 1873 Act, whereas orders under the 1975 Act are normally used where a request is made directly to the Guernsey authorities.

(D) Interim injunctions

As has been seen, an injunction requiring a person to disclose information can be obtained where "proceedings have been or are to be instituted before the Court" under Section 1 (1) of the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987. The requirement that there be at least a future expectation of proceedings before the Royal Court before any injunction can be made would normally exclude the granting of an injunction to disclose information for use in foreign proceedings except, possibly, where it is ultimately intended to enforce in Guernsey any judgment obtained pursuant to such proceedings. However, Section 1 (7) of the 1987 Law provides that:-

"An injunction may in exceptional circumstances be granted notwithstanding that proceedings have not been and are not to be instituted before the Court."

There is, as yet, no authority on how exceptional the circumstances will have to be before the Court will make an order. It seems unlikely that this power of the Court will be much used in the context of orders for disclosure since it is normally possible for a plaintiff to obtain a letter of request, where no "exceptional circumstances" need be shown.

4. Miscellaneous methods of obtaining confidential information

There are a number of specific statutory provisions whereby the authorities can obtain information relating to the matters dealt with in the statutes in question. The most notable of these provisions are as follows:-

(A) Criminal Justice Act 1987 (49)

This English Statute has been extended to Guernsey (50) for a period of two years pending the introduction of legislation specifically designed for the Island to fill what was seen as the gap left in the investigation of international fraud by the restriction of letters of request to cases where criminal proceedings have already been commenced in the requesting court and the fact that the Guernsey courts will not grant orders pursuant to letters of request if they believe the person or body requesting the information is "fishing".

Section 1 of the 1987 Act gives the Director of the U.K. Serious Fraud Office powers to "investigate any suspected offence which appears to him on reasonable grounds to involve serious or complex fraud."

Section 2 of the Act (as amended by the Criminal Justice Act 1988) has been modified for use in Guernsey to provide as follows:-

"(1) The powers of the Attorney General (51) under this Section shall be exercisable, but only on a request made by the Director of the Serious Fraud Office for the purposes of an investigation under Section 1 of this Act, or on a request made by the Lord Advocate for the

purposes of an investigation under legislation corresponding to that section and having effect in Scotland, in any case in which it appears to him that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs of any person.

(2) The Attorney General may by notice in writing require the person whose affairs are to be investigated ("the person under investigation") or any other person whom he has reason to believe has relevant information to answer questions or otherwise furnish information with respect to any matter relevant to the investigation at a specified place in the Bailiwick of Guernsey and either at a specified time or forthwith.

(3) The Attorney General may by notice in writing require the person under investigation or any other person to produce at such place in the Bailiwick of Guernsey as may be specified in the notice and either forthwith or at such time as may be specified any specified documents which appear to the Attorney General to relate to any matter relevant to the investigation or any documents of a specified class which appear to him to so relate; and

- (a) if any such documents are produced, the Attorney General may
 - (i) take copies or extracts from them,
 - (ii) require the person producing them to provide an explanation of any of them;
- (b) if any such documents are not produced, the Attorney General may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are."

Sub-Sections 9 and 10 of Section 2 provide certain safeguards as follows:-

(9) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in the Royal Court, except that a lawyer may be required to furnish the name and address of his client.

(10) A person shall not under this section be required to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying out a banking business unless:-

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
- (b) the Attorney General has authorised the making of the requirement.

Sub-Sections 13 and 14 of the same Section create offences of failing to comply with the requirement made under Section 2 and of making false or misleading statements in purported compliance with such a requirement. The first of these offences is punishable by up to six months imprisonment and/or a fine and the second by up to two years imprisonment and/or a fine. It should be noted that it is a defence to a prosecution under Sub-Section 13 if a refusal to comply with a requirement under Section 2 is made with "reasonable excuse". What will constitute reasonable excuse will depend

on the facts in each case. Clearly a refusal will be reasonable if, for example, the information is the subject of legal professional privilege or if the entire investigation is shown to have been conducted without there having been any reasonable grounds for the Director of the Serious Fraud Office to believe that a suspected offence involves serious or complex fraud. In certain circumstances, however, the professional adviser from whom disclosure is required under Section 2 (2) or 2 (3) may be put in the position of not knowing whether or not he is guilty of an offence until a prosecution is brought against him and a court decides whether or not any excuse he may put forward is reasonable. It is not clear whether the fact that such a professional has relied on legal advice to the effect that he is entitled to refuse to disclose can constitute a "reasonable excuse" (52).

(B) The Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law 1988 (53)

Section 9 of this Law states that:

"(1) If it appears to the President of the Committee (54) -

(a) that there may have been a contravention of section 1, 2, 4 or 5 (55); or

(b) that there may have been a contravention of the laws of another country or territory relating to insider dealing and that a person in the Bailiwick -

(i) may have been concerned (directly or indirectly) in any such contravention; or

(ii) may have information or documents which may be of assistance in the investigation of any such contravention,

he may, after consulting H.M. Procureur, appoint in writing one or more competent inspectors to carry out such investigations as are requisite to establish whether or not any such contravention has occurred and, if any such contravention has occurred, to investigate it, and to report the results of their investigations to him.

(2)

(3) If the inspectors consider that any individual is or may be able to give information concerning the contravention or suspected contravention they may require that individual -

(a) to produce to them any document in his possession or under his control relating to -

(i) the company to the securities of which the contravention or suspected contravention relates; or

(ii) its securities;

(b) to attend before them; and

(c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give."

These provisions clearly give wide powers to the inspectors. A person who furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular to an inspector, or who refuses to comply with a requirement imposed on him or to answer a question put to him under section 9, is guilty of an offence punishable by up to seven years imprisonment and/or a fine. As with the Criminal Justice Act 1987 it is a defence to a prosecution for refusal to answer a question posed or to comply with a requirement made under section 9 to show that the refusal was made with "reasonable excuse". The same problems exist with regard to what is a "reasonable excuse" as are outlined with regard to the Criminal Justice Act 1987 above. The powers of the inspectors under section 9 are tempered somewhat by sub-sections 9 (7) and 9 (8) which provide as follows:-

"(7) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings before the court.

(8) Nothing in this section requires a person carrying on the business of banking to disclose any information or produce any document relating to the affairs of a customer unless -

(a) the customer is a person who the inspectors consider is or may be able to give information concerning the contravention or suspected contravention; and

(b) the President of the Committee is satisfied that the disclosure or production is necessary for the purposes of the investigation."

(C) The Drug Trafficking Offences (Bailiwick of Guernsey) Law 1988 (56)

Section 22 of this Law makes provision for an application for an order to make material available as follows:-

"(1) Subject to subsection (9) of this section, an officer of police may, for the purpose of an investigation into drug trafficking, apply on oath to the Bailiff for an order under subsection (2) of this section in relation to particular material or material of a particular description.

(2) If on such an application the Bailiff is satisfied that the conditions in subsection (4) of this section are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall -

(a) produce it to an officer of police for him to take away, or

(b) give an officer of police access to it, within such period as the order may specify.

(3)

(4) The conditions referred to in subsection (2) of this section are -

(a) that there are reasonable grounds for suspecting that a specified

person has carried on or has benefited from drug trafficking, and

(b) that there are reasonable grounds for suspecting that the material to which the application relates -

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and

(ii) does not consist of or include items subject to legal professional privilege, and

(c) that there are reasonable grounds for believing that it is in the public interest, having regard -

(i) to the benefit likely to accrue to the investigation if the material is obtained, and

(ii) to the circumstances under which the person in possession of the material holds it,

that the material should be produced or that access to it should be given.

The power to make an order is slightly tempered by Section 22 (8) (a) which states that an order under Section 22 (2):

"shall not confer any right to production of, or access to, items subject to legal professional privilege".

It should be noted that this Law contains no stronger protection for confidential information in the hands of a banker than any other confidential information, unlike the proposed Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law 1988 and the Criminal Justice Act 1987.

There is no specific offence of failing to obey an order made under Section 22 or of purportedly complying with such an order but, in doing so, giving false information, although to do either of these acts would certainly constitute a contempt of court.

The 1988 Law goes further than the Laws on insider dealing and fraud in that, as well as imposing an obligation to respond to an order to produce information, it effectively places a duty on a person who becomes aware, or even suspicious, that he is involved in an arrangement whereby (57);

"(a) the retention or control by or on behalf of another (in this section called "A") of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise), or

(b) A's proceeds of drug trafficking -

(i) are used to secure that funds are placed at A's disposal, or

(ii) are used for A's benefit to acquire property by way of investment,"

to inform the Authorities of his knowledge or suspicion. This it does by

providing that if someone becomes aware or even suspicious that he is involved in such an arrangement as aforesaid he commits an offence unless he discloses his knowledge or suspicion to an officer of police as soon as is reasonable (58). What is reasonable will be a matter of fact in each case.

(D) Prevention of Terrorism

At its meeting of 31st January 1990 (59), the States approved proposals to introduce legislation to Guernsey on the lines of the Prevention of Terrorism (Temporary Provisions) Act 1989 (60). The U.K. Act gives powers similar to those mentioned in the drug trafficking legislation relating to the production to officers of police of material (other than material subject to the legal professional privilege) likely to be of substantial value to investigations and to the disclosure, by persons under contractual and other duties of confidence, of information relating to arrangements which facilitate the retention of unlawful funds.

5. Relevance of foreign laws to information held in Guernsey

The laws of overseas states whereby an obligation is in some way placed upon a person to disclose information in that person's possession or under his control may, in certain circumstances, be relevant with regard to information held in Guernsey. The foreign law will be relevant wherever, in default of a person with information in Guernsey disclosing that information, the relevant foreign state can, whether directly or indirectly, exercise some sanction against the person failing to disclose it. This may be the case where, for instance, an obligation is placed upon a company registered in the foreign state in question which has a subsidiary or branch in Guernsey which holds the information which is required by the authorities of the relevant foreign state. The foreign state may impose a criminal sanction upon the parent company if it fails to exercise its control over its subsidiary or branch by obtaining from it the information required and passing it on to the authorities.

A full review of all relevant foreign laws in this context is outside the scope of this article. By way of example, however, under section 20 of the U.K. Taxes Management Act 1970 (61) the U.K. Revenue Authorities may require delivery, or the making available for inspection of such documents as a person "has in his possession or power". A bank, or similar body, with a branch or subsidiary in Guernsey will normally have the documentation held by that branch or subsidiary in its "power".

The only solution which a party interested in preventing the disclosure of information to the authorities of a foreign state by the means outlined above normally has is to seek in Guernsey an injunction preventing those with the relevant information from disclosing it. The existence of such an injunction would normally be a good defence against criminal proceedings brought by the authorities of the foreign state seeking the information in question. In the case of section 20 of the Taxes Management Act, for example, such an injunction would take the relevant documents out of the "power" of the parent, as the branch or subsidiary would be unable to pass the documents on to its parent without being in contempt of the court here.

The only occasion when injunctions preventing the disclosure of information to the authorities of another jurisdiction have been granted in Guernsey was in the Tucker case. Prior to the trustee in bankruptcy in that case asking the Guernsey court for aid in the examination of various witnesses

under section 122 of the Bankruptcy Act 1914 orders were made in England requiring certain individuals and companies holding information in Guernsey to attend in England to be examined. Injunctions were obtained preventing the persons from whom the information was sought from appearing before any hearing concerning the examination of the affairs of the bankrupt for the purpose of disclosing any information or making any books or records available in that process relative to the affairs of the persons who obtained the injunctions. These injunctions, granted by the Deputy Bailiff, were discharged upon his deciding whether or not the Royal Court would act in aid under section 122. He confirmed, however, his power to make an injunction of this type (62). This aspect of the judgment at first instance in Tucker was not the subject of any appeal.

Conclusion

The reader will see that there are a substantial number of ways in which information can be obtained about the confidential affairs of others, the number which has recently grown and is still growing with the introduction of provisions relating to the giving up of information relating to specific offences. Whether or not the correct balance has been struck between secrecy and availability of information is for the individual reader to decide for himself or herself.

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References

- (1) Art. 1, Loi Relative aux Preuves 1865. Ordres en Conseil Vol I, p.424
- (2) Art. 18, Loi Relative aux Preuves 1865. Ordres en Conseil Vol I, p.426
- (3) Art. 29, Loi Relative aux Preuves 1865. Ordres en Conseil Vol I, p.428
- (4) The general rule has been eroded somewhat by the introduction of the Royal Court Civil Rules 1989 which introduce rules requiring the parties to an action to produce copies of documents in their possession to one another prior to trial.
- (5) Ordres en Conseil Vol XVI, p.26
- (6) 42 and 43 Victoria, Chapter 11.
- (7) (1972) 2 All E.R. 1334, p.1338
- (8) Waterhouse -v- Barker (1924) 2 K.B. 759
- (9) Billets d'Etat No. VIII of 1953, p.89
- (10) South Staffordshire Tramways Company -v- Ebbsmith (1895) 2 Q.B.669, p.674
- (11) (1985) Plaids de Meubles 372
- (12) Ordonnances Vol III, p.424
- (13) Orders of the Royal Court No. VII of 1989
- (14) Sections 39 - 42
- (15) Waterhouse -v- Barker (1924) 2 K.B. 759
- (16) South Staffordshire Tramways Company -v- Ebbsmith (1895) 2 Q.B. 669
- (17) South Staffordshire Tramways Company -v- Ebbsmith (1895) 2 Q.B. 669
- (18) South Staffordshire Tramways Company -v- Ebbsmith (1895) 2 Q.B. 669, p.675
- (19) Williams -v- Summerfield (1972) 2 All E.R. 1334
- (20) Rea Brothers (Guernsey) Limited-v-S.E.C. (1986) Plaids de Meubles 811
- (21) i.e. Without the person against whom the order is made being given the opportunity to be heard. The rationale behind this is that if

- the person at whom the order is aimed is warned that application is being made for it, he will take steps to lessen its effect.
- (22) Ordres en Conseil No. V of 1987
 - (23) Management Services of Guernsey Limited -v- P.C.W. Underwriting Agencies Limited (1983) Plaids de Meubles 129.
 - (24) First National Bank of Chicago (C.I.) Limited -v- Arab Monetry Fund (1986) Plaids de Meubles 728
 - (25) Achates Trust Limited -v- Culture Farms Inc. and Activator Supply Company Inc. Court of Appeal 17.5.89
 - (26) The requirement is that proceedings 'are to be instituted'.
 - (27) Ordres en Conseil. Vol XVII, p.178
 - (28) Fewtrell -v- Fewtrell (1985) Plaids de Meubles 424
 - (29) (1983) Plaids de Meubles 129
 - (30) (1980) 3 All E.R. 353
 - (31) (1973) 2 All E.R. 943
 - (32) 1986, Chapter 45
 - (33) S.426 (11) (a) as amended by Section 4 of S.I. 1989 No. 2409. Registered 22.1.1990 for application to Guernsey.
 - (34) See S.426 (10) (a) as amended by Section 3 of s.I. 1989 No. 2409. Registered 22.1.1990 for application to Guernsey.
 - (35) 4 and 5 Geo. V, Chapter 59. Ordres en Conseil Vol. XVIII, p.362
 - (36) Court of Appeal 6.2.89
 - (37) Eleventh Edition, Volume 1, pp. 100 et seq
 - (38) 1975, Chapter 34. Ordres en Conseil Vol. XXVII p.561
 - (39) Ordres en Conseil Vol. XXVII, p. 259
 - (40) i.e. As respects the Island of Guernsey, the Royal Court sitting as an Ordinary Court.
 - (41) Civil Law countries are those countries which have adopted a "civil code" and include most of the countries of continental Europe.
 - (42) (1989) 1 All E.R. 745
 - (43) It would be a gross over simplification to say that no civil law country would classify a revenue claim as civil or commercial. In the Norway case it was held that, notwithstanding that Norway is a civil law country, the courts there would classify a claim by the Norwegian revenue authorities as civil or commercial.
 - (44) See note (37) above.
 - (45) The first instance judgment in the Norway case was cited with approval in Rea Brothers (Guernsey) Limited -v- S.E.C. (1986) Plaids de Meubles 811.
 - (46) Rea Brothers (Guernsey) Limited -v- S.E.C. (1986) Plaids de Meubles 811. Re Boulbain - Divers 3.2.1988
 - (47) 36 and 37 Victoria, Chapter 60
 - (48) The 1873 Act is, by Section 1, to be construed as one with the Extradition Act 1870, Section 22 of which extends the Act to the Channel Islands.
 - (49) 1987, Chapter 38.
 - (50) S.I. 1989 No. 674. Registered 16.5.1989
 - (51) i.e. H.M. Procureur
 - (52) Saddleworth U.D.C. -v- Aggregate and Sand Limited (1970) 69 LGR 103
 - (53) Registered 22.1.1990. In force 1.3.1990
 - (54) i.e. The Advisory and Finance Committee.
 - (55) Which deal, respectively, with prohibition on stock exchange deals by insiders, abuse of information obtained in official capacity, off-market deals in advertised securities and restriction on promoting off-market deals abroad.
 - (56) Ordres en Conseil No. XII of 1988
 - (57) Section 19 (1)
 - (58) Section 19 (3)

- (59) Billets d'Etat No. II of 1990, p.37
- (60) 1989, Chapter 4
- (61) 1970, Chapter 9
- (62) (1987) Plaid de Meubles 323