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GUERNSEY LAW JOURNAL

TENTH ISSUE

Introduction

This edition covers the six month period from 1st July, 1990 to 31st December, 1990. We are pleased to include two articles: an examination of the proposed Administration of Justice Law, by Russell Finch, and a further contribution by Darryl Ogier, this time concerning the States of Guernsey in the sixteenth century.

The original texts of legislation and judgments 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 and future issues will be cited using the figure and letters 10.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 1990.

30th April, 1991.

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AGRICULTURE AND ANIMALS

Dog tax

1. Ordinance: The Dog Tax (Guernsey) Ordinance, 1990. - Increases the annual dog tax payable under the Dog Licences (Guernsey) Law, 1969 to £5.

In force 1.1.91. (No. XXVII of 1990).

Protection of game

2. Ordinance: The Protection of Game (Modification) Ordinance, 1990. - Empowers the Agricultural and Milk Marketing Board to vary the close season for the hunting of game and the times during which the sale or purchase of game is prohibited. The close season and prohibited times are laid down by the Ordonnance pour la Protection du Gibier, 1884.

In force 13.12.90. (No. LIII of 1990).

ASSOCIATIONS

3. Order in Council: The Guernsey Society for the Prevention of Cruelty to Animals (Incorporation) (Guernsey) Law, 1990. - See 7.GLJ.4.

Royal Sanction 7.6.90. Registered and in force 1.10.90. (No. XXI of 1990).

BANKING, INSURANCE AND FINANCE INDUSTRIES

Investment business

4. Statutory Instrument: The Collective Investment Schemes (Class B) Rules, 1990. - Regulate the authorisation and conduct of collective investment schemes declared by the Commission to be Class B Schemes under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (see 5.GLJ.5). These are schemes which are not recognised under the Financial Services Act 1986 (see 6.GLJ.26), are not covered by the compensation scheme (see 6.GLJ.28) and were previously not subject to any significant post authorisation regulation. The B Scheme Rules now regulate principal documents; marketing; investment, borrowing and hedging; dealing in units; income distributions; reports; meetings; termination; scheme particulars and prospectus; and impose duties on their managers, trustees and directors. The rules are considerably more flexible than those governing Class A1 and A2 Schemes (see 6.GLJ.27-29) and the flexibility is increased by the Commission's power to disapply in appropriate cases.

In force 1.10.90. (S.I. No. 22 of 1990).

Protection of depositors

5. Ordinance: The Protection of Depositors (Amendment) (Bailiwick of Guernsey) Ordinance, 1990. - Replaces the detailed requirements as to the contents of

applications for registration and audited accounts with requirements that those documents must contain such information as the Financial Services Commission may from time to time require. The Ordinance also repeals the requirement for registered institutions to publish unaudited half-yearly accounts.

In force 27.9.90. (No. XXII of 1990).

CHILDREN AND YOUNG PERSONS

States Children Board

6. Order in Council: The States Children Board (Amendment) (Bailiwick of Guernsey) Law, 1990. - See paragraph 11.

COMPANIES

Law reform

7. Order in Council: The Companies (Guernsey) Law, 1990. - See 9.GLJ.9.

Royal Sanction 19.12.90. Awaiting registration.

CONSTITUTIONAL LAW

Election expenses

8. Ordinance: The Electoral Expenditure Ordinance, 1990. - Sets the maximum expenditure which may be incurred by candidates in elections for People's Deputies, Constables and Douzeniers.

In force 1.1.91. (No. XXXIX of 1990).

Election of people's deputies

9. Ordinance: The People's Deputies (General Election) Ordinance, 1990. - Prescribes 20.3.91 as the date for the general election of People's Deputies.

In force 27.9.90. (No. XXIX of 1990).

States Committees

10. Orders in Council: The Police Committee (Amendment) (Guernsey) Law, 1990 and the Telecommunications (Amendment) (Bailiwick of Guernsey) Law, 1990. - See 8.GLJ.14.

Royal Sanction 1.5.90. Registered and in force 10.7.90. (Nos. XIII and XIV of 1990).

11. Orders in Council: The Education (Amendment) (Guernsey) Law, 1990, the Ladies' College (Amendment) (Guernsey) Law, 1990, the Post Office (Amendment) (No. 2) (Bailiwick of Guernsey) Law, 1990 and the States Children Board (Amendment) (Bailiwick of Guernsey) Law, 1990. - See 8.GLJ.14.

Royal Sanction 7.6.90. Registered and in force 1.10.90. (Nos. XV, XVI, XVII and XVIII of 1990).

12. Orders in Council: The Appointments Board (Amendment) (Guernsey) Law, 1990 (see 9.GLJ.15) and the Cadastre (Amendment) (Guernsey) Law, 1990 (see 9.GLJ.16).

Royal Sanction 26.6.90. Registered and in force 1.10.90. (Nos. XIX and XX of 1990).

CONTRACT

Voidable contract - duress - correct test

13. See Picot v. Jehan, paragraph 66.

COURTS

Court of Appeal - jurisdiction - single judge - review of decision

14. See Havilland Estates Limited v. Channel Island Ceramics Limited, paragraph 67.

Juvenile Court

15. Ordinance: The Juvenile Court (Guernsey) Law, 1989 (Commencement) Ordinance, 1990. - Appoints 1.10.90 for the commencement of the Law (see 6.GLJ.57).

In force 27.9.90. (No. XXIV of 1990). (See also paragraph 19).

CRIMINAL LAW AND PROCEDURE

Attendance Centre

16. Ordinance: The Criminal Justice (Attendance Centre) (Amendment) Ordinance, 1990. - Amends the Criminal Justice (Attendance Centre) Ordinance, 1983 by inserting provision for females as well as males.

In force 13.12.90. (No. XLVIII of 1990).

Compensation

17. Ordinance: The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990 (Commencement) Ordinance, 1990. - Appoints 1.1.91 for the commencement of the Law (see 8.GLJ.19).

In force 13.11.90. (No. L of 1990).

Driving in a manner dangerous - evidence of speed - whether corroboration necessary

18. 'A', who was convicted by the Court of Alderney of driving in a manner dangerous to the public, appealed on the ground, inter alia, that the Court had failed to give consideration to the need to corroborate the opinion evidence of the two prosecution witnesses on the matter of his speed. HELD by the Bailiff, dismissing the appeal, that one witness was sufficient to found a case if that evidence was accepted by the Court. Although it was a rule of law in England that evidence of speed must be corroborated there was no such rule in the Bailiwick.

[Law Officers of the Crown v. Maloy - Requête and Appeals to the Royal Court 21.8.90 (HMC/NLP)]. (See also paragraph 29).

Juvenile Court - rules of procedure

19. Order of the Royal Court: The Juvenile Court (Criminal Cases) Rules, 1990. - Repeal and re-enact the Magistrate's Court (Juvenile Cases) (Procedure) Rules, 1985 to take account of the establishment of the Juvenile Court (see paragraph 15).

Made and in force 1.10.90. (ORC No. III of 1990).

Law reform

20. Projet de Loi: The Administration of Justice (Bailiwick of Guernsey) Law, 1990. - See article on page 35 of this issue.

Approved by the States 27.9.90. Awaiting Royal Sanction. (See also paragraphs 84 and 97).

Prevention of terrorism

21. Order in Council: The Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990. - See 9.GLJ.21.

Royal Sanction 31.10.90. Registered 4.12.90. (No. XXV of 1990). In force 1.1.91: The Prevention of Terrorism (Commencement) Ordinance, 1990. (No. XLIX of 1990).

22. United Kingdom Statutory Instrument: The Prevention of Terrorism (Temporary Provisions) Act 1984 (Guernsey) (Revocation) Order, 1990. - Revokes the Prevention of Terrorism (Temporary Provisions) Act 1984 (Guernsey) Order 1984 in consequence of the commencement of the 1990 Law (see paragraph 21).

Sentence - burglary

23. 'D' was convicted in the Royal Court on a plea of not guilty of, inter alia, burglary of a handbag plus £100 cash from a house. He had been in custody for 2½ months before trial. He appealed to the Court of Appeal against his sentence of two years' imprisonment. Noting that the appellant, who was aged 22, had a very bad record of theft-related offences but that this

offence, not having involved disturbing the householder or ransacking the property, was at the "lowest end of the scale", the Court reduced the sentence to eighteen months' imprisonment.

'S' pleaded guilty on the same indictment to a number of offences including three counts of burglary (of a handbag plus £160, a handbag plus £100 and £4,500 cash respectively) and asked for twenty-two offences to be taken into consideration. He also had a very bad record and had already spent 2½ months in custody. On appeal against his two sentences of eighteen months consecutive and one further sentence of eighteen months concurrent he argued that the sentences should be reduced in view of his full admission, the fact that he had never before appealed and his undertaking of useful activities in prison. His sentence was reduced to two sentences of twelve months concurrent plus a sentence of eighteen months consecutive.

[Law Officers of the Crown v. Shell and Dodd - Court of Appeal 17.9.90 (HMP/GWA/ADL)].

Sentence - misuse of drugs - cannabis - Royal Court policy

24. When sentencing 'P', who had pleaded guilty to possession and to cultivation of cannabis, the Royal Court stated its policy on sentencing for cannabis offences.
- (1) Possession of small amounts of cannabis with no intent to supply would normally be dealt with by a fine. The Court would infer an intent to supply where large amounts were involved.
 - (2) Importation of very small amounts of cannabis specifically for personal use only would usually be dealt with as if it were simple possession. Where the Court found that importation of a very small amount was made with intent to supply, the importation element would be ignored and the case dealt with as possession with intent to supply.
 - (3) Importation of larger amounts of cannabis i.e. with a street value in Guernsey of at least several hundred pounds would, save in the most exceptional cases, attract immediate sentences of between 18 months and 3 years, with the lowest ranges reserved for pleas of guilty, whether or not there was an intention to supply.
 - (4) Cultivation of more than a few plants of cannabis would attract sentences at similar levels to those imposed for importation of larger amounts of cannabis.
 - (5) In the case of importation on a large scale, the Court would follow closely the sentencing policy of the English Courts.

The Deputy Bailiff also commented that the Court would generally expect Counsel to state the means of the accused as a matter of course in all such cases.

On the first count 'P' was fined £300. On the second count the Court imposed a sentence of 6 months' imprisonment suspended for 2 years plus a fine of £700.

[Law Officers of the Crown v. Petit - Crime 1.10.90 (HMP/SRM)].

Sentence - misuse of drugs - importation of cannabis

25. 'A' was convicted by the Royal Court of two offences involving the importation of almost four ounces of cannabis resin. His appeal against his two sentences of two years' imprisonment (concurrent) was dismissed in view of his bad criminal record, albeit not involving drugs, and the fact that the offences were committed when he was on parole.

[Law Officers of the Crown v. Jones - Court of Appeal 17.9.90 (HMP/SWFH)].

26. 'A' was sentenced by the Royal Court to fifteen months' imprisonment, having already spent two months in custody, for improper importation of 7.9 ounces of cannabis resin. On appeal, following the decision in Coffell and Nagy (see 9.GLJ.23), the sentence was reduced to nine months' imprisonment, suspended for two years. There was no, or insufficient, evidence from which it could be inferred that there was possession with intent to supply and the case should have been dealt with on the basis of an importation alone.

[Law Officers of the Crown v. Sutton - Court of Appeal 17.9.90 (HMP/SRM)].

Serious Fraud

27. Resolution of the States of 28.11.90. - Directing the preparation of legislation replacing the U.K. Criminal Justice Act 1987 (Guernsey) Order, 1989 and providing power for H.M. Procureur in cases of "serious or complex fraud" wherever committed to obtain information and disclose it to certain limited categories of persons.

Transcripts

28. Order of the Royal Court: The Shorthand Notes and Transcripts (Criminal Cases) (Amendment) Rules, 1990. - Further amend the principal Rules of 1964 so as to increase the fee per A4 side or part thereof of an official transcript to £6 or £1 for each additional copy.

In force 1.1.91. (ORC No. VI of 1990).

Trial - presence of witnesses in court - whether material irregularity

29. 'A' appealed against his conviction on the ground, inter alia, that there had been a material irregularity in his trial, namely that the Court of Alderney had permitted two civilian prosecution witnesses to be present in court prior to giving their evidence and then failed to give due consideration to the probative value of their evidence. HELD by the Bailiff that, although in some matters it would be preferable for all witnesses to retire, it was a rule of practice and not a rule of law and did not constitute a material irregularity.

[Law Officers of the Crown v. Maloy - Requête and Appeals to the Royal Court 21.8.90 (HMC/NLP)]. (See also paragraph 18).

CUSTOMS

Import and export control

30. Statutory Instrument: The Import and Export of Goods (Control) (Guernsey) Order, 1990. - Replaces, with modifications, the principal Order of 1978 and subsequent amending Orders relating to control of import and export.

In force 19.9.90. (S.I. No. 24 of 1990).

Law reform

31. Projet de Loi: The Customs and Excise (General Provisions) (Bailiwick of Guernsey) (Amendment) Law, 1990. - Amends the principal Law of 1972 to bring the local legislation into line with that in the U.K. Inter alia, the Law creates an offence of impersonating a customs officer; makes certain administrative alterations; clarifies officers' powers of arrest and procedures in relation to searches of the person; provides for the automatic forfeiture of smuggled goods, or the vessel used to carry them, by removing the Court's discretion where the thing was properly seized; transfers to the Board of Administration the responsibility for increasing penalties for offences of smuggling controlled drugs; creates new offences of attempting to commit certain offences under the Law; and increases all maximum penalties under the Law.

Approved by the States 13.12.90. Awaiting the approval of the States of Alderney and Chief Pleas of Sark.

DIVORCE AND MATRIMONIAL CAUSES

Divorce - financial provision - vesting of matrimonial home - earning capacity of wife - appeal - admission of further evidence

32. 'H' and 'W' were joint owners of the matrimonial home, an open market dwelling in which 'W' continued to reside with the children, both aged 9 years at the date of the hearing, after their separation. The home had been purchased from the proceeds of sale of the former matrimonial home, the sale of some of 'H's business assets plus a bank loan still outstanding. 'H' lived abroad and both parties wished the children to remain in Guernsey for their education. 'W' did not work. The Order made by the Bailiff pursuant to their divorce provided that the property should vest in the parties in undivided shares as to two-thirds in 'W' and one-third in 'H' subject to a droit d'habitation in favour of 'W' for five years. 'H' was ordered to pay to 'W' £50 per week maintenance for herself and £50 for each child, plus school fees, and two-thirds of her costs. 'H' argued on appeal, inter alia, that since he accepted his liability to maintain 'W' and the children he should retain a one-half interest in the home. Both parties sought to adduce additional evidence at the hearing of the appeal in relation to developments since the Bailiff's decision. HELD, considering Rule 12(2) of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964 and the case law on the equivalent English provision, the circumstances in which fresh evidence, even in relation to matters which had occurred after the trial, could be admitted on appeal required to be exceptional. Ordinarily, it would be necessary to satisfy the Court that a basic assumption upon which the trial judge had proceeded had been falsified by subsequent matters. In only one matter had a basic assumption on which the Bailiff proceeded been

falsified: that 'W' would secure employment and thus relieve 'H' of the obligation to maintain her. It appeared to the Court from new evidence that 'W' had deliberately refrained from so doing, enabling the Court to look afresh at the financial provision. Although, pursuant to the line of authority in Traisnel v. Traisnel (1985) (and see paragraph 33), the Bailiff's discretion in respect of the matrimonial home had been exercised within the bounds of reasonableness and should not be interfered with, the order for maintenance in favour of 'W' should cease after three months. The order for costs in favour of 'W' would also be discharged, each party paying their own costs in both courts.

[Stewart v. Stewart - Court of Appeal 4.12.90 (GTAB/RLeCB)].

Divorce - financial provision - vesting of matrimonial home - factors to be taken into consideration

33. After their divorce 'W', who had custody of the children aged 13 and 11, remained in the jointly owned matrimonial home, which was an open market dwelling worth a substantial sum, unencumbered. The home was the only matrimonial asset. The bulk of the financial contributions for the purchase of the house had been made by 'W's father. 'H', who now resided away from Guernsey and did not exercise access to the children, had made only two payments of maintenance in four years. In the Matrimonial Causes Division the Bailiff ordered that the matrimonial property should vest solely in 'W', no order being made as to maintenance. 'H' appealed to the Court of Appeal, arguing that the order conferred on 'W' too high a compensation for the extinction of her periodical payments. HELD, following the Court's decision in Traisnel v. Traisnel (1985), the Court could only interfere with the Bailiff's decision if he had ignored any relevant consideration, taken into account any irrelevant consideration, or if he had otherwise gone plainly wrong. Were it not for the open market status of the house the Court might have been prepared to allow 'H' to retain a share in the home. However, in view of 'W's inability to purchase another open market property for a lesser sum, 'H's evident inability to provide financial support, the history of the financing of the matrimonial home and the desirability of a clean break in the particular circumstances, the appeal would be dismissed.

[Swaine v. Swaine - Court of Appeal 20.9.90 (PTRF/RLeCB)].

Magistrate's Court proceedings - maintenance order - income of cohabitee to be taken into account - remission of arrears of maintenance

34. 'A' applied to the Magistrate's Court for a reduction of the amount payable by him under a maintenance order made in 1987 and for reduction or remission of the arrears. Reducing the weekly sum payable, the Magistrate followed Macey v. Macey (1981) 11 Family Law Reports, p.248 in which it was held that the Court should not take into account the income of a mistress when assessing maintenance except that such income would be a factor to be taken into account where it makes a greater part of the husband's income available for the payment of maintenance.

On the question of remission of arrears, the case law on the corresponding English legislation (and in particular Pilcher v. Pilcher (No. 2) [1956] 1 WLR 298 and Ross v. Pearson [1976] 1 WLR 224) showed that as a rule of practice the English Courts will remit arrears which remain unpaid for more than 12 months although the Court could consider whether in the circumstances of any given case it was right to follow that practice in whole or in part.

[Pilot v. Pilot - Domestic Proceedings 11.7.90 (LLeRS/RALeT)].

EDUCATION

Elizabeth College

35. Petition amending Statutes: Effectively empowers the Board of Directors to charge or sell real property except, without the approval of the States, property owned before 28.7.76. Provides, for the avoidance of doubt, that the Board is a corporate body with all the powers of a limited liability company and that the Directors are not personally responsible for the liabilities of the College.

Approved by the States 10.10.90. Awaiting Royal Sanction.

Ladies' College

36. Order in Council: The Ladies' College (Amendment) (Guernsey) Law, 1990. - See paragraph 11.

States Education Council

37. Order in Council: The Education (Amendment) (Guernsey) Law, 1990. - See paragraph 11.

Unrecognised degrees

38. United Kingdom Statutory Instrument: The Education (Unrecognised Degrees) (Guernsey) Order, 1990. - Extends to the Bailiwick, with modifications, sections 214 to 216 of the Education Reform Act 1988 thus prohibiting the award by Guernsey institutions of unrecognised degrees.

In force 1.12.90. (U.K. S.I. No. 2146 of 1990).

EMERGENCY POWERS

39. United Kingdom Statutory Instruments: The Control of Gold, Securities, Payments and Credits (Kuwait) Directions, 1990, the Control of Gold, Securities, Payments and Credits (Republic of Iraq) Directions, 1990, the Iraq and Kuwait (United Nations Sanctions) (Channel Islands) Order, 1990, and the Iraq and Kuwait (United Nations Sanctions) (Channel Islands) (No. 2) Order, 1990. - Implement United Nations sanctions and other measures taken by H.M. Government following Iraq's invasion of Kuwait.

In force 3.8.90, 6.8.90, 30.8.90 and 6.10.90 respectively. (U.K. S.I. Nos. 1591, 1616, 1771 and 1987 of 1990, respectively).

EMPLOYMENT

Proof of housing status

40. Ordinance: The Right to Work (Limitation and Proof) (Modification and Commencement of Law) Ordinance, 1990. - Modifies the Right to Work (Limitation and Proof) (Guernsey) Law, 1990 (see 7.GLJ.41) so that people who started new employment on or before 1st December 1989 (instead of 9th June 1988) will not require a right to work document for that employment, and by introducing a new right to work document for people living and working on boats. Sets out the requirements in relation to this new category of document and gives a right of appeal against refusal. And brings into force the Law (as so modified) so as to enable the system to be set up from 1st August 1990 and finally introduce the requirement for a right to work document on 1st December 1990.

In force 1.8.90. (No. XXI of 1990).

EUROPEAN COMMUNITIES

41. Article: "The Protocol, the Bailiwicks and the Jersey Cow" by Dr. Richard Plender, Q.C. contained in "Legal History and Comparative Law: Essays in honour of Albert Kiralfy" (1990, published by Frank Cass ISBN 0-7146-3397-6).

FISHING

42. Projet de Loi: The Fishing (Amendment) (Bailiwick of Guernsey) Law, 1990. - Seeks to make a number of minor amendments to the Fishing (Bailiwick of Guernsey) Law, 1989 (as to which see 8.GLJ.44 and 9 GLJ.34), in particular as to the offence of unlawful fishing.

Approved by the States 27.9.90. Awaiting approval of the States of Alderney and the Chief Pleas of Sark.

43. Ordinance: The Fishing (Amendment) Ordinance, 1990. - Amends the criminal penalties imposed by the Fishing Ordinance, 1988.

In force 1.11.90. (No. XXXVII of 1990).

HEALTH AND MEDICINE

Medical benefit

44. Order in Council: The Health Service (Benefit) (Guernsey) Law, 1990. - See 9.GLJ.40.

Royal Sanction 31.10.90. Registered 4.12.90. (No. XXIV of 1990). In force 1.1.91: The Health Service (Benefit) (Guernsey) Law, 1990 (Commencement) Ordinance, 1990 (No. XLIV of 1990).

45. Ordinance: The Health Service (Benefit) Ordinance, 1990. - Makes detailed provision implementing the Health Service (Benefit) (Guernsey) Law, 1990 (see paragraph 44), including the fixing of prescription charges and exemptions therefrom.

In force 1.1.91. (No. XLV of 1990).

46. Order of the Royal Court: The Health Service (Appeals, etc.) Rules, 1990. - Establish procedural rules for appeals to the Royal Court from the Social Insurance Tribunal in respect of determinations under the Health Service (Benefit) (Guernsey) Law, 1990.

In force 1.1.91. (Order of the Royal Court No. IV of 1990).

47. Statutory Instrument: The Health Service (Medical Benefit) Regulations, 1990. - Make provision for the procedure by which claims are to be made for medical benefit under the Law of 1990 (see paragraph 44) and other related matters.

In force 1.1.91. (S.I. No. 42 of 1990).

48. Statutory Instrument: The Health Service (Determination of Claims) Regulations, 1990. - Prescribe the arrangements for the adjudication of claims under the Law of 1990 (see paragraph 44).

In force 1.1.91. (S.I. No. 43 of 1991).

49. Statutory Instrument: The Health Service (Benefit) (General) Regulations, 1990. - Make provision, pursuant to the Law of 1990 (see paragraph 44) for the conditions of entitlement relating to residence and presence in Guernsey or Alderney, the arrangements for the issue of a Health Benefit Card and certain transitional provisions.

In force 1.1.91. (S.I. No. 44 of 1990).

Residential homes - application for registration - sheltered accommodation - whether residential home

50. 'A' appealed against the decision of the Board of Health not to register premises as a residential home under the Nursing Homes and Residential Homes (Guernsey) Law, 1976. The premises comprised 18 self-contained units in one building with a single external door. A warden would be employed by 'A' but there were no separate facilities for communal cooking or eating. Persons over 55 years of age would qualify to purchase a 99 year lease of a unit on payment of a premium. Section 18 of the 1976 Law defined "residential home" as an establishment the aim of which was "the provision of accommodation, whether for reward or not, for -

- (a) persons who are blind, deaf or dumb or other persons who are substantially and permanently handicapped by illness, injury or congenital deformity; or
- (b) the aged; or
- (c) both"

but excluded any States-maintained hospital and any nursing home. HELD by the Deputy Bailiff -

- (1) that the phrase "the aged" in paragraph (b) of the definition must be construed in the light of paragraph (a) so as to mean persons who were substantially and permanently handicapped by age. The provision of facilities for the total and indefinite independence of a resident must exclude any such premises from qualification for registration under the Law;
- (2) that section 1(3)(f) of the Law enabled the Board to refuse registration if satisfied that the way in which it was proposed to conduct the home was such as not to provide services or facilities reasonably required by persons resorting to such a home. The word "home" imported a provision of continuous care in communal surroundings and a person resorting to a residential home might reasonably require that communal eating and recreational facilities be provided.

The appeal would be dismissed.

[Villa del Sol Management Co. (Guernsey) Limited v. Board of Health - Requête and Appeals to the Royal Court 25.9.90 (JDMU/HER)].

HOUSING

Control of occupation

- 51. Ordinance: The Right to Work (Limitation and Proof) (Modification and Commencement of Law) Ordinance, 1990. - See paragraph 40.

INCOME TAX

Appeals

- 52. Order in Council: The Income Tax (Amendment) (Guernsey) Law, 1990 (see also paragraphs 53, 54 and 56). - Provides for the establishment and operation of a body to be known as "the Guernsey Tax Tribunal" with the task of determining appeals and stating cases for the Ordinary Court. Appeals against assessments, penalties, directions and orders made or imposed by the Administrator will in future be determined by the new tribunal, except where the taxpayer has failed to submit a return. (In such cases the only question in practice is whether more time can be allowed, and the Authority will continue to deal with this administrative matter). Appeals under the Income Tax Law concerning the E.T.I. Scheme, initial allowances, purchased

allowances, purchased life annuities, approval of professional bodies and approval of pension and annuity schemes will also lie to the tribunal, as will appeals under the Dwellings Profits Tax Law. The tribunal is to consist of up to seven members plus a President and Vice-President, all appointed by the Full Court. It will have a clerk to advise on matters of law and to deal with its administration. Proceedings are to be conducted as quickly and informally as possible and, apart from laying down rules about matters such as quorum, presidency, conflict of interest, immunities and voting, the Project empowers the tribunal to regulate its own procedure.

Approved by the States 26.7.90. Royal Sanction 20.11.90. Registered 11.12.90. To be brought into force in this respect by Ordinance. (No. XXVI of 1990).

Computation of income

53. Order in Council: The Income Tax (Amendment) (Guernsey) Law, 1990 (see also paragraphs 52, 54 and 56). - Section 4 of this Law gives legislative effect to a States' budget resolution to include widows' allowances payable from 1st January 1990 under the Social Insurance Law in the list of benefits which are not chargeable to income tax.

Approved by the States 26.7.90. Royal Sanction 20.11.90. Registered 11.12.90. In force in this respect 12.12.90. (No. XXVI of 1990).

Employees Tax Instalment Scheme

54. Order in Council: The Income Tax (Amendment) (Guernsey) Law, 1990 (see also paragraphs 52, 53 and 56). - Until 31st December 1990 the E.T.I. scheme applied, inter alia, to payments made by a person carrying on business or exercising functions in Guernsey to an individual "in respect of manual labour personally performed by that individual". By virtue of this Law payments made by such a person from 1st January to an individual in respect of any manual labour (including labour performed by other people to whom that individual passes on the payment) will be subject to deduction of tax at source unless the payee has produced to the person making the payment a currently valid E.T.I. exemption certificate in the former's name and has complied with any relevant E.T.I. regulations (see paragraph 55). The Law puts beyond doubt the powers of the Income Tax Authority to make regulations governing the issue, validity and cancellation of E.T.I. exemption certificates; confers rights of appeal, which in due course will lie to the new tribunal (see paragraph 52); and creates criminal offences of failure to pay over money deducted under the E.T.I. scheme, wilful failure to make deductions required by the scheme, and other matters connected with E.T.I. exemption certificates.

Approved by the States 26.7.90. Royal Sanction 20.11.90. Registered 11.12.90. In force, as respects the administrative, appeals and offences provisions, 12.12.90; and as respects the new duty to deduct tax at source, 1.1.91. (No. XXVI of 1990).

55. Statutory Instrument: The Income Tax (Guernsey) (Employees Tax Instalment) (Amendment) Regulations, 1990. - Complete the system envisaged by section 2

of the Income Tax (Amendment) (Guernsey) Law, 1990 (see paragraph 54) by laying down the requirements for obtaining E.T.I. exemption certificates and the duties of employers. Exemption certificates can be issued and renewed for up to three years having regard to the applicant's record of compliance with the Scheme. Employers making payments in respect of manual labour performed by people other than the payee must enter them on the appropriate list, depending on whether or not the payment is made without deduction of tax on the authority of an E.T.I. exemption certificate, and all employers who have not been exempted by the Administrator further to an appropriate written certification must return both lists each quarter whether or not any such payments have been made during the quarter.

In force, as respects the power to issue E.T.I. exemption certificates, 1.11.90; and in all other respects, 1.1.91. (S.I. No. 21 of 1990).

Penalties

56. Order in Council: The Income Tax (Amendment) (Guernsey) Law, 1990 (see also paragraphs 52, 53 and 54). - Increases the maximum civil penalties which can be imposed on taxpayers who fail to comply with the Income Tax Law and removes the previous requirement for a joint request to be made by the Administrator and the Income Tax Authority before a Royal Court prosecution could be instituted, instead of civil penalty proceedings, in a case involving fraud.

Approved by the States 26.7.90. Royal Sanction 20.11.90. Registered 11.12.90. In force in this respect 12.12.90. (No. XXVI of 1990).

Pensions

57. Projet de Loi: The Income Tax (Pension Amendments) (Guernsey) Law, 1990. - The main effects of this Projet are to facilitate the spreading or changing of pension and annuity investments and to open up Guernsey approved schemes to a wider market, by
- extending the circumstances in which transfers between different types of scheme give rise to no Guernsey tax liability;
 - removing certain financial disincentives to transfers under the rules of authorised schemes;
 - introducing new flexibility in connection with approval of occupational pension schemes;
 - removing the present ban on approved retirement annuities being effected by Guernsey residents who are capable of receiving the maximum permitted benefits under an approved occupational pension scheme;
 - catering for Guernsey-based retirement annuity schemes for non-residents.

The Projet also brings annuities within the E.T.I. scheme and effects a number of minor reforms.

Under the new requirements for approval of occupational pension schemes (with which existing schemes will also have to comply if they are to retain approval after the end of 1991) a person leaving with more than 5 years of qualifying service must be allowed to choose between a refund of his

contributions, deferred benefits determined in accordance with a specified formula, or the transfer to another approved pension or annuity scheme of the current value, calculated by a qualified actuary, of those deferred benefits. People leaving with less qualifying service must be allowed to transfer to approved annuity schemes if they are given an option to transfer to other occupational schemes; but, if not, they must be entitled to at least a refund of their contributions. For these purposes a person's qualifying service and contributions include service and contributions under a previous transferred-in scheme. Other reforms relating to occupational schemes enable the Administrator to relax benefit limits in certain cases and clarify the tax position of payments to employers out of their funds.

Approved retirement annuity and retirement annuity trust schemes will be made available for the first time to all Guernsey residents even if they could obtain the maximum permitted benefits under an occupational scheme and different contribution limits may apply in such cases, but premiums will not attract tax relief. Provision is also made for a new type of Guernsey-based scheme whose annuities and lump sums will be tax free if the annuitant (and the payee if different) has not been resident in Guernsey, Alderney or Jersey at any time during its term, and whose income from investment of its funds will not be liable to Guernsey income tax.

The Projet will facilitate transfers into, and out of, approved annuity schemes from, and to, other such schemes, the new Guernsey-based non-residents' annuity schemes and similar approved or exempt overseas schemes; and also transfers into approved annuity schemes from approved pension schemes and Guernsey-based superannuation scheme for overseas employees. The existence of a facility to make these transfers will no longer render a scheme ineligible for approval, and the transfer payments will not in general give rise to any charge to tax or any claim for relief from tax. Transfers into approved schemes for non-residents will, however, attract tax at half of the standard rate (as will transfers from approved occupational pension schemes into such schemes or into superannuation schemes for non-residents).

Approved by the States 13.12.90. Awaiting Royal Sanction.

INDIRECT TAXATION

58. Ordinance: The Indirect Taxes, Duties and Impôts (Increase of Rates) (Budget) Ordinance, 1990. - Increases the impôt on tobacco, alcohol and petrol, motor tax and trade licence tax.

In force as to impôts 14.12.90 and as to the remainder 1.1.91. (No. XLI of 1990).

LIQUOR

Immature spirits

59. Ordinance: The Immature Spirits (Guernsey) Ordinance, 1990. - Amends the Immature Spirits (Guernsey) Law, 1976 so as to follow E.E.C. policy by

reducing the minimum period of maturation of brandy or cognac from three years to six months in oak casks of a capacity of less than 1,000 litres or one year in other oak receptacles.

In force 27.9.90. (No. XXIII of 1990).

Licensing - club licence - proprietary club - whether Ordinance applies

60. 'A', the president of a snooker club, applied for a club licence under Part XI of the Liquor Licensing Ordinance, 1984. 'A' was beneficial owner of 'B' Ltd., the owner of the club premises. The club rules provided that the president must be 'A', his nominees or personal representatives and that the president had sole power to exclude persons from membership of the club. All membership and playing fees and bar and food takings would accrue to 'B' Ltd. When, pursuant to section 119(a)(iii), the draft rules had been submitted to the Law Officers for approval, H.M. Procureur had declined to approve them on the ground that the club was a proprietary club and not a members' club and, as such, Part XI of the 1984 Ordinance did not apply. 'A' did not dispute that the club was a proprietary club but argued that nothing in the Ordinance prevented a club licence being granted to such a club. HELD, that although the Court must have power to review the exercise of the discretion of the Law Officers in approving the rules of a club, an application under Part XI of the Law could not be entertained in respect of a proprietary club and would be dismissed. Quaere whether H.M. Procureur's opposition to the application should have been based on the Law Officers' function as protectors of the public interest rather than on a review of his decision not to approve the rules.

[In re the Guernsey Snooker Club's Application - Liquor Licences 6.11.90 (RPO/HMP)].

Licensing - fees

61. Ordinance: The Liquor Licensing (Amendment) Ordinance, 1990. - Increases the fees payable for renewal of liquor licences.

In force 31.10.90. (No. XXXII of 1990).

62. Ordinance: The Liquor Licensing (Amendment) (No. 2) Ordinance, 1990. - Increases various fees for the grant and renewal of liquor licences and increases the minimum sum in the definition of a "meal" from £1 to £3.

In force 1.1.91. (No. LI of 1990).

POLICE

Island Police Committee

63. Order in Council: The Police Committee (Amendment) (Guernsey) Law, 1990. - See paragraph 10.

POPULATION AND MIGRATION

64. Ordinance: The Census Ordinance, 1990. - Provides for the taking of a census of the population of Guernsey, Herm and Jethou on 21.4.91.

In force 13.12.90. (No. LIV of 1990).

PRACTICE AND PROCEDURE (CIVIL)

Appeals - appeal to Court of Appeal - admission of further evidence

65. See Stewart v. Stewart, paragraph 32.

Appeals - appeal to Court of Appeal - appeal against finding of fact - correct test - contract voidable for duress

66. 'A' was a business associate of 'R'. While 'R' was on holiday 'A' examined the books of a company of which both were directors and formed the belief that substantial sums had been misappropriated by 'R' from that company. Immediately upon 'R's return 'A', supported by the company's accountant, confronted 'R' with the allegations and allegedly threatened him that unless 'R' signed an agreement already prepared by 'A' the matter would immediately be reported to the police. The evidence was that 'R', who was unprepared for the meeting, was prevented from contacting his wife, who kept the books, or from taking professional advice, and he was unable to provide an explanation satisfactory to 'A'. He signed the contract. 'A' brought an action to enforce it and 'R' successfully claimed that the contract was voidable for duress and had been avoided by a subsequent letter from 'R's advocate. 'A' appealed. HELD, the proper approach to the Court's power to review findings of fact made by Jurats was set out in Guille v. MacKay (1967). The Court should not interfere with the findings of fact unless satisfied that there was no evidence before the Jurats upon which they could reasonably have arrived at those findings or, exceptionally, that for any other reasons the findings of the Jurats were perverse. Dismissing the appeal on that ground, the Court went on to consider the defence of duress. The essence of duress was that the will had been deflected by the imposition of illegitimate pressure, taking into consideration what course of action was threatened and the constraints of time and space which were imposed and also the nature of the agreement proposed. Either there must be an unlawful or illegitimate threat or a lawful threat coupled with illegitimate pressure. A firm statement of intention that allegations of serious fraud would be reported to the police only if the contract was not signed which, together with the other circumstances of the case, amounted to illegitimate pressure, could amount to duress, rendering the contract revocable if it was signed as a result of that pressure rather than as a matter of free choice.

[Picot v. Jehan - Court of Appeal 20.9.90 (unrep/JPG)].

Appeals - appeal to Court of Appeal - stay of execution - application to single judge - review by Court of Appeal - jurisdiction

67. Judgment was awarded by the Royal Court against 'AA' in a sum (including interest) exceeding £18,000 plus costs. 'AA' appealed against that judgment on grounds relating to a discount to which they alleged they were entitled and a set-off against their own claims. 'AA' applied unsuccessfully for a

stay of execution of the judgment pending the appeal, first to the Deputy Bailiff as presiding judge of the lower court and thence to the Bailiff sitting as a single judge of the Court of Appeal. On their application to the full Court of Appeal 'RR' argued as a preliminary point that, on the wording of section 21(2) of the Court of Appeal (Guernsey) Law, 1961, that Court had no jurisdiction to review the decision of a single judge of the Court of Appeal. HELD, on the proper construction of that provision the Court of Appeal as fully constituted did have the power to discharge or vary an incidental or protective order made by a single judge of that Court. With respect to the substantive application, the practice in Guernsey, unlike the English rule, seemed to be to consider each application upon its individual merits, particular regard being had to the nature and prospects of the appeal and to any special circumstances affecting the parties. There appeared to be no defence to 'RR's claim other than the establishment of 'AA's own claims. Were they established, and should the alleged discount be made out on appeal, the sum due to 'RR' would be approximately £15,000. Subject to a satisfactory, readily enforceable security for repayment, such as a bond or letter of guarantee from a bank, judgment would be enforceable up to that sum. There would be a stay of execution of the order for costs until taxation had taken place, subject to 'AA's right to apply to the Court for a further order in that regard.

[Havilland Estates Limited v. Channel Island Ceramics Limited - Court of Appeal 4.12.90 (JPG/NJB)].

Appeals - medical benefit - appeal against decision of Tribunal - Rules

68. Order of the Royal Court: The Health Service (Appeals, etc.) Rules, 1990. - See paragraph 46.

Application for arrêt or injunction - procedure - Practice Direction

69. With effect from the 3rd September, 1990, the following procedure should be adopted when Counsel wish to make application to the Bailiff or Deputy Bailiff for an arrêt or injunction:-
- (i) a draft copy of the affidavit(s) together with a draft copy of the Order to be applied for should be submitted to H.M. Greffier together with copies of all supporting documents;
 - (ii) H.M. Greffier will then arrange a time for the application and will notify Counsel when to attend Chambers;
 - (iii) Counsel should present the original affidavit and any supporting exhibits to the Bailiff or Deputy Bailiff at the hearing of the application. H.M. Greffier will retain the copies submitted to him for the record;
 - (iv) application to the Bailiff or Deputy Bailiff in Chambers will be made by Counsel. It will not be necessary for clients to be present as affidavits may be sworn before a Notary Public;
 - (v) fees for the application will be charged to Counsel's account by H.M. Greffier.

(Practice Direction No. 5 of 1990).

Costs and fees - Rules

70. Order of the Royal Court: The Royal Court (Costs and Fees) Rules, 1990. Re-enact with substantial amendments the Rules of 1981; determine Court fees, recoverable Advocates' fees and witness allowances in civil proceedings; and establish a Taxation Panel.

In force 1.1.91. (ORC No. V of 1990).

Defences - filing - Practice Direction

71. Copies of defences to be tabled before the Ordinary Court must be lodged at the Greffe and Bailiff's Office no later than 12 noon on the day preceding the sitting of the Court at which they are to be tabled.

No defences may be lodged after this time unless Counsel first obtain leave from the Bailiff or Deputy Bailiff.

(Practice Direction No. 7 of 1990).

Judgment - interest - direction to Jurats

72. The Court of Appeal has held that when judgment interest is to be awarded under the provisions of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985, the Jurats should be given guidance on the proper method of calculating it, including the appropriate rates to be used for different periods, with attention to the various questions and authorities set out in the White Book.

[Douglas v. Gallienne - Court of Appeal 14.11.90 (RJC/JPG)]. (See also paragraph 76).

Non-contentious applications

73. Order of the Royal Court: The Royal Court (Non-contentious Applications) (Amendment) Rules, 1990. - Further amend the principal Rules of 1988 to replace the certificate endorsed on an application to register a limited liability company that a Law Officer has seen and marked the Memorandum with one stating that a Law Officer has signified that he raises no objection to the incorporation of the company.

In force 21.9.90. (ORC No. II of 1990).

74. Practice Direction. - Non-contentious applications will be dealt with by the Bailiff or Deputy Bailiff on two days each week with effect from Tuesday, 14th August, 1990.

Applications for permission to register new companies will be considered on each Tuesday and Friday. All other applications under the Royal Court (Non-contentious Applications) Rules, 1988 will only be considered on a Tuesday. There will then be no Non-contentious Court on a Wednesday as at present - the last Wednesday Court will be on Wednesday, 8th August, 1990.

Any application under the Non-contentious Rules must be lodged at the Greffe not later than 11.00 a.m. each Tuesday and Friday and must be accompanied by

the certificate specified in the Second Schedule to the said Rules. In the case of new companies, this will permit registration to be effected on that day if so required.

(Practice Direction No. 4 of 1990).

Summary judgment - application - procedure - Practice Direction

75. All applications for Summary Judgment under Part III of the Royal Court Civil Rules of 1989 will in future be dealt with by the Bailiff or Deputy Bailiff sitting in Chambers.

Counsel wishing to make application for Summary Judgment should submit two copies of the cause to H.M. Greffier together with supporting affidavit(s).

A date for the Chambers hearing will then be arranged and H.M. Greffier will notify Counsel for the plaintiff(s).

Upon receipt of a summons, Counsel for the defendant(s) should, if the application is to be contested, lodge an affidavit in reply with H.M. Greffier within forty-eight hours.

If the application is not to be contested it would be appreciated if Counsel could notify H.M. Greffier immediately.

(Practice Direction No. 6 of 1990).

Summing-up - duties of judge - duties of Counsel

76. During an appeal against a finding that a medical practitioner had been negligent the Court of Appeal considered the duty of the Bailiff in summing-up to the Jurats. Following the Court of Appeal decisions in Heywood (1971) and Guille v. McKay (1967), the duty of the Bailiff to sum up the case to the Jurats was the same as the duty of an English judge to sum up a case to the jury. It was essential that the Jurats should be told what were the issues of fact which they had to decide and be reminded of the evidence relevant to each of those issues in that degree of detail which was appropriate to the particular case in hand. Per Sydney Kentridge, Q.C., that, although in Seaton v. Burnard [1900] AC 135, where the judge first submitted to Counsel the questions which he proposed to put to the jury, and Counsel were also given the opportunity to require other questions to be put, Counsel had thereafter been prohibited from objecting to the summing-up, it would be quite unreasonable to expect Counsel in this case to have stated any objections he might have had immediately after the summing-up and he was entitled subsequently to complain of any misdirection.

[Douglas v. Gallienne - Court of Appeal 14.11.90 (RJC/JPG)]. (See also paragraph 72).

PRISON

Regulation of access

77. Ordinance: The Prison (Regulation of Access) Ordinance, 1990. - Prohibits access without lawful authority to the prison site at Baubigny.

In force 13.12.90. (No. XLVII of 1990).

PUBLIC ASSISTANCE

78. Ordinance: The Public Assistance (Amendment) (Guernsey) Law, 1990 (Commencement) Ordinance, 1990. - Brings the Law of 1990 into force on 1st October, 1990 (see 8.GLJ.76 and 9.GLJ.55).

In force 27.9.90. (No. XXV of 1990).

79. Ordinance: The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 1990. - Approves the Board's regulations which increase the limit of weekly income to £110 with effect from 1.12.90.

In force 28.9.90. (No. XXVI of 1990).

80. Ordinance: The Public Assistance (Transfer of Functions) Ordinance, 1990. - Transfers the functions of the Central Outdoor Assistance Board and the Stranger Poor Assistance Committee under the Public Assistance Law, 1937 to the Public Assistance Authority.

In force 1.11.90. (No. XXXVIII of 1990).

RATING

States Cadastre Committee

81. Order in Council: The Cadastre (Amendment) (Guernsey) Law, 1990. - See paragraph 12.

Tax on rateable values

82. Ordinance: The Tax on Rateable Values (Amendment) (Guernsey) Ordinance, 1990. - Increases the rates at which the tax is to be assessed (in the case of domestic premises, to £1.05 per pound).

In force 13.12.90. (No. XLII of 1990).

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES

83. Resolution of the States of 1.11.90. - Directing the preparation of legislation making minor amendments to the legislation relating to the fees for registration of births, deaths, marriages and legitimacy.

ROAD TRAFFIC AND PUBLIC TRANSPORT

Car-sharing

84. Projet de Loi: The Administration of Justice (Bailiwick of Guernsey) Law, 1990. - Amends the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936 so as, inter alia, to provide that, where certain

conditions are fulfilled (namely, the vehicle is not adapted to carry more than eight passengers and is not a motor cycle, the total fares paid do not exceed the running costs of the vehicle and the arrangements for payment of fares were made before the journey began), restrictions or exclusions in an insurance policy otherwise preventing the carrying of passengers in a car-sharing agreement will not apply.

Approved by the States 27.9.90. Awaiting Royal Sanction. (See also paragraphs 20 and 97).

Driving school signs - transfer of functions

85. Ordinance: The Road Traffic (Driving School Signs) Ordinance, 1990. - Transfers the functions of the Chief Officer of Police under section 5(1)(c) of the Motor Vehicles (Miscellaneous Provisions) Ordinance, 1962 relating to the approval of driving school signs to the Island Traffic Committee.

In force 1.10.90. (No. XXX of 1990).

Driving under the influence of drink or drugs

86. Order in Council: The Road Traffic (Drink Driving) (Amendment) (Guernsey) Law, 1990. - Amends the principal Law of 1989 (see 8.GLJ.81 and 9.GLJ.58) so as to entitle a person providing a specimen of breath containing a proportion of alcohol not exceeding 50 microgrammes of alcohol in 100 millilitres of breath to elect that such specimen be replaced by a specimen of blood or urine.

Approved by the States 26.7.90. Royal Sanction 19.12.90. Awaiting registration.

International driving permits - fees

87. Order in Council: The Motor Vehicles (International Circulation) (Guernsey and Alderney) (Amendment) Law, 1990. - See 9.GLJ.62.

Royal Sanction 19.12.90. Awaiting registration.

Offences - driving in a manner dangerous - evidence of speed - whether corroboration necessary

88. See Law Officers of the Crown v. Maloy, paragraph 18.

Prohibited and one-way streets

89. Ordinance: The Prohibited and One-Way Streets (Amendment) Ordinance, 1990. - Amends the Prohibited and One-Way Streets Ordinance, 1989, by adding George Road, Le Pied des Vardes, Les Vardes and La Pouqelah to Schedule 2 of one-way streets.

In force 1.11.90. (No. XXXI of 1990).

Public transport - fees

90. Ordinance: The Public Transport (Fees) Ordinance, 1990. - Increases various fees payable to the Island Traffic Committee for licences etc. under the Public Transport Ordinance, 1986 and the Road Service (Permits to Drive Public Service Vehicles) Ordinance, 1986 and sets a fee for vehicle examinations.

In force 13.12.90. (No. LII of 1990).

Transfer of responsibility for vehicle licensing and registration

91. Resolution of the States of 28.11.90. - Directing the preparation of legislation transferring the functions relating to the registration and taxation of motor vehicles and to driving licences from the Board of Administration and States Supervisor to the Island Traffic Committee.

SOCIAL SECURITY

Attendance and invalid care allowances

92. Ordinance: The Attendance and Invalid Care Allowances (Guernsey) Ordinance, 1990. - Increases the weekly rates of such allowances.

In force 5.11.90. (No. XXXIV of 1990).

Family allowances

93. Ordinance: The Family Allowances (Guernsey) Ordinance, 1990. - Increases the family allowance to £7.50 per week per child.

In force 6.11.90. (No. XIX of 1990).

Social insurance

94. Ordinance: The Social Insurance (Rates of Contributions and Benefits, etc.) (Guernsey) Ordinance, 1990. - Increases the upper weekly and monthly earnings limits for payment of social insurance contributions; the rates of class 3 contributions; the rates and amounts of benefits, pensions and grants; and the allocation to the Guernsey Health Service Fund.

In force as to part 5.11.90 and as to the remainder 1.1.91. (No. XXXIII of 1990).

Supplementary benefit

95. Ordinance: The Supplementary Benefit (Implementation) (Amendment) Ordinance, 1990. - Increases the limits of weekly income and normal monetary requirements for specified classes of person.

In force 9.11.90. (No. XXXV of 1990).

TELECOMMUNICATIONS

States Telecommunications Board

96. Order in Council: The Telecommunications (Amendment) (Bailiwick of Guernsey) Law, 1990. - See paragraph 10.

TERRES A L'AMENDE

97. Projet de Loi: The Administration of Justice (Bailiwick of Guernsey) Law, 1990. - Provides that penalties are recoverable only in the Petty Debts Court.

Approved by the States 27.9.90. Awaiting Royal Sanction. (See also paragraphs 20 and 84).

TOURISM

Boarding permits - fees

98. Ordinance: The Tourist Law (Fees) (Amendment) Ordinance, 1990. - Increases to £2.00 (for guest houses) and £3.25 (in any other case) the fees payable for boarding permits under the Tourist Law, 1948.

In force 1.1.91. (No. XLIII of 1990).

TRADE AND INDUSTRY

99. Order in Council: The Trading Stamps (Amendment) (Guernsey) Law, 1990. - See 9.GLJ.78.

Royal Sanction 7.6.90. Registered 1.10.90. In force 29.10.90. (No. XXII of 1990).

WATER

100. Projet de Loi: The States Water Supply (Amendment) (Guernsey) Law, 1990. - Imposes strict liability on the Water Board for damage done by escapes of water from mains or service pipes. The States may limit the measure of the Board's liability by Ordinance. The Projet also amends Article 6 of the 1927 Law by clarifying the extent of the Board's powers to carry out works and their liability for damage done in course of such works; and excludes the Board's liability for restrictions and interruptions in the water supply.

Approved by the States 13.12.90. Awaiting Royal Sanction.

GUERNSEY STATUTORY INSTRUMENTS

101. 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 Milk (Retail Prices) (Guernsey) Order, 1990	14.
The Central Outdoor Assistance Board (Amendment) Regulations, 1990	15.
The Health Service (Pharmaceutical) (Payment of Approved Suppliers) (Amendment) (Guernsey) Regulations, 1990	16.
The Health Service (Pharmaceutical) (Prescribed Appliances) (Amendment) (Guernsey) Regulations, 1990	17.
The Financial Services Commission (Fees) Regulations, 1990	18.
The Post Office (Overseas Letter Post) (Amendment) Order, 1990	19.
The Post Office (Inland Post) (Amendment) Order, 1990	20.
The Income Tax (Guernsey) (Employees Tax Instalment) (Amendment) Regulations, 1990 (see paragraph 55)	21.
The Collective Investment Schemes (Class B) Rules, 1990 (see paragraph 4)	22.
The Parking Places (Amendment) Order, 1990	23.
The Import and Export of Goods (Control) (Guernsey) Order, 1990 (see paragraph 30)	24.
The Importation of Feeding Stuffs Order, 1990	25.
The Social Insurance (Classification) (Amendment) Regulations, 1990	26.
The Social Insurance (Contributions) (Amendment) Regulations, 1990	27.
The Social Insurance (Increase of Benefit) Regulations, 1990	28.
The Social Insurance (Widow's Benefit and Old Age Pensions) (Amendment) Regulations, 1990	29.
The Post Office (Overseas Letter Post) (Amendment) (No. 2) Order, 1990	30.
The Immigration (Guernsey) (Amendment) Rules, 1990	31.
The Health Service (Pharmaceutical) (Prescribed Appliances) (Amendment No. 2) Regulations, 1990	32.

	S.I. Number
The Fishing Vessels (Safety Regulations) (Fees) (Guernsey) Regulations, 1990	33.
The Impôts (Temporary Increase of Rates) Order, 1990	34.
The Income Tax (Guernsey) (Retirement Annuity Schemes and Retirement Annuity Trust Schemes) Regulations, 1990	35.
The Health Service (Pharmaceutical Benefit) Regulations, 1990	36.
The Health Service (Authorised Suppliers) Regulations, 1990	37.
The Health Service (Payment of Authorised Suppliers) Regulations, 1990	38.
The Health Service (Medical Appliances) Regulations, 1990	39.
The Health Service (Authorised Appliance Suppliers) Regulations, 1990	40.
The Health Service (Payment of Authorised Appliance Suppliers) Regulations, 1990	41.
The Health Service (Medical Benefit) Regulations, 1990 (see paragraph 47)	42.
The Health Service (Determination of Claims) Regulations, 1990 (see paragraph 48)	43.
The Health Service (Benefit) (General) Regulations, 1990 (see paragraph 49)	44.
The Social Insurance (Classification) (Amendment) (No. 2) Regulations, 1990	45.

ALDERNEY

AGRICULTURE AND ANIMALS

Dog tax

102. Ordinance: The Alderney (Application of Legislation) (Dog Tax) Ordinance, 1990. - Provides that the Dog Tax (Guernsey) Ordinance, 1990 (see paragraph 1) shall have effect in Alderney.

In force 1.1.90. (No. XXVIII of 1990).

BANKRUPTCY AND INSOLVENCY

103. Order in aid - request from High Court - no evidence of misapplication of company funds by witness - jurisdiction of court - whether notice of application required

'AA' were required by the Court of Alderney, pursuant to an application by the Official Receiver, to give evidence under section 236 of the Insolvency Act 1986, as extended to Alderney, in respect of a company which had been wound up by the High Court. They appealed to the Royal Court against the Order. Firstly, they argued that section 426(4) and (5) of the Insolvency Act 1986 required the receiving court to apply "the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction.". The relevant insolvency law of Alderney (section 13 of the Companies (Alderney) Law, 1962), unlike section 236(2) of the Insolvency Act 1986, limited the powers of the Alderney Court to require evidence only when the witness had been guilty of misappropriation, misfeasance or breach of trust. They alleged that the Court had failed, as it was required to do, to examine the powers given by the requesting court and its own powers to see if they were comparable. 'AA' also argued that the Court had denied 'AA', who had been served with notice of the proceedings, an adjournment to obtain legal advice, contrary to the rules of natural justice. HELD, by the Bailiff sitting alone, such applications should be made ex parte and the proper time to object would be at the date 'AA' were ordered to appear for examination. As far as the substantive ground was concerned, in exercising its discretion the Court of Alderney must look at the law which was most reasonable to apply and if dealing with an English company then the law of England should be applied if Alderney had no comparable provisions. Furthermore, the affidavit of the Official Receiver alleged a misfeasance and therefore section 13 of the 1962 Law would apply. The appeal would be dismissed.

[Slinn v. Official Receiver and Liquidator of Seagull Manufacturing Company Limited - Requête and Appeals to the Royal Court 8.11.90 (GWA/EAGP)].

FEES

104. Ordinance: The Fees (Alderney) Ordinance, 1990. - Sets fees payable under the Fees (Alderney) Law, 1988 and for various other matters and also in respect of marriages and registration of nursing or residential homes.

In force 5.9.90. (Ordinance of the States of Alderney of 5.9.90).

GUARDIANSHIP

105. Order in Council: The Guardianship of Minors (Alderney) Law, 1990. - See 8.GLJ.107.

Royal Sanction 7.6.90. Registered 1.10.90. (No. XXIII of 1990). In force 6.10.90: The Guardianship of Minors (Alderney) Law, 1990 (Commencement) Ordinance, 1990.

(Ordinance of the States of Alderney of 3.10.90).

HEALTH AND MEDICINE

Medical benefit

106. Ordinance: The Alderney (Application of Legislation) (Health Service) (Benefit) Ordinance, 1990. - Extends the Health Service (Benefit) (Guernsey) Law, 1990 (see paragraph 44) to Alderney, with modifications.

In force 1.1.91. (No. XLVI of 1990).

Prescription charges

107. Ordinance: The Alderney (Application of Legislation) (Health Service) (Pharmaceutical) (Amendment) Ordinance, 1990. - Increases the prescription charge in Alderney to £1.60.

In force 1.8.90. (No. XX of 1990).

LIQUOR

Permitted hours

108. Ordinance: The Alderney Liquor Licensing (Amendment) Ordinance, 1990. - Amends the First Schedule to the Alderney Liquor Licensing Ordinances, 1968 to 1989 by making midnight the closing time for permitted hours.

In force 3.10.90. (Ordinance of the States of Alderney of 3.10.90).

MILK

Prices

109. Ordinance: The Milk (Retail Price) (No. 2) Ordinance, 1990. - Increases the ceiling price for retail sales of milk.

In force 16.9.90. (Ordinance of the States of Alderney of 5.9.90).

RATING

110. Ordinance: The Occupier's Rate (Level for 1991) Ordinance, 1990. - Sets the Alderney occupier's rate for 1991 at £1.25 in the pound.

In force 14.12.90. (Ordinance of the States of Alderney of 14.12.90).

SOCIAL SECURITY

Supplementary benefit

111. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) Ordinance, 1990. - Applies the Supplementary Benefit (Implementation) (Amendment) Ordinance, 1990 (see paragraph 95) to Alderney.

In force 9.11.90. (No. XXXVI of 1990).

WATER

Charges

112. Ordinance: The States Water Supply (Rates of Charge) (Alderney) Ordinance, 1990. - Increases charges for the supply of water.

In force 30.9.90. (Ordinance of the States of Alderney of 5.9.90).

SARK

CONSTITUTIONAL LAW

113. Ordinance: The Deputies of the People (General Election) (Sark) Ordinance, 1990. - Prescribes 11.12.90 as the date for a general election of Deputies of the People.

Made and in force 3.10.90.

DEVELOPMENT CONTROL

114. Projet de Loi: The Development Control (Sark) Law, 1990. - Repeals and re-enacts, with modifications, the Preservation of Natural Amenities and Agricultural Land Control (Sark) Law, 1961. The Projet provides for the appointment of a Development Control Committee to be charged with the administration of the Law and empowers Chief Pleas to make provision by Ordinance in relation to the control of development in the Island and the factors to be taken into account by the Committee in exercising its functions and to designate "conservation areas" in which, with certain specified exceptions, no permission for development may be granted. Provision is also made for the period of validity of permissions, preliminary declarations, penalties and other ancillary matters. Chief Pleas is exempted from the application of the Law.

Approved by Chief Pleas 3.10.90. Awaiting Royal Sanction.

FISHING

115. Ordinance: The Fishing (Amendment) (Sark) Ordinance, 1990. - Extends to 31st October, 1995 the effect of section 1 of the Fishing (Sark) Ordinance, 1966, as amended, relating to the close season for lobsters and crayfish.

Made and in force 3.10.90.

HARBOURS AND MOORINGS

116. Projet de Loi: The Pilotage (Sark) Law, 1990. - Repeals the Ordinance entitled "Ordonnance portant règlement pour les Pilotes de l'Ile de Serk" of 1932 and empowers the Chief Pleas of Sark to make provision by Ordinance for the compulsory pilotage of vessels within the territorial waters adjacent to the island, including the delimitation of the areas of the territorial waters within which pilotage is to be compulsory, the licensing of pilots, the determination of the qualifications and mode of examination of pilots, the suspension or revocation of pilotage licences, appeals from decisions of the Sark Pilotage Committee (charged with the administration of such Ordinances) and the levying of pilotage licence fees. All vessels, other than those excepted by Ordinance, in the compulsory pilotage zone which are entering, using or leaving the Island's harbours must be under the pilotage

of a licensed pilot. However, the owner or master of such a vessel remains responsible for navigational error as if pilotage were not compulsory. Chief Pleas may by Ordinance prescribe penalties for offences under the legislation.

Approved by Chief Pleas 3.10.90. Awaiting Royal Sanction.

HOUSING

117. Projet de Loi: The Housing (Extension) (Sark) Law, 1990. - Extends the expiry date of the Housing (Temporary Provisions) (Sark) Law, 1976, which controls the erection and occupation of dwelling-houses in Sark, from 31st December, 1991 to 31st December, 2001.

Approved by Chief Pleas 3.10.90. Awaiting Royal Sanction.

118. Ordinance: The Housing (Temporary Provisions) (Prescribed Persons) Ordinance, 1990. - Prescribes the Trustees for the Bailiwick of Guernsey Methodist Church Purposes, and the Methodist Minister and members of his household, as persons of a prescribed description for the purposes of the 1976 Law.

Made and in force 3.10.90.

THE ADMINISTRATION OF JUSTICE (BAILLIWICK OF GUERNSEY) LAW, 1990

by J. R. Finch, Solicitor[1]

Introduction

This measure of law reform was approved by the States in September 1990 and awaits the Sanction of the Privy Council. It contains a variety of provisions, mainly evidential and procedural, designed to improve the quality of the administration of criminal justice in the Bailiwick. Defence Advocates will be able to take advantage of sections 1 and 2, which are intended to save time and enable the essentials of a case to be addressed.

Reference should be made to Billets XVI and XXVII of 1989 at pages 902 and 1391 respectively. These contain the Policy Letters and give a general background which it is not proposed to précis here. I hope this article will enable readers to see the practical effects of these new provisions and to see some of the English cases on similarly-worded statutes in England. My own experience of some of these matters may also help, as I have lived with many of them since I began working in the courts, in fact without some of them I doubt if the over-worked English courts would last the day. When employed sensibly, and with a proper regard to the spirit of the legislation, these reforms will help everybody.

The Law, as one can see from the Projet de Loi at page 5 of the Brochure for 26th September, 1990, is in five parts - evidence, additional powers of the Magistrate's Court, powers of search, miscellaneous and supplementary. I do not intend to reproduce the sections extensively here: please consult the Brochure itself.

A. Part I - Evidence in Criminal Proceedings

Section 1 is based upon section 9 of the Criminal Justice Act, 1967, which has been around as long as I have worked in the English criminal courts and is used very extensively indeed. It is not simply a labour-saving device for the Prosecution, but can be used (and is) by the Defence. It is intended to save time and effort by using statements instead of "live" witnesses. Examples abound, one normally would have the evidence of policemen tendered in statement form where they simply testify on a procedural point in an excess alcohol case or a speeding matter. Professional witnesses have often got better things to do than hang around in court so non-contentious medical evidence or formal evidence of any type can be adduced in this way.

Note the safeguards - section 1(2)(c) requires service prior to the hearing and section 1(2)(d) provides seven days from service for the other side to require the witness to attend. The court can also of its own motion require the witness to come to court (very rare).

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This article represents the writer's views only and is in no way intended to be an official guide.

Only a foolish prosecutor would run a serious case just on these written statements as it is necessary to give the matter some "flesh". I have frequently been advised by Treasury Counsel at the Old Bailey to get one or two witnesses before the court to give the jury something to interest them, even if the whole of the Crown Case was uncontested by the defence. (Not at all an uncommon occurrence - in many murder cases the issue is simply diminished responsibility, or a case may stand purely on a point of law - the meaning of "Public Body" in a corruption charge, for example). The Defence often use this procedure for a multiplicity of character witnesses all saying the same thing, as calling them all would irritate the judge - but it is wise to call at least your best one.

The limitations of the procedure are well illustrated by the Divisional Court case of *LISTER v. QUAIFFE*[2]

This was a Prosecutor's appeal following the acquittal of a defendant on a typical shop-lifting charge. The defendant was arrested on the 24th July outside a store in King's Lynn with a dress which she could not provide evidence of having purchased. In her statement to the Police she said she had bought the dress on the 2nd July at Portsmouth and was intending to change it. The Prosecution served two statements under the section 9 (our section 1) procedure which showed that no such dress had been available at any store until the 22nd July and that the Portsmouth store did not stock it. The defence failed to serve the notice requiring the makers of the statements to give oral evidence. At the hearing the defendant gave evidence in accordance with her statement. The court found an element of doubt and acquitted her, despite the Prosecution arguing that it was not open to her to contradict the statements.

The appeal was dismissed. The contents of such statements were to be treated in the same way as if the maker of the statement had given oral evidence and although the proper procedure of putting a defence case to prosecution witnesses had not been followed the burden was on the prosecution throughout - even if the persons had given evidence the justices could still have had doubts and their decision could not be described as perverse. The Divisional Court added that, in such a case, the Prosecution should have applied for an adjournment under what is our section 1(4)(a) to call the witnesses.

There are several comments worth making on this useful decision. The most important is that the trial was equally mishandled by both Prosecution and Defence. The Prosecution should have called the witnesses so that the impact of the evidence could be made on the court. The procedure was useful, but not for evidence central to the case. The Defence should have exercised their right to have the witnesses called - it is highly unlikely that their course of conduct was a tactical one.

It should also be noted that the Court used expressions indicating that they preferred the Prosecution case, but they could only upset the verdict, (on the facts) if it was wholly perverse, i.e., no reasonable court could have reached it. This is, rightly, an exceptionally rare conclusion, so the Prosecution lost. It seems to be an objectionable submission that if a written statement under this section is produced then the other side must be taken to accept the contents when they fail to require the witnesses to attend.

[2] [1983] 1 WLR 48.

There are some other points to consider with regard to this section. Section 1(2)(b) provides that the statement must contain a declaration by the maker that it is true and that he made it knowing he was liable to prosecution if he stated anything falsely. In CHAPMAN v. INGLETON[3] it was held that this declaration, as opposed to the statement itself, need not be signed. This leads to another area where error occurs. It is not possible for persons under the age of criminal responsibility (10 years - section 15 of the Children and Young Persons (Guernsey) Law, 1967) to make a statement under this section. The reason is that they cannot be prosecuted for lying in the statement so the declaration is meaningless. This happens quite frequently in England as policemen have a tendency to wish to spare witnesses of tender years the need to go to court, especially in routine matters; however it is not possible.

Section 2 is based upon section 10 of the Criminal Justice Act, 1967. It is used far less frequently than section 9, but it is still pretty useful. Judges tend to encourage admissions by both sides at Practice Directions at the Old Bailey and on circuit. A typical example might be in an assault case where the issue is self-defence. It saves everyone's time if it is admitted that the aggrieved did suffer a wound at the venue on the date in question, that it was treated by Doctor X who inserted 10 sutures and that he stayed in hospital three days. The issue - self-defence - can be addressed by oral evidence within a short compass. I have known several murder cases where the Defence admit most of the Crown case, just calling medical evidence. It should not be forgotten that this procedure applies to both sides and on one occasion as a Prosecutor I made an admission under these provisions at a trial which avoided the defence having to call several other witnesses to prove a negative. This saved at least half a day in court. It should also be kept in mind that you can only admit facts under this section that would be admissible in evidence. The section was used in rather too obliging a fashion in R. v. LEWIS[4] where the Defence kindly made a general admission of all the facts in the Crown's opening - there should be some degree of specificity.

It will be seen that this section is hedged with safeguards, especially section 2(3) - power to permit withdrawal at trial of an admission. The English requirement that an individual's admission should be made only by his counsel or solicitor was considered unduly restrictive to unrepresented defendants, so was not followed in Guernsey; the relevant phrase used is "may be made by his Advocate".

Section 3 re-enacts section 101 of the Magistrate's Courts Act, 1980 and simply puts in statutory terms the common law rule followed in Guernsey. It is necessary to bear in mind both the restricted nature of the provision and its basis as a rational rule of evidence. Any exception, exemption, proviso, excuse or qualification for a defendant is peculiarly within his own knowledge, so the burden of establishing it is on him. The standard is that of a balance of probabilities - ISLINGTON BOROUGH COUNCIL v. PANICO[5].

[3] [1973] 57 Cr. App. Rep.476.
[4] [1971] 55 Cr. App. Rep.356.
[5] [1973] 1 WLR 1166.

For example, the defendant must show he has a driving licence or policy of insurance - the latter certainly being difficult to disprove by the Prosecution - how could it be done? On such charges it suffices in England to prove that the defendant was driving a motor vehicle on a road on the day in question and no further evidence is required - the onus shifts to him to show he had the licence or insurance: see LEATHLEY v. DRUMMOND[6]. Other examples include holding a T.V. licence or being the holder of a hawkers licence. The rule was reviewed by the Court of Appeal in R. V. EDWARDS[7] which showed it was limited to those offences "arising under enactments which prohibit the doing of an act save in specified circumstances or by persons of specified classes or with specified qualifications or with the licence of specified authorities". The court must construe the enactment and if it prohibits the doing of acts, subject to provisos, exemptions and the like, then the Prosecution can rely upon the exception.

Section 4 follows section 72 of the Criminal Justice Act, 1982 in abolishing the right of the accused to make an unsworn statement. He now has the choice between going into the box or staying silent. It was always difficult to explain this right to unrepresented defendants, who often chose to make a statement unsworn which thus did not have the effect of sworn evidence. The court also had to take care not, in its anxiety to be fair to the defendant, to overpress him to give evidence.

The unsworn statement was an historical anomaly dating from the days when defendants were not able to give evidence. When section 1 of the Criminal Evidence Act, 1898 removed this disability there was no longer any justification for it - so the 1982 Act removed the right. In addition to the anomaly there was the question of unfairness. A defendant could throw mud at Crown witnesses without running the risk of having his character put in. A particularly unfair set of circumstances came out in R. v. GEORGE[8]. G's co-accused made an unsworn statement putting all the blame on G. G's counsel was unable to question the co-accused and was even prevented from calling evidence that G had admitted that his allegations were untrue. Serious allegations against G were never tested in cross-examination or discredited in rebuttal. In my experience professional criminals, principally armed robbers, used the unsworn statement to vilify the Crown's witnesses with impunity and juries could not always distinguish between what was evidence and what was not. In England both the Criminal Law Revision Committee and the Court of Appeal (R. v. EXTON[9]) called for its abolition.

The rights of a defendant to address the court are expressly preserved by the new provision (section 4(2)).

Section 5 is based on two English provisions. Subsection (1) follows section 38(1) of the Children and Young Persons Act, 1933 and subsection (2) is based on section 34 of the Criminal Justice Act, 1988. The issues dealt with section 5(1) are well-known in English law. In Guernsey the situation was unnecessarily complicated as unsworn evidence was restricted to indecency charges. Both in England and Guernsey there was a requirement that unsworn evidence had to be corroborated and section 5(2) removes this.

[6] [1972] Crim. L.R. 227.

[7] [1975] Q.B. 27.

[8] [1979] 68 Cr. App. Rep. 210.

[9] Times 9.7.81.

Quite extensive guidance on the general question of receiving unsworn evidence of children "of tender years" is found in English cases. The first, and most important, point is that the judge himself must make the enquiries required, which must be recorded, and he should be satisfied beyond reasonable doubt that the requirements of the section are fulfilled - R. v. YACOOB[10].

The meaning of "tender years" will vary with the child. As a matter of good sense I would not recommend calling anyone under 8. The process of making this sort of enquiry was described by the Criminal Law Revision Committee as one that sometimes verges on farce, and it is frequently very difficult to quiz a small child on matters best left to theologians. In practice courts simply have to satisfy themselves that the child appreciates that there is a solemn duty to tell the truth over and above the normal rule of social conduct (see Phipson on Evidence, 13th edition page 697).

Section 5(2) removes the long-established rule that the uncorroborated evidence of a child must be the subject of a severe warning by the judge to the effect that is dangerous to convict on it. This only applies to those cases where the warning is given because of the fact that the witness is a child, not other cases where, as a matter of law or practice, the corroboration warning is also required. The principal categories of situations where corroboration is required independently of the age of the witness are in sexual offences and the evidence of accomplices, so it follows that as child witnesses frequently appear as complainants in sexual cases their evidence will still have to be corroborated, as would that of an adult complainant. (The concept of corroboration is an important one which should be kept in mind, for instance "recent complaint" in sexual cases is not corroboration and there are limits on how far the accused's lies can provide it. The 7th edition of Cross on Evidence is particularly good on this).

Section 5(3) rationalizes a previously over-complex situation, whereby the unsworn evidence of a child could not corroborate the unsworn evidence of another child, but that evidence could be corroborated by the evidence of a sworn child (which could itself be corroborated by the evidence of the unsworn child which it has itself corroborated). On this question of so-called "mutual corroboration" the case of D.P.P. v. HESTER[11] offered a complete analysis, now thankfully rendered academic.

The provisions of sections 5(2) and (3) generated a lot of controversy in England based on the slogan that a child has a "right to be believed". In common with most slogans its meaninglessness conceals the nature of the problem. The question must simply be one for the individual court to decide, based on all the circumstances, and it is as well to mention the incidence of "prosecutorial discretion". Until the setting up of the Crown Prosecution Service the D.P.P. dealt with a very large number of child sex type cases. As a matter of practice one looked for corroboration before instituting proceedings and I cannot see this changing now. It is a good rule based on experience and prevents weak or groundless allegations going to court. Stripping aside the slogans some consider that generally only a bold or rash Prosecutor would commence a serious case, especially involving sexual allegations, without some form of corroboration, whether "independent" evidence or from other alleged victims; there will be exceptions to this rule of practice where exceptional circumstances and public interest require it. Other people may see things differently and the ultimate judgment is left to the individual.

[10] [1981] 72 Cr. App. Rep. 313.

[11] [1972] 3 WLR 910.

B. Part II - Additional powers of the Magistrate's Court

Section 6 reproduces section 123 of the Magistrates' Court Act, 1980 and avoids the dismissal of charges for trifling errors. In *WRIGHT v. NICHOLSON*[12] it was held that these words should not be read literally as meaning that there can be no attack on a charge however fundamental the defect. Each case depends on its own merits and circumstances are infinitely variable. It depends in every case whether the variance is of such a character as to require amendment. The broad principle is that the wording of a charge which was good enough to enable the defendant to identify the misdoing alleged against him could be amended so long as it continued to allege the same misdoing - *SIMPSON v. ROBERTS*[13]. In one case a summons was amended from "permitting" to "using" (which did not require mens rea). It was held that the court was entitled to allow the amendment as the prosecution was not introducing new facts - *R. v. NEWCASTLE JUSTICES ex parte BRYCE*[14].

Some defects are so trivial that they mislead nobody and do not even require amending e.g. "Princes Street" instead of "Princess Street" - *TAYLOR v. GREY*[15], or a venue 1½ miles away from that named in a summons - *CREEK v. PECK and JONES*[16]. But where the defendant is a wrong limited company the summons cannot be amended to show the right one - *MARCO (CROYDON) LTD. v. METROPOLITAN POLICE*[17]. For fuller discussion I recommend the commentary on "Defects in Process" in volume 1 of Stone's Justices' Manual.

This new provision is surely a rational one and so long as the courts confine it within the proper limits will work no injustice.

Section 7 is an updated version of section 12 of the Contempt of Court Act, 1981. In the past contempts of the Magistrate's Court were not punishable summarily and had to be referred to the Royal Court. Although this power remains it is desirable to have a power exercisable on the spot with a limited punishment. The words "or threatens" have been added in order to escape the anomalous decision in *R. v. HAVANT JUSTICES ex parte PALMER*[18] which found that in the English section, which was confined to "Insults" there was no power to punish a person who threatened a witness.. This activity would amount to perverting the course of justice, but nemesis would take much longer to descend upon the head of the offender in such circumstances.

There is a detailed article on the English section at 147 J.P. Journal p.531.

C. Part III - Power of search

Section 8 fills a gap in the Protection of Depositors Law of 1969. There was no power of search in that Law and this is now remedied by the introduction of a Bailiff's warrant after the applicant has shown on oath "reasonable cause to believe" that relevant items are on the premises.

[12] [1970] 1 ALL E.R. 12.

[13] Times 21.12.84.

[14] [1976] RTR 325.

[15] [1973] RTR 281.

[16] [1983] 147 JP 537.

[17] [1984] RTR 24.

[18] [1985] 149 JP 609.

Section 9 amends the search provisions of the Theft Law of 1983. These were based closely on those in the Theft Act, 1968 and, whilst appropriate to England, were too narrow for the Bailiwick. The main problem is that they referred merely to "stolen goods" whereas the new section covers "any property whatsoever with respect to which any offence against this Law has been committed". This is not exactly a startling and radical innovation as it merely restates the position under the Larceny (Guernsey) Law, 1958. Subsection (2), which also is to be found in the old 1958 Law, is a helpful power to let the court decide on the disposal of property seized under a Chief Officer's warrant where the occupant of the premises is not charged. This avoids handing back property to the occupant where it is clear someone else has a better right to it and is akin to the English Police (Property) Act, 1897. The resurrection of this section is proof of the dictum known as Hutber's Law "Improvement means deterioration", at least insofar as the 1983 provisions are concerned.

D. Part IV - Miscellaneous

It is regretted that the lexicon failed to reveal any more elegant title for this Part of the Law, but it does at least have the merit of accuracy.

Section 10 is based on section 160 of the Criminal Justice Act, 1988 and fills a gap in the existing legislation. Child abuse is a contentious problem, but this is a measure of practical importance. One commentator puts it that the relationship between distributor and collector of child pornography is like that of burglar and receiver; if there were none of the latter there would be few of the former. The defences are sufficiently wide to avoid persecution of the innocent possessor of such items and the punishment is a fine (level 5) without imprisonment.

Section 11 deals with the U.N. Convention against Torture adopted in 1984. Passing this domestic legislation therefore fulfils the Bailiwick's international obligations. It is interesting to have it on the Statute book, but I doubt if it will be used frequently - other legislation of this type dealt with genocide, which does not fill the Law Reports.

Section 12 deals with yet another anomaly. Under what was section 25 of the Magistrates' Courts Act, 1952 a person could elect trial in much the same way as in Guernsey. There was therefore a similar exclusion of the right of election for "assaults". What about assaults on police officers? In *R. v. WOOLWICH JUSTICES ex parte TOOHEY*[19] the House of Lords held that assault on a constable was an "assault" within the meaning of the English legislation and an accused could not elect trial by jury despite the fact that it carried imprisonment for a term exceeding 3 months. This decision is, of course, highly persuasive in Guernsey and has been cited with approval. However, if followed to its logical conclusion it would lead to the lesser offences in the section - resisting and obstructing, being electable. In view of this the penalty for assaulting and resisting, in the Magistrate's Court, is reduced to 3 months, and that for obstructing is reduced to one month to follow the provisions of the English Police Act, 1964 - after all it is a manifestly less serious offence.

[19] [1967] 2 A.C. 1.

Section 13 was introduced to meet a situation which has occurred in the past and was likely to recur. If the police receive information that a person wanted by a U.K. Police Force is at large in the Bailiwick nothing could be done to apprehend him in the absence of the warrant, properly signed and backed for execution here. Hence there was nothing to prevent the fugitive from hiring a plane to Bolivia in advance of the warrant - which could easily be delayed by weather. This new provision enables detention for up to 72 hours on a copy or facsimile of the warrant. There is a right of appeal from the Magistrate's order to the Bailiff, but it should be noted that the powers of the court are limited to matters of identity and authenticity.

Section 14 brings Guernsey law in to line with the Road Traffic Acts in England. The circumstances under which an officer of police could require the production of driving licences and certificates of insurance were dated and restrictive. The categories are now fuller and more realistic, including not only drivers but any person reasonably believed to have been driving a motor vehicle when any accident occurred owing to its presence on a road or reasonably believed to have committed an offence in relation to the use of a motor vehicle. There is also provision for supervisors of "L" drivers. A driver is subject to these obligations even though he is involved in an accident entirely the fault of someone else (insofar as the requirement is made under the "accident" paragraph), but there must be a direct connection between the motor vehicle and the occurrence of the accident.

Section 15 updates the Road Traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936. Subsection (1) elegantly fills a modest lacuna in an amended section and has retrospective effect from 2nd October 1989. Subsection (2) is largely self-explanatory and brings Guernsey law into line with the United Kingdom: the principal point to note is the new section 6A(2)(b) on the fare not exceeding the running costs of the vehicle.

Section 16 makes the recovery of penalties for Les Terres mises à l'Amende simpler, by putting this in the Petty Debts Court. This has the effect of making the enforcement of penalties more of an economic concern and removes relatively trivial work from the Royal Court.

Part V of the Law deals with "administrative" matters - interpretation, citation and commencement. Note the different periods prescribed in section 19.

THE STATES OF GUERNSEY IN THE SIXTEENTH CENTURY

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There exists quite some confusion about the history of the States in the fifteen hundreds. There is little reason why this should be the case, since illuminating Royal Court records survive which have been accessible to historians and antiquarians for many years. This article uses those records in an attempt to answer some of the questions which have been raised[1].

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In 1914 T. W. M. de Guérin printed the texts of two documents dated 1434 and 1481 respectively[2]. The former of these referred to a meeting held some five years earlier when the Royal Court made an order limiting the jurisdiction of the Dean's court

dun mesme assent et mesmement oveques le conseil sur ceu et bonne deliberacion des gentilshommes et bonne communautey de la dicte isle [de Guernesey].

(of one accord and likewise with the counsel thereupon and good deliberation of the gentlemen and good community of the said island [of Guernsey])

The document of 1481 appointed attorneys to represent the local community in engagements with the Admiral of France. The deed is in the form of an A Tous Ceux document published by the bailiff Edmond Cheyne (bailiff 1480-1481)[3]. It declares that the appointment was made

par le conseil et bon advis tant des jureys de la Court Royalle ... que aussi des gents desglise pareillement des connestables des parroesses et de la plus saine part des manants et habitants en la dite ysle [de Guernesey]

(by the counsel and good advice as much as of the jurats of the Royal Court ... as also of the clergy, likewise of the parish constables, and of the most sound part of the folk (manants) and inhabitants of the said island).

In its composition this 1481 assembly closely resembled the traditional membership of the body called until recent times les états.

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- [1] I have adjusted dates to a year commencing 1 January. Abbreviations are expanded. Translations of passages quoted are provided, but the late medieval/early modern French legal idiom cannot always be rendered into familiar modern English.
- [2] T. W. M. de Guérin, "Notes on Some Old Documents" Transactions of the Guernsey Society for Natural Science (afterwards La Société Guernesiaise) (hereafter "TSG") vii (1914) pp.158-164.
- [3] J. H. Lenfestey (ed.) List of Records in the Greffe, Guernsey, Volume 2: Documents under Bailiwick Seal (List and Index Society Special Series vol. 11) (London, 1978) (hereafter List ii) p.151.

De Guérin recognised this fact. Although he concluded that the c.1429 meeting cannot have been an assembly of the States, since the Approbation des Lois (1583) stated that "Nous n'avons accoustumé en cette Isle d'avoyr gens des troys estatz", he somewhat contrarily asked of the 1481 meeting "can we consider this assembly corresponded to our modern States? One is tempted to think so ...".

I propose that one may yield to such a temptation, and that we see in both of these assemblies early correspondence with the états as we recognise them in later centuries. The body which met in c. 1429 (if it was an established institution at all) may even have been one which included the clergy in its usual membership. If this was so, it would not be remarkable if their consent to this particular act - which limited ecclesiastical jurisdiction - was not given or recorded in this instance. With regard to the record of 1481, this certainly preserves evidence of an assembly which was very similar to (if not identical with) the body which was known as the états (usually spelled "estatz") in the sixteenth century.

It is necessary to turn to the registers of the Royal Court to confirm this fact. The earliest reference to estatz, by name, which I have come across is dated 24 February 1538[4]. The register notes that an order concerning prices and weights originated

de par monzieur Le Lieutenant du Roy et les jures avecques Les estatz du pays

(from monsieur the King's lieutenant [governor] and the jurats with the estatz of the country)

Here we see the estatz participating in the creation of legislation. Their involvement is perhaps noted in unusual circumstances when the island was between bailiffs after the death of James Guille[5]. However, there is nothing in the record to suggest that the estatz was a new body, or that there was any novelty in its participation in such affairs.

We also find an order concerning the management of livestock made by the Court and la commune de lisle in October 1540[6]. That la commune (sometimes called les communs and, most often, les communitiez) may be identified with the estatz is shown in records of the elections of jurats and prévôts. In October 1550 a jurat was recorded as being appointed "apres lelection de tous les communs de lisle et par l'assent de Justice" and two months later a similar appointment was made after "le lection de tous les communitiez et estatz de lisle et par l'assent de Justice"[7]. Thereafter the formula recording the appointment of jurats and prévôts became something

[4] Greffe, Guernsey, Jugements vol. 1 (hereafter Jugements i) p.328.

[5] List ii p.151.

[6] Jugements i p.37.

[7] Jugements i p.62 (bis). Les communitiez perhaps strictly referred to the parishioners whom the estatz represented, but the distinction between represented and representatives seems to have been blurred, as in the records quoted here. Of course the word estatz itself referred, in its broadest sense, to the wider community as well.

like "by the election of the estatz and with the consent of the Court". This was the case in the mid-decades of the sixteenth century. Often, in later decades, the consent of the Governor to the appointment also was noted. This was, of course, the period before the creation of a separate States of Election, that being a creature of the Royal Commission of 1607[8].

The Précepte d'Assize (1441), states that the prévôt and the jurats were elected by "lez habitans et demouranz en la dicte ysle", a phrase which has some similarities to the record of the "plus saine part des manants et habitants" who comprised, with others, the assembly of 1481[9]. Some sort of assemblies must have been necessary for the appointment of jurats and prévôts before the sixteenth century and it is likely that a body which was a precursor of the estatz in its electoral guise was called to do this.

On 29 July 1555 Francis Chamberlain took the oath as joint Captain (or Governor) before his father (as joint Captain), the Royal Court, and "en la presence dez estatz de lisle[10]. On this occasion the representatives of the community assembled to recognise one of the Crown's senior representatives. A decade later we find the estatz deeply involved in less loyal activities, namely in resisting the changes attendant upon the Calvinist coup of 1565[11]. The estatz had elected the sacked Catholic bailiff Helier Gosselin as a jurat in February 1565 and their sympathy for the traditional faith seems established. The record of the election of the Protestant jurats who replaced the Catholics who had been dismissed by the Crown notes that they were elected only by "la plus saine part des estatz", a fact which further suggests that the assembly's sympathies lay elsewhere than with the new Calvinist régime. This traumatic situation led to a meeting of the assembly in December 1565 which resigned itself (not without some murmurings after the event) to petitioning the Crown to be excused arrears which were due the Queen in respect of Catholic revenues. The record of this meeting reveals the composition of the body at this date[12]. It states that before the Court and Francis Chamberlain

comparurent personnellement les cures vicars et conestables de chuncue paroesse de lisle/lesquelz enssemble estantz les estatz de ladyte isle

(appeared in person the curés vicars and constables of each parish of the island, who together are the estatz of the said island).

[8] R. Hocart An Island Assembly: the Development of the States of Guernsey 1700-1949 (Guernsey, 1988) p. xi.

[9] the Précepte is printed in H. de Sausmarez (ed.) The Extentes of Guernsey 1248 and 1331 and other documents relating to ancient usages and customs in that island (Guernsey, 1934) pp. 130-142. Quotations here have been corrected by reference to the original which presently hangs in the Greffe strongroom.

[10] Jugements i p.75.

[11] this affair is dealt with more fully and with references in my forthcoming thesis (probably to be called "The Reformation in Guernsey").

[12] Jugements i p.244.

It will be noted that this body - which as I have shown had electoral and advisory capacities, and probably the power to initiate petitions to the Crown - was markedly similar in composition to the fifteenth century assemblies.

So there is certain evidence that a body called estatz existed by 1538, and that it had some advisory function (at least) when the Royal Court made ordinances in certain matters. It had a say, perhaps, in external relations as well. Its electoral rôle in appointing jurats and the prévôt in the fifteen hundreds is also beyond doubt, and it is likely that a similar mechanism for selection existed in the fifteenth century. The membership of the estatz included the parish constables and the clergy (not just the rectors). Elections took place very likely after the constables had taken the opinion of the parish communities, as was recalled in the seventeenth century[13]. The body may have changed in its membership and its functions over time, but it is reasonable to acknowledge the existence in the sixteenth century of a representative assembly which changed (evolved even), but all of the time was identifiable - even by name - as a form of the états of later times.

ii

But a serious objection remains. In the Approbation des Lois, which was ratified by the Privy Council in 1583, the Court and the Governor declared to the English authorities that

Nous n'avons accoustumé en cette Isle d'avoyr gens des troys estatz mais toutes les affaires politiques se font par ladvis du Gouverneur baillif et Jurez de la court Royale apres avoir par les Conestables cogneu le vouloyr de la generallité du peuple[14].

(We have not been accustomed in this island to have men of the three estates, rather all political business is done according to the opinion of the Governor, [and the] Bailiff and jurats of the Royal Court, after having been acquainted with the will of the generality of the people by the constables)

This was the statement which troubled de Guérin, as was mentioned above. The seventeenth century jurist, the Calvinist minister Thomas le Marchant, similarly found difficulty in reconciling this passage with actual tradition[15]. He considered that the compilers of the Approbation must

[13] "Mr. Warburton" A Treatise on the History, Laws and Customs of the Island of Guernsey (Guernsey, 1822) pp.52-53.

[14] Approbation p.3. An original of the document commonly called the Approbation des Lois which is in the Greffe is actually entitled Livre des coutumes et usages de L'Isle de Guernezey. It is signed by the Governor (Leighton), the Bailiff (Thomas Wygmore), and eight jurats. It is this original which I have consulted. For its location see J. H. Lenfestey (ed.) List of Records in the Greffe, Guernsey. Volume 3 (Guernsey, 1983) p.133. I have to thank Mr. Lenfestey for this reference.

[15] T. le Marchant Remarques et Animadversions, sur l'Approbation des Lois et Coustumier de Normandie usitées es juridictions de Guernezé et particulièrement en la Cour Royale de la ditte isle (J. Guille and P. le Cocq (eds.), 2 vols., Guernsey 1826) vol. i, pp.54-58.

have sought to concentrate power in their own hands at some cost to their honesty. This is a conclusion which probably had some appeal to its author after the local establishment had submitted to Anglicanism after the Restoration in 1660[16].

In contrast the historian A. J. Eagleston acted as an apologist for the compilers. He argued that they were correct to deny the existence of "gens des troys estatz". This was so, he maintained, because social divisions comparable to the French états (which the compilers had in mind) did not exist in the island[17].

This explanation is inadequate. There certainly was a third estate, which the parish constables represented. As for an estate of clergy, this was represented by the priesthood. Eagleston's suggestion that "the rectors ... are to be regarded as the King's ecclesiastical officials rather than the estate of the spirituality" is ingenious but incorrect.

Technically until 1568 or 1569, and in practice until 1547 and in Mary's reign, the rectors - even though they were nominated by the Crown - were subordinates of the Bishop of Coutances[18]. If they were not absolutely the bishop's loyal representatives in these years neither can they be claimed to have been the king's.

Eagleston finally suggested with regard to the second estate, that this, if anything similar to it existed at all in the Channel Islands, was "an order of nobles" by which he meant the manorial seigneurs, who did not sit in the estatz. But it is likely that the jurats were not reluctant to regard themselves as a local nobility. They were after all content to call themselves "Douze Hommez dez plus notablez et discrez sages loyaulx et Riches en la dicte ysle [de Guernesey]" in the Précepte, a document which the Approbation itself recognised as a key text in the local constitution[19].

Having rejected Eagleston's apologia we are left with the original problem. How is the sixteenth century existence of the estatz to be reconciled with the Approbation's apparent denial of that existence?

The problem might be solved by looking at Guillaume Terrien's Commentaires, upon which work the Approbation is itself a commentary. Terrien states that the political body comprises three estates. The first is of the "gens d'eglise, et du clergé". The second estate is the nobility, and the third "includes the labourers, merchants, artisans and all the menu peuple".

[16] Le Marchant did not die in 1662 as suggested in Guernsey Law Journal 4 (1986) p.1, the Royal Court Library Catalogue, etc. He was alive, if not thriving, in 1667 when he was released from the Tower of London: see F. de Schickler, Les Églises du Refuge en Angleterre (3 vols., Paris, 1892) vol. ii pp.515-516.

[17] A. J. Eagleston "Parliamentary Analogies from the Channel Islands" History ix (1924) p.105.

[18] A. J. Eagleston The Channel Islands under Tudor Government 1485-1642: a study in administrative history (Cambridge, 1949) p.51; G. E. Lee (ed.) "Extraits des Registres du Secrétariat de l'Évêché de Coutances 1487-1557" Société Jersiaise Bulletin Annuel xiv (1889) p.450.

[19] H. de Sausmarez (ed.), op. cit. p.132, and see note 9 above.

He goes on to describe the manner in which these estates assemble:

La convention et assemblee generale des gens desdits estats de Normandie, se tient tous les ans par commission du Roy, en la ville de Rouen capitale du pays: en laquelle se trouvent et assemblent ceux qui sont deleguez és conventions particulieres qui se tiennent pour cest effect en chacune viconté dudit pays: c'est à savoir de chacun bailliage un personnage de l'estat de l'eglise, et un de l'estat de noblesse: et de chacun viconté un du tiers estat. Et de la part du Roy y sont envoyez plusieurs grans et notables personnages, pour proposer aux gens desdits estats ce qui leur est mandé par ledit sieur, avec pouvoir de pourveoir ausdits estats sur les plaintes, doleances, requestes et remonstrances qu'ils veulent fair au Roy.

(the meeting and general assembly of the men of the said Norman estats is held every year by the king's commission in the town of Rouen, the capital of the region, at which are present and assembled those who are delegated by special meetings which are held for this purpose in each viconté of the said region, namely from each bailliage a personage of the estate of the church, and one from the estate of the nobility, and from each viconté, one of the third estate. And on the king's behalf there are sent several great and notable personages to propound to the men of the said estats what the said lord commands them, with authority to oversee the said estats regarding the complaints, grievances, requests and remonstrances which they want to make to the king)[20].

By estats de Normandie then Terrien meant an assembly which differed markedly from the ones held in Guernsey under a like name. In Normandy the estats were summoned annually by the king, they comprised a body of single representatives from each estate representing either a bailliage or viconté, and they received royal commands from the king's nominees and were able to make representations to them. This is a very different institution from the structure which I have described as existing in Guernsey. The Royal Court and the Governor were therefore quite correct to declare in the Approbation, when referring to Terrien's description of the Norman estats, that "Nous n'avons accoustumé en cette Isle d'avoyr gens des troys estatz". In Terrien's terms they certainly did not.

It is also worth remarking that no record says that the members of Guernsey's Royal Court were (in the sixteenth century) members of the estatz themselves. The Court, it appears, met with the estatz, as did (on occasion) the Governor, but not as part of that body. The distinction is a subtle one, but to recognise it goes further in establishing the overall accuracy of the passage in the Approbation which has caused confusion in the past. There was no second estate in Guernsey's estatz.

A problem remains. As we have seen, the Approbation stated that "political business is done according to the opinion of the Governor, [and the] Bailiff and jurats of the Royal Court, after having been acquainted with the will of the generality of the people by the constables". This appears to describe the advisory (if not the electoral) function of the estatz accurately, albeit cursorily, except that the participation of the clergy in their business is not mentioned.

[20] G. Terrien Commentaires du Droict Civil tant public que privé, observé au pays et Duché de Normandie (Paris, 1574) p.26. I have to thank Advocate N. M. Ozanne for lending me this volume.

And it is here perhaps that we do see the compilers being disingenuous. The Approbation was put together between 1580 and 1583[21]. This was a period of bitter struggle between the local clergy and the Governor, Sir Thomas Leighton. Coming as the Approbation did from the civil power (and it is signed by Leighton and others), it is perhaps not surprising that the established tradition of clerical participation in government was passed over in silence. It is possible even that the clergy had ceased to attend meetings of the estatz in the circumstances of their quarrel with the Governor[22].

A more charitable opinion would be to suggest that as the Calvinist colloque gained in power and influence over legislative policy so the rôle of the clergy in the less powerful estatz waned. Yet all the same the clergy were still participating in the election of a jurat in 1578[23].

These last two paragraphs are perhaps over speculative - certainly they raise more questions. The activities of the estatz in the early Calvinist period have still to be investigated fully. Quite what happened to the assembly in both its electoral and political aspects in the years before 1605 (when it was re-established), also is unclear. Several problems therefore remain unsolved.

To conclude on a more definite note, and to sum up this discussion, it can be stated firstly that the Approbation was not inaccurate with regard to the absence of a local body of "gens des troys estatz" in Terrien's terms. Secondly we can say that Guernsey's States existed in a recognisable (if not necessarily static) form by the early fifteen hundreds, and that they quite likely had done so in the previous century.

[21] see the documents printed in Second Report of the Commissioners appointed to inquire into the State of the Criminal Law in the Channel-Islands - Guernsey (London 1848) pp. 313-316.

[22] A. J. Eagleston "The Quarrel between the Ministers and the Civil Power, 1581-85" TSG xii (1936).

[23] Jugements i p.154.