

# GUERNSEY LAW JOURNAL

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GUERNSEY LAW JOURNAL

THIRTEENTH ISSUE

Introduction

This edition covers the six month period from 1st January, 1992 to 30th June, 1992. An additional feature of this issue is the publication of the first part of an occasional series of notes on some decisions of the Royal Court made before the inception of the Guernsey Law Journal which it is hoped will be of interest to readers.

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 for the contents of this issue or its accuracy.

References to this issue and future issues will be cited using the figure and letters 13.GLJ. followed by the paragraph number.

Editorial Committee

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

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 January to June, 1992.

30th September, 1992

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## ADVOCATES

### Duty to client - conflict of interests - confidential information - information acquired by Advocate in previous employment

1. X, an Advocate employed by Z and Co. who acted for D (a company), left their employ and became a partner in Y and Co. Y and Co had been acting for P in proceedings which included serious allegations against M, a director of D. During his time with Z and Co X had had conduct of proceedings for the winding up of D which contained similar allegations against M. D sought an order restraining Y and Co. from continuing to act for P on the ground that X had been party to highly privileged information concerning D and M when he took instructions to resist the winding up proceedings. HELD by the Deputy Bailiff that although Advocates were a fused profession there was nothing to distinguish them from English solicitors when considering problems of this kind. It was essential that members of the public had free access to members of the Bar to represent them in matters before the Court and of necessity this could involve them instructing a firm of Advocates who had some knowledge of their opponents in litigation. Applying the principles laid down in English authorities, each case must be considered on its facts and in Guernsey the small size of the community and the Bar would possibly call for greater flexibility in such situations. He was satisfied that P could obtain the services of another Advocate, although this would involve extra expense. In the circumstances, and applying the test, laid down in In re a Firm of Solicitors [1991] NLJR 746, whether a reasonable man with knowledge of the facts would anticipate that, however unwittingly, information gained while the solicitor was acting for him might be used against him, the order would be granted, no order being made as to costs.

[Cockram v. Loyalty Brokers Ltd - Plaids de Meubles (Interlocutory)  
15.6.92 (RPB/JPG)].

## AGRICULTURE AND ANIMALS

### Control of dogs

2. Ordinance: The Control of Dogs Ordinance, 1992. - Requires owners to exclude dogs from specified play areas, beaches, playing fields and streets. Excrement to be removed immediately from any public place.

In force 1.6.92. (No. XII of 1992).

## APPEALS

### Civil appeal - procedure - necessity for compliance with requirements as to time

3. See Havilland Estates Limited v. Channel Islands Ceramics Limited, paragraph 48.

## CHILDREN AND YOUNG PERSONS

### Adoption

4. Ordinance: The Children Board (Regulation of Adoption Arrangements) (Amendment) Ordinance, 1992. - Amends the Ordinance of 1961 so as to empower the Children Board to establish an Adoption Panel for the purpose of making arrangements for adoption and to determine the constitution and functions of such panel.

In force 25.3.92. (No. VII of 1992).

### Court proceedings

5. Order in Council: The Children and Young Persons (Miscellaneous Provisions) (Guernsey) Law, 1991. - See 11.GLJ.3.

Royal Sanction 19.11.91. Registered and in force 20.11.92. (No. XIX of 1991).

## CONSTITUTIONAL LAW

6. Review Board system

Projet de Loi: The Administrative Decisions (Review) (Amendment) (Guernsey) Law, 1992. - Introduces greater flexibility into the procedure for appointing a Review Board where the Chairman or Deputy Chairman is unavailable or indisposed, or is in some way concerned with the subject matter of a complaint. Where both are so affected the task is assigned to the senior available Acting President of the States.

Approved by the States 30.4.92. Awaiting Royal Sanction.

### States Committees - constitution

7. Order in Council: The States Committees (Constitution and Amendment) (Guernsey) Law, 1991. - See 12.GLJ.10.

Royal Sanction 19.11.91. Registered and in force 20.1.92. (No. XX of 1991).

### States Committees - transfer of functions

8. Order in Council: The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991. - See 12.GLJ.7.

Registered and in force 11.2.92. (No. XXI of 1991).

9. Ordinance : The Building Control (Transfer of Functions) Ordinance, 1992. - Transfers to the Island Development Committee the functions previously exercised by the Housing Authority under the Building Law and related

legislation.

In force 1.7.92. (No. XIV of 1992).

States of Deliberation - constitution

10. Resolution of the States of 29.1.92. - Rescinding the Resolutions of 31.1.91 (see 11.GLJ.9) and 26.9.91 (see 12.GLJ.11); resolving that the constitution of the States of Deliberation should remain as provided in the Reform (Guernsey) Law, 1948 subject to the amendment that Conseillers should be elected by universal suffrage; and directing the Constitution of the States Review Committee to report on proposals for the holding of such elections.
11. Resolution of the States of 30.4.92. - Directing the preparation of legislation laying down the procedure for the election of Conseillers.

COURTS

Magistrate's Court - jurisdiction - civil jurisdiction - damages for trespass to land

12. A sued R in the Petty Debts Court for damages for trespass. In addition he sought a declaration that he was the owner of an area of land between his property and a private road owned by R, where the trespass was alleged to have occurred. The Magistrate ruled that he did not have the jurisdiction to make such a declaration, but took the view that he did have the jurisdiction to deal with a claim for damages for trespass. He ruled however that A had not proved his title to the disputed area of land and dismissed the action. A appealed. The Deputy Bailiff directed the Jurats:-

1. Although the point had not been appealed, the Magistrate was correct in ruling that he had no jurisdiction to make declarations as to ownership of land.

2. That the Magistrate had jurisdiction to hear claims for damages for trespass to land and that inevitably this would on occasion involve him in investigating title. The omission from the Magistrates Court (Guernsey) Law 1954 of provisions re-enacting Article 13 of the 1925 Law which excluded from the Magistrate's jurisdiction disputes as to the ownership of land were intentionally omitted (vide Article XLVIII in Billet d'Etat No.I of 1954).

[On R's conceding that the disputed land did belong to A, the Court allowed the appeal and awarded A damages of £10. No order was made as to costs].

[R. Hugo v. Skillet - Royal Court 23.6.92 (unrep/IHB)].

Magistrate's Court - legislation

13. Order in Council: The Magistrate's Court (Guernsey) (Amendment) Law, 1992. - See 12.GLJ.13.

Royal Sanction 4.6.92. Awaiting registration.

Royal Court - jurisdiction - trust instrument governed by Guernsey Law and subject to jurisdiction of Guernsey courts - whether third party bound - forum conveniens

14. P, a foreign trust company as trustee of funds in a trust established under the law of Guernsey, sought orders in the Royal Court against DD to account for funds allegedly received and belonging to the trust. DD filed exceptions de fond challenging the jurisdiction of the Royal Court on the basis that the Court was not the proper forum and/or the forum conveniens for the action and/or P's cause disclosed no actionable cause of action against DD within the jurisdiction of the Royal Court. The trust instrument provided that the settlement was established under Guernsey law and that it should be subject to the exclusive jurisdiction of the Royal Court of Guernsey. HELD by the Bailiff, allowing the exceptions de fond and staying the action in the Royal Court, that -

1. The agreement which P alleged to have been made with, and breached by, DD was oral and there was no allegation that DD had been informed of the provisions of the trust instrument.

2. Without some acknowledgment that DD were affected by the provisions of the trust instrument, or unless some other reason for DD being liable to be sued in Guernsey was advanced, they must stand under the presumption that the normal rule applies, namely, that a defendant should be sued in his own jurisdiction. The relevant jurisdiction in this case was the English courts : as respects D1 because he was resident and/or domiciled there; and as respects D2 because he consented to be sued there.

3. Having read the affidavits filed he was satisfied that the English courts were the forum conveniens.

[Booilushagg Trust Company Limited v. Kaye and Miller - Plaids de Meubles (Interlocutories) 29.5.92. (ADNH/PTRF/JPG)].

CRIMINAL LAW AND PROCEDURE

Disorderly conduct - definition

15. In an appeal to the Royal Court against conviction by the Magistrate's Court of the offence of behaving in disorderly manner under section 1(c)(ii) of the Summary Offences (Bailiwick of Guernsey) Law, 1982 the Deputy Bailiff directed the Jurats to follow the guidelines set out in the 1967 New Zealand decision of Melser v The Police (quoted in Butterworths' "Words and Phrases Legally Defined"), making particular reference to the words of Mr. Justice Turner therein:-

"Disorderly conduct is conduct which is disorderly; it is conduct which, while sufficiently ill-mannered, or in bad taste, to meet with the disapproval of well-conducted and reasonable men and women, is also something more - it must, in my opinion, tend to annoy or insult such persons as are faced with it - and sufficiently deeply or seriously to warrant the interference of the criminal law."

[Law Officers of the Crown v. Bailey - Appeals from the Magistrate's Court 29.6.92 (HMC/MGF)].

### Drug trafficking

16. **Projet de Loi: The Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992.** - Implements the Vienna Convention on drugs, signed in Vienna on 20.12.88, and updates the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988. The manufacture and supply of "scheduled substances" listed in Schedule 1 is made an offence. Provision is made for punishing drug-trafficking offences committed in Guernsey vessels and for the enforcement of drugs laws in respect of ships used for illicit traffic. An offence of conceding or transferring the proceeds of drug-trafficking is created and provision is made for gathering interest on unpaid confiscation orders and increases in the value of property subject to such orders.

Approved by the States of Guernsey 27.5.92. Awaiting Royal Sanction.

17. **Ordinance: The Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 (Specified Countries and Territories) (Amendment) Ordinance, 1992.** - Amends the Drug Trafficking (Bailiwick of Guernsey) Law, 1988 (Specified Countries and Territories) Ordinance, 1991, by adding Bahrain, Barbados, list of "specified" countries and territories in the Ordinance.

In force 30.4.92. (No. VIII of 1992).

### Pre-trial statement - right to silence - discretion of trial judge to admit statement - direction to Jurats

18. A was convicted of various drugs offences. He had made a statement in which he answered some of the questions put to him but not others. He sought to exclude the whole statement from evidence. The Deputy Bailiff admitted the whole statement and directed the Jurats that they should "make of it what you will" and that it was a matter for them whether they should comply with A's request that they should draw no conclusion from his answers of "no comment" to certain questions. HELD, on his appeal to the Court of Appeal, that where a statement contained some questions which had been answered and some which had not the judge must exercise his discretion whether to exclude the statement altogether, remove some of the questions or admit the whole. The Deputy Bailiff had quite properly elected the third option. However, where an accused person who had been cautioned exercised his right of silence the Jurats should be warned that they should not use his refusal to answer those questions and answers as any evidence of guilt. The Jurats had been misdirected and the conviction

would be quashed.

[Law Officers of the Crown v. Quilter - Court of Appeal 7.1.92 (HMC/CMF)].

**Sentence - causing grievous bodily harm with intent**

19. A, aged 19, pleaded guilty to causing grievous bodily harm with intent following what was described as a vicious attack on a policeman in the middle of the night. Six months previously he had been convicted of two other offences of assault on the police. The Court of Appeal dismissed his appeal against his sentence of 30 months' youth detention.

[Law Officers of the Crown v. Gavey - Court of Appeal 7.1.92 (HMC/SRM)].

**Sentence - possession and supply of controlled drugs with intent to supply - aggregation of sentences**

20. A was convicted by the Royal Court of four offences of possession with intent to supply a Class A drug, supplying a Class A drug, possession with intent to supply a Class B drug and possession of a Class B drug. He was sentenced to two consecutive sentences of 21 months and 16 months and to two concurrent sentences. On his appeal against sentence the Court of Appeal HELD that where a court is imposing a number of consecutive sentences it must consider the totality which they represent and consider whether the total period of imprisonment is commensurate with the type of offences for which the sentences are being passed even if the sentences would have been unexceptionable had they been passed in isolation. In the present case the total of 44 months in custody, taking into account the period before the trial, was too long and the consecutive sentences would be reduced so as to reduce the total period spent in custody to 3 years.

In a second case, B, who pleaded guilty to two counts of importation by internal concealment of cannabis resin, which it was accepted he would sell locally, was sentenced to an effective eighteen months concurrent on each charge and five months consecutive on a further charge of obstructing customs officers. Again the totality of the sentences was too long and the two sentences would be made concurrent.

[Law Officers of the Crown v. Newton-Smith; Law Officers of the Crown v. Campbell - Court of Appeal 6.1.92 (HMC/NLP/CJB)].

**DIVORCE AND MATRIMONIAL CAUSES**

**Financial provision - maintenance - enforcement of order made in other jurisdiction - power of court to vary or revoke order**

21. A applied to the Magistrate's Court under sections 15(4) and (5) and 19(1) of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 for the variation or revocation of a maintenance order which had been made in England and registered in Guernsey where A now lived. HELD by the Magistrate, dismissing the application, that he had no power to vary or revoke the order. Although section 2(1) of the Maintenance Orders (Facilities for Enforcement) (Guernsey) Law, 1955, under which the

original order was registered, provided that "...all proceedings may be taken under such order as if it had been an order originally obtained in the Court in which it is so registered..." the Magistrate would follow the decisions in Pilcher v. Pilcher (1955) P. 318 and in R v Rose, ex p. McGibbon (1959) 123 JP 374 where it was held that those words were limited in their effect to matters of enforcement and did not confer the power to vary or discharge.

[Price v. Price - Magistrate's Court 28.4.92 (FJH/unrep)].

#### Magistrate's Court proceedings

22. Order in Council: The Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1992. - See 12.GLJ.27.

Royal Sanction 4.6.92. Awaiting registration.

#### EMPLOYMENT

##### Conditions of employment

23. Order in Council: The Conditions of Employment (Amendment) (Guernsey) Law, 1992. - See 12.GLJ.28.

Royal Sanction 11.2.92. Registered and in force 31.3.92. (No. I of 1992).

##### Industrial disputes

24. Projet de Loi: The Industrial Disputes and Conditions of Employment (Guernsey) Law, 1992. - Consolidates with amendments the Industrial Disputes and Conditions of Employment Laws, 1947 to 1986. The principal changes are that the Industrial Disputes Tribunal is streamlined (it will now comprise a chairman and two members); that the Board of Employment, Industry and Commerce is given power to prescribe rules of procedure and scales of costs in relation to hearings; and that the Tribunal is given wider powers to award costs.

Approved by the States 27.5.92. Awaiting Royal Sanction.

##### Proof of housing status

25. Ordinance : The Right to Work (Limitation and Proof) (Tent Dwellers' Industries) (Amendment) Ordinance, 1992. - Removes retailing, food manufacture and building from the list of industries in which people living in tents may lawfully work, on production of a tent dweller's declaration (see 7.GLJ.41), from April to October. The remaining industries are horticulture, tourism and fish farming.

In force 19.5.92. (No.XV of 1992).

## EVIDENCE

### 26. Commission Rogatoire - request for foreign counsel to appear to examine witnesses

The Supreme Court of South Africa furnished the Court with a Commission Rogatoire which included a request that South African Counsel be permitted to appear before the Commissioner to examine witnesses. It was HELD by the Bailiff that, although on the face of it to grant the request would be contrary to common law, in the special circumstances of this case it would be proper to grant the application. The Evidence (Proceedings in Other Jurisdictions) Act 1975 as extended to the Bailiwick conferred upon the Court the right to admit foreign counsel if the Court considered that course to be appropriate for the purpose of giving effect to the request made by the foreign state. However, having regard to the continuing responsibilities of the Royal Court in the matter and the provisions of the Bar Ordinance of 1932, a proviso would be added to the Order granting the Request "(1) that each party shall instruct an Advocate of the Royal Court who shall have overall control of the case of their respective clients and (2) that South African Counsel may not seek remuneration under any provision of Guernsey Law."

[Republic of South Africa v. Dutton 24.3.92.(HER)].

## FISHING

### 27. Order in Council: The Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992. - See 11.GLJ.42.

Royal Sanction 4.6.92. Awaiting registration.

## HEALTH AND SAFETY AT WORK

### Freight containers

### 28. Ordinance : The Health and Safety at Work (Freight Containers Safety Convention) Ordinance, 1992. - Establishes a system of compulsory approval, safety plating, periodic examination and maintenance of freight containers in accordance with the Geneva Convention for Safe Containers.

In force 1.5.92. (No. X of 1992).

## HOUSING

### Control of occupation - tent-dwellers' declarations

### 29. Ordinance : The Right to Work (Limitation and Proof) (Tent Dwellers' Industries) (Amendment) Ordinance, 1992. - See paragraph 25.

### Control of occupation - variation of schedules

30. Ordinance: The Housing (Control of Occupation) (Variation of Schedules) Ordinance, 1992. - Amends the second schedule to the Housing (Control of Occupation) (Guernsey) Law, 1982 by adding the staff quarters at L'Atlantique Hotel.

In force 25.3.92. (No. VI of 1992).

### INCOME TAX

#### Charities

31. Projet de Loi : The Income Tax (Amendment) (Guernsey) Law, 1992 (see also paragraphs 34, 37 and 39). - Gives effect to a States' Budget resolution of December 1991 reducing from 6 years to 3 years the minimum period for which a covenanted donation to a charity must be irrevocable in order to qualify for tax relief, and ensuring that a husband and wife can achieve the same tax relief in relation to their combined covenanted donations to charities as would be available to two single people. The new rules apply as respects covenanted donations made during 1992 and succeeding years of charge.

Approved by the States 30.4.92. Awaiting Royal Sanction.

32. Ordinance : The Income Tax (Settlements) (Guernsey) Ordinance, 1992. - Increases from £300 to £1,000 the maximum sum which a taxpayer can donate under covenant to charity in any year of charge before it is deemed to be his income for tax purposes.

In force 1.1.92. (No. II of 1992).

#### Exempt bodies - offshore insurers

33. Ordinance : The Income Tax (Exempt Bodies : Offshore Insurers) Ordinance, 1992. - Enables captive and other offshore insurers (those which write no significant long-term business and whose domestic business does not exceed 5% of their total business) to elect for tax exempt status as an alternative to being taxed on the sliding scale basis (see 7.GLJ.50) or the normal commercial basis. To be eligible for exemption such an insurer must have entered into an arm's length agreement for managerial and secretarial services in Guernsey; no Guernsey resident may be beneficially interested in it (subject to some technical exceptions); it must disclose any Guernsey investments and income not derived from its offshore business; it must have cleared all previously assessed tax liabilities; and it must pay the annual fee (which presently stands at £500). The exemption for insurers so electing is widened to cover the Guernsey source income arising from their offshore business. The timing requirements are also more relaxed than those for Category A to D bodies, in that an application can be made (and may be withdrawn in favour of an election for either the sliding scale or normal commercial basis of

taxation) at any time within 3 years after the end of the year of charge concerned.

In force 1.5.92. (No. XI of 1992).

#### Friendly Societies

34. **Projet de Loi : The Income Tax (Amendment) (Guernsey) Law, 1992** (see also paragraphs 31, 37 and 39). - Empowers the Income Tax Authority to specify by regulations the extent to which the income of registered friendly societies is exempt from tax under section 40 of the Income Tax Law. Regulations may be made applicable to income arising in any year of computation beginning on or after 1.1.92.

Approved by the States 30.4.92. Awaiting Royal Sanction.

#### Guernsey Tax Tribunal

35. **Ordinance : The Income Tax (Commencement) Ordinance, 1992.** - Brings into force on 15.6.92 the provisions of the Income Tax (Amendment) (Guernsey) Law, 1990 which established the Guernsey Tax Tribunal (see 10.GLJ.52).

(No. XIII of 1992).

#### Legislative procedures

36. **Resolution of the States of 27.5.92.** - Directing the preparation of legislation empowering the States to declare by Resolution when approving a **Projet de Loi** concerning any tax or duty that it is to come into force immediately, or with effect from a specified date, subject to savings in the event that Her Majesty should subsequently decline to sanction it.

#### Oaths of secrecy

37. **Projet de Loi : The Income Tax (Amendment) (Guernsey) Law, 1992** (see also paragraphs 31, 34 and 39). - Replaces the section of the Income Tax Law dealing with oaths. The principal changes are to give statutory force to the oath taken by people other than Income Tax authority members and officers whose work necessitates access to the Authority's records; and to increase from level 3 to level 4 on the uniform scale the maximum financial penalty which may be imposed on conviction for violation of the oath. The new section will also clarify precisely who is required to take an oath and that it must be taken before access is given to information about people's tax affairs.

Approved by the States 30.4.92. Awaiting Royal Sanction.

38. **Ordinance : The Income Tax (Forms of Oath) Ordinance, 1992.** - Prescribe the oaths to be taken by members of the Income Tax Authority and Tax Tribunal, the Clerk to the Tribunal, the Administrator and Assistant Administrator; by other people working for the Income Tax Authority; and by other people who have access to information under the control of the Authority or Administrator relating to the income, profits or tax affairs of any identifiable individual or body.

In force 29.1.92. (No. I of 1992).

### Penalties

39. **Projet de Loi : The Income Tax (Amendment) (Guernsey) Law, 1992** (see also paragraphs 31, 34 and 37). - Amends section 68(2) of the Income Tax Law (which requires people to make returns of income if they have not been given notice to do so by 30th June in any year) so as to prescribe a 14 day period after that date in which to comply. Replaces the previous fixed maximum penalty for failure to make such a return with a maximum penalty calculated by reference to the defaulter's tax liability in the same way as the present maximum penalties for making incorrect returns. As in the latter case, if the default was through negligence liability to a penalty can be avoided if it is corrected before enquiries are instituted, and in cases of fraud the effect of personal allowances is to be disregarded in calculating the appropriate maximum penalty.

Enables the Administrator to impose a penalty on an employer failing to make returns and pay over tax deducted from employees under the Employees Tax Instalment Scheme by the due date, immediately upon discovery of the default, without having first to serve a notice and give an opportunity for the employer to make representations and require court proceedings to be taken instead of the imposition of the penalty. The employer's right to appeal is unaffected.

Approved by the States 30.4.92. Awaiting Royal Sanction.

### INDIRECT TAXATION

#### Legislative procedures

40. Resolution of the States of 27.5.92. - See paragraph 36.

### INSOLVENCY AND DÉSASTRE

#### Preferred Debts (Guernsey) Law, 1983 - amendment

41. **Projet de Loi: The Preferred Debts (Guernsey) (Amendment) Law, 1992.** - Amends the Law of 1983 by increasing to £3,000 the maximum sum to which priority is to be given to persons owed wages or salary by a debtor whose affairs have been declared "en désastre" and further provides that the "relevant date", from which is calculated the period in respect of which preferred creditors shall enjoy priority, shall be the date when a Commissioner is appointed by the Court rather than the subsequent date of declaration of the désastre.

Approved by the States of Guernsey 25.3.92 and by the States of Alderney 6.5.92.. Awaiting Royal Sanction.

Preferred Debts (Guernsey) Law, 1983 - section 4 - owner's right to claim ownership of goods seized in execution of judgment against a tenant - meaning of "application to court" within 14 days.

42. D had obtained judgment against X for arrears of rent and goods found upon the property were seized in execution thereof. The Sheriff had published the notice required under section 4(2) inviting persons other than the tenant who claimed to be the owner of the goods seized within 14 days to make application to the court to determine the lawful ownership of such goods. On the fourteenth day P had sent by fax notices to H.M. Sheriff and H.M. Greffier furnishing evidence that a printing press found on the premises was the property of P. P had apparently originally leased the press to Y, an English company which, without the consent of P. had then passed it into the possession of X. P had then instructed an Advocate who had brought an application to court outside the fourteen day period firstly seeking an extension of time within in which to make the required application or in the alternative for a declaration that the faxed letter had constituted an application to the court for the purposes of section 4(2). HELD by the Deputy Bailiff that although the point had not been fully argued before him he had grave doubts as to whether the Court had any power to extend the 14 day period provided for in the Law. There was no evidence of delay or fault on the part of P. In the circumstances the Court had a wide discretion as to matters of procedure and the interpretation of what constituted "an application to court". Accordingly, despite the fact that the faxed letter to H.M. Greffier did not in so many words say that it was to be deemed to be an application to court, the Court would in order to do justice in the case treat the letter as an application to court within the 14 day period. Therefore P was at liberty to proceed to establish its claim to ownership of the printing press. No order for costs was made.

[Concorde Leasing U.K. Limited v. B.D. Properties Limited - Plaids de Meubles 1.5.92 (JPG/PTRF)].

ISLAND DEVELOPMENT

Island Development Committee

43. Ordinance: The Building Control (Transfer of Functions) Ordinance, 1992.  
- See paragraph 9.

LAND LAW

Conveyancing procedure - boundaries - neighbour appearing in conveyance to confirm description of boundary - whether purchaser subsequently estopped from claiming that boundary so defined is incorrect

44. In 1966 P purchased two fields adjoining a dwelling now owned by D. P's conveyance and those to D's predecessors had described the boundaries between the two properties as "fossés" or hedges belonging to D's property. In 1987 the advocates acting for D at the time of her purchase from V had difficulty in identifying the precise boundary and invited P to

state what he considered the boundary to be. P replied that in his view the boundary between his property and that to be conveyed to D was a stream including that part thereof that was culverted and ran through the forecourt of D's property and on under the adjoining highway. P then joined in the conveyance from V to D and confirmed this as the boundary. The effect of this definition of the boundary was to include as part of P's property an area of the forecourt lying on P's side of the culvert which had previously been enjoyed by D's predecessors in title. On P's action for restraint of trespass by D on the land lying on P's side of the culvert, D pleaded that the 1987 conveyance was wrong and the area of forecourt claimed by P had always formed part of D's property and was owned by her or V. P entered a Replique to the effect that D was estopped from saying that the boundary description in the 1987 conveyance was not truly stated. HELD by the Deputy Bailiff that D was not estopped from denying P's title to the disputed area of forecourt. The 1987 conveyance was essentially a transfer of V's interest in the property to D. In that conveyance they agreed between themselves that the property extended as far as the culverted part of the stream. It was for the vendor to satisfy the purchaser as to title and it was not uncommon for vendors to call in aid the neighbour of an adjoining property to appear before the Court at the completion of the conveyance and declare for the avoidance of any future dispute that the boundary was indeed as declared in the conveyance between the parties. The role of the neighbour in appearing in the conveyance was a limited one. P was given no separate covenant by either of the parties. Neither did he give any guarantee of his title to enable him to make the declaration of the boundary that was being sought from him. The situation contrasted with that of a deed of exchange where neighbours seeking to clarify or rationalize a boundary would convey to each other, with the usual guarantees as to title, the relevant areas of land involved. If it was to accede to the submissions of P in this regard the Court would in effect have to be interpreting what was recorded in the 1987 conveyance as the transfer of title by V of an area of land to P. Further the Deputy Bailiff could see no principle of public policy according to which considerations of justice required that, even at the expense of truth, a person in the D's position should be precluded from denying or asserting a particular fact against a person in P's position. [The Jurats subsequently found that as a matter of fact the disputed area of forecourt was still in V's ownership.]

[Sparkes v. Lancaster - Plaids de Meubles 27.5.92 (NJB/RJC)].

Livre des Hypothèques - removal of registration of an interlocutory act.

45. See paragraph 56.

LIQUOR LICENSING

46. Ordinance: The Liquor Licensing (Amendment) Ordinance, 1992. - Amends the Liquor Licensing Ordinance, 1984 by substituting "Bar Meal" permits for "Bar Lunch" permits, amending permitted hours in respect of various classes of licensed premises and clubs and increasing penalties for

offences under that Ordinance.

In force 30.4.92. (No. IX of 1992).

**PAROCHIAL MATTERS**

47. Resolution of the States of 24.6.92. - Directing the preparation of legislation making provision for the maintenance and insurance of rectories where parishes are held in plurality..

**PRACTICE AND PROCEDURE (CIVIL)**

**Appeals - procedure - necessity for compliance with requirements as to time**

48. The Respondent to a civil appeal sought an order confirming that the appeal had lapsed owing to the failure of the would be Appellant to comply with the terms of Rule 8 of the Court of Appeal (Civil Division) (Guernsey) Rules, 1964. The Appellant made a cross-application seeking leave to extend the time for complying with the Rule in accordance with Rule 17 thereof. After reviewing the somewhat complex facts of the matter and taking account of the delay in production of the transcript the Court extended the time for complying with Rule 8 to 14 days after receipt by the Appellant of the transcript. The Court however expressed concern as to the delay and the suggestion that it had become the practice of the Guernsey Bar not to observe the requirements of the Rules with regard to extension of time. The Court observed that the expedition of appeals was not a matter simply for the parties - it was a matter in which the Court and the community at large have an interest. If there were difficulties in the prosecution of an appeal due to delays in the filing of a transcript it should not be taken for granted that any extensions of time will be given if it could be shown that either of the parties is at fault with regard to any delays in the preparation of the transcript.

[Havilland Estates Limited. v Channel Islands Ceramics Limited - Court of Appeal 1.4.92 (IHB/NJB)]

**Applications for hearing dates - Practice Direction**

49. Lays down requirements to be fulfilled and procedural steps to be taken by Counsel when preparing and submitting applications for a civil action to the Greffe.

(Practice Direction No. 1 of 1992).

**Applications for hearing dates - advance dates - Practice Direction**

50. Lays down requirements and procedure for applying for the allocation of a date for trial of a civil action in advance of the list being issued at

the commencement of a term.

(Practice Direction No. 2 of 1992).

**Applications for hearing dates - interlocutory hearings - Practice Direction**

51. When application is made for the hearing of interlocutory matters in accordance with Practice Direction No. 1 of 1991, Counsel should submit two copies of the up-to-date Pleadings in the matter - one for the use of the Bailiff and one for the use of the Greffier.

(Practice Direction No. 4 of 1992).

**Arrests and injunctions - Practice Direction**

52. Makes provision for matters to be addressed by Counsel when applying for an injunction or arrest order.

(Practice Direction No. 3 of 1992).

**Discovery - nondisclosure before trial - evidence rebutting bona fides of Plaintiff's claim - application not to disclose until trial.**

53. P claimed to have been grossly disabled as a result of an accident at work. D's advocate applied inter partes for leave not to disclose until the trial certain evidence, in the form of photographs, video tape and an additional medical report which indicated that the Plaintiff was exaggerating the level of his disability, for fear that to do so would result in dishonest "trimming" of his evidence. HELD by the Deputy Bailiff, granting the application: -

1. that the Royal Court Civil Rules 1989 were silent on excusing disclosure. He could not find anything in the Rules of the Supreme Court dealing with the topic other than Rule 38(5) to which counsel had referred him and the case of McGuinness v. Kellogg [1988 1 WLR 913] which seemed to be on all fours with this case;

2. that, referring to the passage of Lord Justice Glidewell's judgment in the case of Naylor v. Preston Health Authority [1987 1 WLR 958], quoted in the McGuinness case, he considered he had a discretion in the matter and that he would exercise it in favour of the Defendant, particularly having regard to the medical reports which indicated that the doctors had relied on what the plaintiff had told them as to the level of his disability in preparing their reports;

3. that cases where such applications were appropriate would be rare;

4. that the "documents" referred to in the Defendant's advocate's affidavit should be lodged in sealed envelopes with H.M. Greffier.

[A v. B Ltd. - Plaids de Meubles (Interlocutories) 4.3.92 (RJC/EAGP)]

**Discovery - power of the court to order discovery before close of pleadings**

54. P had commenced two actions against D in negligence and nuisance for damages caused to its vinery and horticultural business resulting from the use by D of an adjoining quarry as a rubbish tip. Defences had not been filed although Exceptions de Forme had been raised in one action. P was contemplating reforming its cause and possibly consolidating the actions. P applied for an order under Rule 39 of the Royal Court Civil Rules 1989 for discovery in respect of eleven named reports furnished by third parties to D on its operation of the tip. P argued that the reports would assist its advocate in drafting new pleadings and in particular clarifying the allegations of negligence and nuisance and the alleged failure of D to adhere to recommendations in the reports. The result of this application succeeding would be to save costs and time. HELD by the Deputy Bailiff that it was clear from the English Authorities that discovery, whether general or specific, is seldom ordered before the close of pleadings and in his judgment this was not one of those rare occasions when it should be ordered at an early stage. The damage suffered by P in consequence of the alleged nuisance was within P's knowledge and no question of negligence would arise until a later stage in the proceedings. The application would be dismissed. (R.H.M.Foods Ltd. v. Bovril [1982 1.A.E.R. 673] and Rule 24/3 of the Rules of the Supreme Court considered.)

[Bordeaux Vineries Limited v. States of Guernsey - Plaids de Meubles (Interlocutory) 29.5.92 (CMF/PTRF)]

**Jurisdiction - Royal Court - trust instrument governed by Guernsey Law and subject to exclusive jurisdiction of the Guernsey Courts - whether third party dealing with trustee bound thereby - forum conveniens**

55. See Booilushagg Trust Company Limited v. Kaye and Miller, paragraph 14.

**Registration of interlocutory act - registration against jointly owned property in respect of action against one party - application to order vacation without lodging security - principles on which Court acts.**

56. P sued its former managing director, D, for repayment of a loan and unauthorised expenses drawn from the company's funds and obtained permission ex-parte to register the Act of Court recording the inscription on the Rôle des Causes à Plaidier in the Livre des Hypothèques etc. against property owned jointly by D and his wife who were about to sell the property. D, supported by his wife who was permitted to intervene, applied for the registration to be removed unconditionally pursuant to the provisions of section 7(d) of the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 because D needed funds from the sale to meet other obligations. Counsel for D argued that, drawing an analogy from the Mareva jurisdiction, P should not be permitted to use its order to get priority over other creditors of the defendant. He further drew attention to the dicta in the case of P.C.W. Underwriting Agencies Ltd v. Dickson [1983 2 AER 158] from which it was clear that Mareva injunctions must not prevent a defendant paying his proper debts and having sufficient funds for his living expenses and legal fees in connection with the defence of the plaintiff's action against him. Neither was it permissible to use

Mareva injunctions for the purpose of punishing an errant defendant. Counsel for the wife argued that P had no right to interfere with what she did with her half of the proceeds of sale. Further, the Court must balance P's desire to secure assets with the effect that such action would have on the freedom of action of third parties of whom the wife was one (Galaxcia Maritime SA v. Mineralimportexport [1982 1 AER 796]). HELD by the Deputy Bailiff -

1. The sale should proceed and the registration in the Livre des Hypothèques lifted.

2. With regard to P's request that a sum equal to the amount claimed be retained out of the proceeds of sale until the claim was resolved -

(a) that with a defendant in a less precarious financial position than D such a course of action would have probably seemed reasonable;

(b) that if no provision was made to safeguard the proceeds of sale against dissipation and consequent prejudice to P's position, D might be able to prefer his other creditors;

(c) that the wife was not a third party in the true sense of the word and that, distinguishing the decision of the then Deputy Bailiff in Re Faulkner (7.6.91.), it was not appropriate to split the proceeds of sale half and half at this stage before that had been any investigation of the entitlement of the husband and wife thereto. Further, to order severance would put the wife in a substantially better position than she would have been had the registration not been removed;

(d) that accordingly a sum equal to P's claim should be lodged with H.M.Greffier on removal of the registration, notwithstanding the fact that this exceeded one half of the net proceeds of sale, pending conclusion of P's action against D.

3. That if the remainder of the proceeds of sale proved inadequate to meet D's living and other expenses, following the principles in P.C.W. Underwriting Agencies Ltd v. Dickson (see above) D could come back to Court and ask for further funds to be released. (The Deputy Bailiff noted the risk of one creditor being preferred to another then gave some guidance as to what expenses and repayment of current debts he considered proper in D's circumstances).

Channel Islands Cream Liqueurs Ltd. v Woods (Woods intervening) -  
Plaids de meubles 13.3.92 (JPG/CJB/JMW).

#### REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES

57. Ordinance: The Marriage Fees (Amendment) Ordinance, 1992. - Amends the Ordinance of the 1978 Ordinance so as to reduce the fee payable for the attendance of a Registrar at a private house or hospital for the purpose of conducting a marriage where one of the parties is unable to attend at

the Greffe due to ill health.

In force 29.1.92. (No. III of 1992).

#### **ROAD TRAFFIC AND PUBLIC TRANSPORT**

##### **Prohibited and One-Way Streets**

58. Ordinance : The Prohibited and One-Way Streets (Amendment) Ordinance, 1992. - Establishes a one-way and restricted access system at Crève Coeur and Mont Cuet.

In force 27.2.92. (No. IV of 1992)

#### **SOCIAL SECURITY**

59. Ordinance: The Social Insurance (Reciprocal Agreement with Barbados) Ordinance, 1992. - Implements in the Bailiwick the Convention on Social Security between the Governments of the UK and of Barbados.

In force 25.3.92. (No. V of 1992).

GUERNSEY STATUTORY INSTRUMENTS

60. The following Statutory Instruments were made during the period covered by this issue. Except where otherwise indicated they have not been digested in detail. A reference copy of each is held at the Greffe and copies may be obtained from the relevant Committee.

	S.I. Number
The Protection of Game (Amendment) Order, 1992	1.
The Post Office (Inland Post) (Amendment) Order, 1992	2.
The Post Office (Overseas Parcel Post) (Amendment) Order, 1992	3.
The Rent Control (Variation) Order, 1992	4.
The Immigration (Guernsey) (Amendment) Rules, 1992	5.
The Family Allowances (Qualifications) (Amendment) Regulations, 1992	6.
The Parking Places (Amendment) Order, 1992	7.
The Health Service (Payment of Authorised Appliance Suppliers) (Amendment) Regulations, 1992	8.
The Health Service (Payment of Authorised Suppliers) (Amendment) Regulations, 1992	9.
The Health Service (Payment of Authorised Suppliers) (Supplemental Payment) Regulations, 1992	10.

UNITED KINGDOM STATUTORY INSTRUMENTS

61. The following is a list of Statutory Instruments made in the United Kingdom which are specifically applicable to Guernsey and which were registered here during the period covered by this issue. Unless otherwise indicated they are not digested in detail elsewhere in the Journal.

The Merchant Shipping Act 1988 (Guernsey) Order, 1991	2875
The Civil Aviation Act 1982 (Guernsey) Order, 1992	230
The Wireless Telegraphy (Licence Charges) (Amendment) Regulations, 1992	353
The Wireless Telegraphy (Television Licence Fees) (Amendment) Regulations, 1992	362

The Civil Aviation Act 1982 (Guernsey) (Amendment) Order, 1992	806
The Social Security (Barbados) Order, 1992	812
The Libya (United Nations Prohibition of Flights) Order, 1992	973
The Libya (United Nations Sanctions) Order) 1992	977
The Serbia and Montenegro (United Nations Prohibition of Flights) Order, 1992	1307
The Serbia and Montenegro (United Nations Sanctions) (Channel Islands) Order, 1992.	1308

## ALDERNEY

### FIREARMS

62. Ordinance: The Dangerous Weapons (Amendment) (Alderney) Ordinance, 1992. - Amends the Ordinance of 1965 so as to enable a visiting competitor in a bona fide competition in Alderney who fulfils certain other criteria to have in his possession a shotgun, rifle or pistol without the necessity to hold a weapons certificate.

Ordinance of the States of Alderney of 15.7.92.

### FISHING

#### Parlour pots

63. Ordinance: The Fishing (Parlour Pots) Ordinance, 1992. - Prohibits, except by licence, the use of, and the carrying on a vessel of, parlour pots (as defined) in Alderney waters.

Ordinance of the States of Alderney of 6.5.92.

### MILK

64. Ordinance : The Milk (Retail Price) Ordinance, 1992. - Increases the price of milk to 45p per pint with effect from 15.3.92.

Ordinance of the States of Alderney of 11.3.92.

### ROAD TRAFFIC

65. Offences - obstruction of public highways - increase of fines

Ordinance: The Road Traffic and Public Highways (Amendment) Ordinance, 1992. - Amends the Alderney Road Traffic and Public Highways Ordinance, 1966 so as to amplify the offence of obstructing the highway and to increase various fines under that Ordinance.

Ordinance of the States of Alderney of 11.3.92.

#### Speed trial

66. Ordinance: The Tourgis Hill Speed Trial (Alderney) Ordinance, 1992 - Closes Tourgis Hill to general vehicular traffic on 19th September 1992 for the purposes of a speed trial, and exempts participants from speed and noise restrictions.

Ordinance of the States of Alderney of 11.3.92.

## TRUSTS

### 67. Variation of trust

Projet de Loi: The Saint Anne's Trust (Alderney) Law, 1992. - Permits the sale of all real property held by the Saint Anne's Club Trust (which is dissolved) and directs that the proceeds of sale shall be held upon a new trust for charitable purposes generally.

Approved by the States of Alderney 6.5.92. Awaiting Royal Sanction.

## SARK

### CATERING

68. Ordinance: The Catering (Transfer of Functions) (Sark) Ordinance, 1992. - Transfers the functions of the Tourism Committee under the Catering (Sark) Law, 1988 (see 6.GLJ.283,284) to the Public Health Committee.

Approved by Chief Pleas 22.4.92. In force 1.10.92.

### COURTS

69. Ordinance: The Court of the Seneschal (Increase of Jurisdiction) (Commencement) (Sark) Ordinance, 1992. - Brings into force on 22.4.92 the Law of 1992 (see 12.GLJ.78).

Approved by Chief Pleas 22.1.92.

### CRIMINAL LAW AND PROCEDURE

70. Ordinance: The Uniform Scale of Fines (Sark) (Amendment) Ordinance, 1992. - Amends the Law of 1989 (see 8.GLJ.117) so as to provide a new uniform scale of fines for Sark.

Approved by Chief Pleas 22.4.92. In force 1.5.92.

### DEVELOPMENT CONTROL

71. Ordinance: The Development Control (Sark) Ordinance, 1992. - Brings into force on 22.4.92 the Law of 1991 (see 12.GLJ.79). Also makes provision as to the control of development in Sark and in particular prohibits any development of land except under a written permission of the Development Control Committee.

Approved by Chief Pleas and in force 22.1.92.

## HARBOURS AND MOORINGS

72. Ordinance: The Pilotage (Sark) (Commencement) Ordinance, 1992. - Brings into force on 1.6.92 the Pilotage (Sark) Law, 1991 (see 12.GLJ.80).

Approved by Chief Pleas 22.4.92.

73. Ordinance: The Sark Pilotage Ordinance, 1992. - Prohibits persons from acting as pilots in the compulsory pilotage zone (which comprises the whole of the Sark territorial waters) unless they hold a pilots licence. Deals with applications for, and the grant by the Pilotage Committee of, pilots licences; the examination of applicants by the Examination Committee; the renewal and revocation of licences; and appeals against refusals or revocations to the Court of the Seneschal. Excepts specified vessels from the obligation of compulsory pilotage in Sark territorial waters. Prescribes functions and constitutions of the Pilotage Committee and Examination Committee.

Approved by Chief Pleas 22.4.92. In force 1.6.92.

## TAXATION

74. Ordinance: The Financial Provisions (Commencement) (Sark) Ordinance, 1992. - Brings into force on 22.4.92 the Law of 1991 (see 12.GLJ.81).

Approved by Chief Pleas 22.4.92.

75. Ordinance: The Financial Provisions (Variation of Rates) (Sark) Ordinance, 1992. - Amends the Financial Provisions (Sark) Law, 1978, as amended, so as to increase the amount of landing tax.

Approved by Chief Pleas and in force 22.4.92.

The introduction to the first edition of this journal in 1985 contained the following:-

"The Editorial Committee is aware that much material exists from former years which has not been the subject of any formal recording in a work such as this. Any contributions digesting or analysing earlier legislation and cases will be welcome for future editions as will any articles on subjects relating to the Law of the Bailiwick."

Although we have received a number of useful articles over the years no response has been made to the challenge to produce a record of judicial decisions prior to 1985. Decisions of the Court of Appeal have been published over the years and the cases recorded here are therefore decisions of the Royal Court which have not been the subject of appeal. As will be apparent the effect of some of these decisions have been overtaken by subsequent legislation, but they are considered to be of interest all the same. Many of the judgments contain erudite and comprehensive reviews of the law on the matter in issue and the writer has not attempted to do more than provide the barest summary of the decision in the expectation that anybody wishing to study it further will obtain a copy of the judgment from H.M. Greffier, whose preliminary work in assembling and digesting these cases has been of great assistance to the writer. For ease of reference the decisions are listed under the subject headings adopted in the substantive part of the Law Journal.

#### TORTS

76. Griffin v. Gamble and Blair Limited (Plaids de Meubles 15.12.1975).

P raised the Clameur de Haro in order to restrain D, a Company, from causing or permitting the jib of a tower crane on a building site from trespassing through the air space of adjoining premises owned and occupied by P. In an action to see the Court confirm the Clameur de Haro and award compensatory damages it was argued on behalf of D that it had offered a reasonable sum to P for permission to use the air space over their premises but that permission had been refused, that the jib of the crane had not been driven over P's premises but had been swung by the force of the wind, and the use of a tower crane reduced the inconvenience to neighbouring properties from the building site.

The Court was directed by the Bailiff:-

- (1) That the Clameur de Haro when raised operates as an immediate injunction and that any continuance of the act complained of or interference with the matter in dispute amounts to a contempt of court.
- (2) That the Court has no power to suspend the operation of the Clameur de Haro, but merely to affirm it or set it aside.

- (3) That it is a trespass for the jib of a crane on one person's land to invade the air space of another person's land applying the maxim *cujus est solum, cujus est usque ad coelum et ad inferos*. Further that the principle that direct infringement of air space amounts to a trespass is impliedly recognised by section 40(1) of the Civil Aviation Act, 1949, as extended to the Channel Islands by the Civil Aviation (Channel Islands) Order, 1953.
- (4) That the convenience of the public cannot justify a tort to an individual and in particular cannot justify the tort of trespass to property. The Courts have no power to licence a person to trespass on the property of another. With regard to the claim for damages the Court adopted the principles with regard to exemplary damages laid down in Rookes v. Barnard (1964) A.C. 1129 and Cassell & Co. Ltd. v. Broome (1972) A.C. 1027.

The Court affirmed the Clameur de Haro and ordered the Defendant to pay to the Plaintiffs £325 as ordinary damages and £500 as exemplary damages.

*[Comment: This case has been quoted as one of the few cases in recent years where not only has the Clameur de Haro been properly raised but also there has been a Court action for confirmation and damages. The judgment of the Bailiff is also of assistance on the question of the award of exemplary damages and it is, it is believed, the first case where the principles laid down in English Law on the matter of exemplary damages have been adopted in a Guernsey Court.]*

77. Chambers v. H.M. Sheriff (Plaids de Meubles 22.12.1977)

P had been given permission to arrest a vessel for the recovery of a judgment debt. H.M. Sheriff was instructed to arrest the vessel at its moorings in St. Peter Port Harbour. Despite the action taken by him the vessel concerned sailed from St. Peter Port and was subsequently lost with all hands off the north coast of Spain. P instituted an action against H.M. Sheriff alleging negligence in effecting the arrest of the vessel. H. M. Sheriff pleaded by way of Exception de Fonds that there was no right of action in tort against H.M. Sheriff arising out of his actions in execution of his duties as an officer of the Royal Court. It was HELD:

- (1) That the office of H.M. Sheriff or Prévôt in Guernsey is the equivalent of the office of Sergent de l'Epée in Normandy.
- (2) That under the Coûtume of Normandy an action would lie against the Sergent de l'Epée for failing to carry out his duties in relation to levying execution on meubles, which expression included a boat or vessel, and that, accordingly, an action would lie against the Prévôt in Guernsey should a plaintiff suffer damage arising out of the fault, negligence or breach of duty of the Prévôt in arresting a vessel.

*[Comment: This judgment contains an interesting review of the authorities on the duties of the Sheriff. As a matter of interest the case proceeded*

to trial on the facts and in the event the Jurats found that the Sheriff had not been negligent and so was not liable in damages to P.J

WILLS AND ADMINISTRATION OF ESTATES

78. In re Tardif deceased (Plaids de Meubles 9.5.1953).

The deceased's will of real property contained a devise "en fin et perpétuité d'héritage", but subject to the condition that the real property subject to the devise be not alienated "avant la troisième génération". The devisee petitioned the Court to declare the condition void on one or more of the following grounds:-

- (i) that the condition was repugnant to the estate to which it was annexed and/or
- (ii) that the condition was contrary to public policy and/or
- (iii) that the condition was void for uncertainty.

Prior to the hearing the Court, in exercise of its powers under the Order of the Royal Court entitled "Procedure for the appointment of one person to represent others in certain proceedings before the Court" of 1949, appointed the petitioner's daughter to represent all those persons other than the petitioner who were comprised in the class of persons mentioned in the clause of the will which was in the following terms:-

"Et de plus à condition que la dite légataire ses descendants ou ses héritiers ne pourront pas bailler à rente, vendre ou autrement aliéner les dites prémisses ou aucune partie d'icelles avant la troisième génération";

The Royal Court decided:-

- (1) that the condition that the real property be not alienated "avant la troisième génération" was void as being repugnant to the estate created by the words "en fin et perpétuité d'héritage" being the greatest estate in real property known to Guernsey Law, in that it purports to restrict that right of alienation which is an essential element of such an estate;
- (2) that the English rule against perpetuities had no local application and it was not within the competence of the Court to lay down a general rule as to the extent to which a restraint on alienation is, or is not, against public policy;
- (3) that the condition was void for uncertainty as it was impossible to determine whom the testatrix intended should become entitled to the property freed from the restraint on alienation.

79. In re Moore (deceased) (Plaids de Meubles 21.3.1972).

The Testatrix devised part of residuary estate to the Guernsey Children's Aid Society which was dissolved sometime prior to her death and had prior to dissolution assigned all its assets to the N.S.P.C.C. On the action of the Executor for directions the Court was directed by the Deputy Bailiff:-

- (1) That if the Court were to hold as a matter of fact that the Guernsey Children's Aid Society had been in existence at the date of death of the Testatrix, and had been dissolved subsequent to that date, then the gift would not fail but would pass to the Crown. (In re Slevin (1891) 2 Ch. 236 adopted and followed.)
- (2) That the cy-près doctrine was a doctrine of construction falling within the equitable jurisdiction of the English Courts and formed no part of the law of Guernsey. Two Acts of the Royal Court varying the terms of charitable trusts, *bien de M. Jean Priaulx* (1881) (*Receuil d'Ordonnances, Tome IV p. 242*) and *Fidéi-Commis Eglise St. Barnabé* (1932) (*Receuil d'Ordonnances Tome VII p. 1*, were distinguished as having been effected by the Royal Court *siégeant en corps* in exercise of its common law power to legislate by Ordinance which it enjoyed prior to the Reform (Guernsey) Law, 1948.
- (3) That under the Law of Guernsey a charitable bequest cannot be applied cy-près by direction of Her Majesty under the Royal Prerogative, as this also would involve an application of the cy-près doctrine. (In re Bennett, deceased (1960) 1 Ch. 18 distinguished.)
- (4) That if the Court were to hold as a matter of fact that the Guernsey Children's Aid Society had not been in existence at the death of the Testatrix, then the gift would lapse and as a residuary gift it would devolve as on an intestacy. (In re Ovey (1885) Ch. 560 followed.)

The Jurats found as a matter of fact that the Guernsey Children's Aid Society had not been in existence at the death of the Testatrix.

*[Comment: As the then Deputy Bailiff said in his judgment in this case any change in Guernsey Law to extend the equitable jurisdiction of the Royal Court to enable it to apply the cy-près doctrine was a matter for the legislature. The legislature has now done this. See section 54 of the Trusts (Guernsey) Law, 1989.]*

80. In re Collivet (deceased) (Plaids de Meubles 19.6.1978)

The deceased made a will leaving all his Guernsey real estate to the children of his illegitimate stepchild. His legitimate daughter and only child petitioned the Court to declare that she was the sole and rightful heir to the Guernsey real estate of her deceased father and to set aside the disposition contained in the will. It was held by the Deputy Bailiff that section 4(1) of the Law of Inheritance, 1954, did not permit of a

devise in favour of illegitimate stepchildren, and that accordingly the devise in the will was null and void.

*[Comment: This case is of limited interest as the Law was changed in 1979 to provide inter alia that such a devise would be valid. It is perhaps worth noting that the reasons for the change were not as a result of any perceived injustice in this decision but in order that the Island could become party to an international convention providing for non-discrimination against persons born out of wedlock. See the Law of Inheritance (Guernsey) Law 1979 (Ordres en Conseil, Vol. XXVI p. 146).]*

**[TO BE CONTINUED]**