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GUERNSEY LAW JOURNAL

FOURTEENTH ISSUE

Introduction

This edition covers the six month period from 1st July, 1992 to 31st December, 1992.

Also included in this edition is a comparative table of sources of the Theft (Bailiwick of Guernsey) Law, 1983, compiled by the draftsman, which it is hoped will be of interest. For the convenience of practitioners the Editorial Committee is prepared to waive its copyright in respect of this item so that copies may be taken for use in court or elsewhere.

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 will be cited using the figure and letters 14.GLJ. followed by the paragraph number.

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, 1992.

Editorial Committee

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30th April, 1993

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AGRICULTURE AND ANIMALS

1. Animal diseases

Ordinance: The Foot and Mouth and other Animal Diseases (Amendment) Ordinance, 1992. - Empowers the Agricultural and Milk Marketing Board to amend by order the maximum rates of compensation payable for slaughtered animals.

In force 30.9.92. (No. XXVIII of 1992).

Protection of animals

2. Order in Council: The Animal Experiments (Bailiwick of Guernsey) Law, 1992. - See 12.GLJ.2.

Royal Sanction 28.10.92. Awaiting registration.

3. Ordinance: The Protection of Animals (Amendment) Ordinance, 1992. - Increases fines for offences of cruelty; and empowers officers of police to enter land to investigate suspected offences and to be accompanied by other persons.

In force 30.9.92. (No. XXVI of 1992).

BANKING, INSURANCE AND FINANCE INDUSTRIES

Security interests

4. Projet de Loi: The Security Interests (Guernsey) Law, 1992. - See paragraph 56.

BUILDING LAW

5. Statutory Instrument: The Building Regulations, 1992. - Re-enacts the Building Regulations of 1956 with substantial updating to take account of modern building practices.

In force 1.3.93. (No. 27 of 1992).

CONSTITUTIONAL LAW

Election expenses

6. Ordinance: The Electoral Expenditure (Procureurs and Overseers of the Poor) Ordinance, 1992. - sets the maximum expenditure which may be incurred by candidates in elections for Procureurs and Overseers of the Poor at the same levels as the maximum for Constables' and Douzeniers' elections.

In force 29.7.92. (No. XVI of 1992).

Island Traffic Committee - transfer of functions

7. Ordinance: The Island Traffic Committee (Transfer of Functions) (No. 2) Ordinance, 1992. - Establishes the States Traffic Committee and transfers to that Committee the functions of the Island Traffic Committee, dissolved by resolution of the States of 29.7.92.

In force 29.7.92. (No. XXIV of 1992).

Note. - This Ordinance repeals and replaces the Island Traffic Committee (Transfer of Functions) Ordinance, 1992 (No. XXIII of 1992) which was made by the Legislation Committee on 29.7.92.

Legislative procedures

8. Projet de Loi: The Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992. - See paragraph 30.

People's Deputies - election

9. Ordinance: The People's Deputy (Saint Peter Port) Election Ordinance, 1992. - Appoints 20th January, 1993 for the election of a People's Deputy for Saint Peter Port.

In force 10.12.92. (No. XLI of 1992).

Review Board system

10. Order in Council: The Administrative Decisions (Review) (Amendment) (Guernsey) Law, 1992. - See 13.GLJ.6.

Royal Sanction 28.10.92. Awaiting Registration.

11. Projet de Loi: The Administrative Decisions (Review) (Guernsey) (Amendment) (No. 2) Law, 1992. - Amends the Law of 1986 by empowering the States Supervisor to refuse to refer a complaint to the Review Board if the complainant already has a right of appeal whether or not to a tribunal constituted under any enactment.

Approved 25.11.92. Awaiting Royal Sanction.

COURTS

Magistrate's Court

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

Registered and in force 25.8.92. (No. III of 1992).

CRIMINAL LAW AND PROCEDURE

Driving under the influence of drink or drugs - driving with excess alcohol - specimen of breath containing less than 50 ugs alcohol - right to provide sample of blood or urine - duty of police officer

13. A applied for leave to appeal against his conviction by the Magistrate, which had been upheld by the Royal Court, of driving with excess alcohol in his blood. He had given two specimens of breath, the lower of which was below 50 ugs of alcohol in 100 ml of breath. Accordingly, under section 3(8A) of the Road Traffic (Drink Driving) (Guernsey) Law, 1989, he was entitled to elect to provide an alternative specimen (of blood or urine) pursuant to section 3(5). A contended that the evidence of the States Analyst showing the proportion of alcohol in his blood was inadmissible because the police officer had failed to comply with the requirements of section 3 in that the his words had not satisfied the requirement to give A a fair opportunity to state his preference for one sample or the other. He had said (inter alia) ".....I have the right to choose whether it will be blood or urine. I propose to choose blood unless you give me a good reason why you should give urine instead.". He had then asked A whether he wished to give blood and then, having received an affirmative reply, asked whether there was any reason why he should not do so. HELD, the English authorities on the equivalent section (Hobbs v. Clark (1988) RTR 36 and DPP v Byrne (1991) RTR 119) showed that it was necessary for the officer to tell the person who had provided the samples of breath of both types of alternative specimen referred to in the section and to listen to what he had to say as to which type he would prefer to provide. However, having done that, it was for the police officer to make the decision which should be given. In the present case the police officer had satisfied these requirements and the application for leave to appeal would be dismissed.

[Law Officers of the Crown v. Kroon - Court of Appeal 3.8.92 (HMC/CMF)].

Note. - This case was decided before the decision of the House of Lords in DPP v Warren [1992] 3 WLR 884.

Drug trafficking

14. Order in Council: The Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992. - See 13.GLJ.16.

Royal Sanction 28.10.92. Registered 16.12.92. In force 13.1.93. (No. V of 1992).

Insider dealing

15. Statutory instrument: The Insider Dealing (Recognised Stock Exchange) Order, 1992. - Designates LIFFE as a recognised stock exchange for the purposes of the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1989.

In force 12.10.92. (No. 19 of 1992).

Sentence - misuse of drugs - importation of heroin and cannabis - impeding a search by a customs officer

16. A appealed against the sentences of imprisonment imposed upon him by the Royal Court for importation of over 45 grams of heroin (2 years), importation of over 3 grams of cannabis (2 months concurrent) and impeding a search by a customs officer by swallowing drugs after his arrival in Guernsey, contrary to section 5(b) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 (3 months consecutive). HELD by the Court of Appeal that the offence of importation of what was a considerable quantity of heroin, the first such offence to come before the Guernsey court, was serious and was entirely in line with the English cases. Further, the act of swallowing of drugs which had already been imported could not be treated as part of the original act of importation, so as to form part of the same transaction, and in all the circumstances the consecutive sentence was justified. The appeal would be dismissed.

[Law Officers of the Crown v. Church - Court of Appeal 3.8.93 (HMC/SRM)].

Sentence - misuse of drugs - possession of controlled drugs with intent to supply

17. A pleaded guilty to possession of 140 grammes of cannabis with intent to supply. He had obtained the drugs on behalf of various other persons, who paid him in advance, and retained some for his personal consumption. He was sentenced to 18 months' imprisonment. The activation of a suspended sentence of 1 month's imprisonment previously imposed for possession of cannabis and a further sentence of 3 months' imprisonment imposed shortly before the present conviction brought the total term to be served to 22 months' imprisonment. On appeal, HELD by the Court of Appeal, while A was a supplier, he was not a wholesaler supplying retailers and this particular form of supply would place him towards the bottom of the bracket of suppliers for sentencing purposes. A further factor was the total length of imprisonment taking into account the earlier sentences being the first term actually served by him. The sentence of 18 months would be reduced to 12 months.

[Law Officers of the Crown v. Machon - Court of Appeal 3.8.93 (HMC/ADNH)].

Sentence - possession of sawn-off shotgun

18. A appealed against two sentences of two years' imprisonment, to be served concurrently, for possession of a shortened shotgun without a firearms certificate and possession of a firearm by a prohibited person. HELD by the Court of Appeal, dismissing the appeal, that possession of such a weapon, particularly in the case of a defendant, such as A, with a bad record, was a serious offence and the sentence was fully justified.

[Law Officers of the Crown v. Peden - Court of Appeal 3.8.93 (HMC/ADNH)].

Serious fraud - power of Court to review decision of H. M. Procureur

19. A, a firm of accountants upon whom had been served an order of H. M. Procureur under section 1 of the Criminal Justice (Fraud Investigation)

(Bailiwick of Guernsey) Law, 1991 requesting information to be given in relation to an investigation, applied for judicial review of H. M. Procureur's decision. HELD by the Deputy Bailiff, dismissing the application, that the 1991 Law, which had been approved by the States, contained no provision for appeal against the decision of H. M. Procureur. There was no authority for judicial review of administrative decisions in Guernsey and H. M. Procureur was in any event an officer of the Court and it was not surprising that there was no power to review his decision in such cases.

[In re Moore Stephens - Plaids de Meubles 7.9.92 (IHB)].

DIVORCE AND MATRIMONIAL CAUSES

Magistrate's Court proceedings

20. Order in Council: The Domestic Proceedings and Magistrate's Court (Amendment) (Guernsey) Law, 1992. - See 12.GLJ.27 and 13.GLJ.22.

Registered and in force 25.8.92. (No. II of 1992).

DOCUMENT DUTY

Duty payable on share capital of limited liability company

21. Ordinance: The Document Duty Ordinance, 1992. - Introduces a ceiling of £5,000 for the document duty payable by reference to the nominal capital of a limited liability company. Accordingly, a company with an initial nominal capital in excess of £1,000,000 pays only £5,000 on registration of its memorandum; and a company registering a resolution to increase its nominal capital to a total of over £1,000,000 pays document duty of 0.5% only on the difference between its previous nominal capital and the figure of £1,000,000.

In force 9.12.92. (No. XL of 1992).

Legislative procedures

22. Projet de Loi: The Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992. - See paragraph 30.

EDUCATION

Special education

23. Ordinance: The Education (Amendment) (Guernsey) Law, 1987 (Commencement) Ordinance, 1992. - Brings into force on 1.12.92 the Law of 1987 (see 6.GLJ.93).

(No. XXXV of 1992).

ENVIRONMENTAL LAW

24. Statutory instrument: The Deposits in the Sea (Exemptions) Order, 1992. - Exempts a number of operations from the prohibition on dumping at sea imposed by the Food and Environment Protection Act, 1985.

In force 10.11.92. (No. 23 of 1992).

FIREARMS

25. Resolution of the States of 1.10.92. - Directing the preparation of legislation amending and updating the Firearms (Guernsey) Law, 1983 and the Ordinance of 1987 by controlling certain types of firearms, increasing the regulatory powers of the Chief Officer of Police and providing for increased insurance cover relating to firearms.

FISHING

26. Order in Council: The Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992. - See 11.GLJ.42 and 13.GLJ.27.

Registered and in force 25.8.92. (No. IV of 1992).

HORTICULTURE

Dutch Elm Disease

27. Ordinance: The Elms and Dutch Elm Disease (Repeal) Ordinance, 1992. - Repeals the 1981 Ordinance and consequently the provisions thereof relating to the reporting of dutch elm disease and the various control measures imposed thereby.

In force 1.10.92. (No. XXX of 1992).

HOUSING

Control of occupation

28. Ordinance: The Housing (Control of Occupation) (Extension) Ordinance, 1992. - Extends the duration of the 1982 Law until 31st October, 1993.

In force 29.10.92. (No. XXXIII of 1992).

INCOME TAX

Legislation

29. Order in Council: The Income Tax (Amendment) (Guernsey) Law, 1992. - See

13.GLJ.31, 34, 37 and 39.

Royal Sanction 28.10.92. Awaiting registration.

Legislative procedures

30. Projet de Loi: The Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992. - Enables tax legislation to be brought into effect on a provisional basis, by resolution of the States, pending any necessary sanction of Her Majesty in Council. Should Royal sanction subsequently be declined, provision is made for the restoration of the position prior to approval of the legislation.

Approved by the States 28.7.92. Royal Sanction 17.12.92. Awaiting registration.

Pensions

31. Resolution of the States of 10.12.92. - Directing the preparation of legislation governing the eligibility of members of the Public Servants and States Members Schemes to contribute to approved retirement annuity schemes; and facilitating transfers between such schemes and UK pensions schemes.

Reliefs and allowances

32. Resolution of the States of 29.7.92. - Directing the preparation of legislation to introduce an initial allowance of 30% on capital expenditure incurred on or after 1st January, 1991 by owners or lessors of premises used in hotel business.
33. Resolution of the States of 1.10.92. - Directing the preparation of legislation excluding persons not solely or principally resident in Guernsey from full personal allowances and extending proportional allowances to those persons.

INDIRECT TAXATION

Increase of rates

34. Ordinance: The Indirect Taxes, Duties and Impôts (Increase of Rates) (Budget) Ordinance, 1992. - Alters the rates of certain indirect taxes. The impôt on most tobacco products is increased whilst that on low alcohol wines is cut. Motor tax and trade licence tax are also increased.

In force 9.12.92 (as to part) and 1.1.93 (as to remainder). (No. XXXVIII of 1992).

Legislative procedures

35. Projet de Loi: The Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992. - See paragraph 30.

INSOLVENCY AND DÉSASTRE

Preferred debts

36. Order in Council: The Preferred Debts (Guernsey) (Amendment) Law, 1992. - See 13.GLJ.41.

Royal Sanction 28.10.92. Awaiting Royal Sanction.

INTERNATIONAL LAW

International Organisations

37. Projet de Loi: The Organisation for Economic Co-operation and Development (Bailiwick of Guernsey) Law, 1992. - Affords legal personality to the Organisation for Economic Co-Operation and Development; recognises its status; and affords privileges, immunities, exemptions and reliefs in relation to the OECD and its officers, to its members' representatives and to experts performing missions for it.

Approved by the States of Guernsey 30.9.92 and by the States of Alderney 4.11.92. Awaiting approval of the Chief Pleas of Sark.

38. Projet de Loi: the European Bank for Reconstruction and Development (Bailiwick of Guernsey) Law, 1992. - Affords legal personality to the European Bank for Reconstruction and Development; recognises its status; and affords privileges, immunities, exemptions and reliefs in relation to the EBRD and its Governors, Directors, Alternate Governors, Alternate Directors, officers and employees, and to experts performing missions for it.

Approved by the States of Guernsey 30.9.92 and by the States of Alderney 4.11.92. Awaiting approval of the Chief Pleas of Sark.

39. Projet de Loi: The Vienna Document (Privileges and Immunities) (Bailiwick of Guernsey) Law, 1992. - Confers diplomatic privilege on observers, evaluators and inspectors designated by foreign states for the purpose of the Vienna Document on Confidence and Security Building Measures of 1990.

Approved by the States of Guernsey 29.10.92 and by the States of Alderney 15.12.92. Awaiting approval of the Chief Pleas of Sark.

LAND LAW

Real property - termination of undivided ownership - partage or licitation - procedure

40. In 1990, PP and D acquired, by conveyance, a dwelling house accepting the premises as to an undivided two-thirds share in respect of PP and as to an undivided one-third share in respect of D. PP commenced an action requiring a licitation to bring this undivided ownership to an end. D

claimed that the property was capable of being divided up and therefore the proper procedure was for a partage to be ordered.

On the parties' application for directions, HELD by the Deputy Bailiff:

1. The licitation procedure and the partage procedure were two alternative routes for bringing an indivision to an end. Before a partage would be ordered the Jurats as judges of fact would have to decide whether or not it was practicable to divide the property up.
2. Pothier page 226 and Houard page 159 both referred to a licitation taking place when it was not possible to have a partage. There was in his judgment a presumption that when proceeding to divide up a property held in undivided ownership the preferred route was that of partage. Accordingly, it was for PP to satisfy the Court that the partage was not practicable and that licitation was the appropriate route. His view was supported by the Privy Council case of Le Boutillier v. De Lisle and Richards of 1832. D would prepare two lots and PP would choose which lot they would take. If necessary, a cash adjustment could be made. If PP wished to proceed with their application, therefore, they must produce evidence in support of their contention that partage was not a practicable solution.
3. On a separate point raised by D as to procedure, if a licitation was to be ordered it appeared from the Le Boutillier case that a licitation where the co-owners bid between themselves was only permissible if all the co-owners were agreeable to proceeding in that way. In default of agreement third parties would come in to bid at a public auction before Commissioners. He did not consider D's suggestion that a private treaty sale be ordered was a practicable alternative to public auction.

[Greening v. Zabiela - Plaids de Meubles (Interlocutory) 23.9.92 (MGF/JMW)].

PAROCHIAL MATTERS

Collection of refuse

41. Projet de Loi: The Parochial Collection of Refuse (Guernsey) (Amendment) Law, 1992. - Amends the principal Law of 1958 so as to allow a parish to which that Law applies to decide on which date annually the refuse rate for that parish shall become due.

Approved by the States 25.11.92. Awaiting Royal Sanction.

POLICE

Special constables

42. Resolution of the States of 25.11.92. - Directing the preparation of legislation to amend the Special Constabulary Ordinance, 1950 by adding a

new "C" Division of Special Constables with restricted powers related to their work as States' employees.

PRACTICE AND PROCEDURE (CIVIL)

Arrest - disclosure order - application by bank for the order to be discharged - banker's duty of confidentiality to client

43. P, an English financial services company, claimed that D, an Italian resident, owed them in excess of \$4,000,000 under an agreement for the investment of funds on behalf of D. Following unsuccessful negotiations to arrange for settlement of the debt P issued a writ in England against D on the 9th November, 1992. On the same day they instructed a local Advocate to obtain an arrest in respect of monies which they believed D had in accounts with B, a bank in Guernsey. Following the grant of such arrest P obtained a further order requiring B to disclose what funds they held on behalf of D and, when B indicated that it held no funds on behalf of D, P applied for a further order ex parte on 10th December requiring B to disclose certain information relating to movements on D's accounts since the day on which P claimed to have first formally demanded payment.

On B's application for the discharge of the order of the 10th December, HELD by the Deputy Bailiff:

1. Following the English case of Bankers Trust Co. v. Shapira [1983] AER 353 a bank could only be ordered to disclose documents and correspondence relating to the operation of a customer's account when there was good ground for thinking that the money in the bank was P's money, as for instance when the customer had acquired the money by fraud or other wrongdoing and paid it into his account at the bank. In this case there was no allegation of fraud or wrongdoing and therefore the bank should not be required to breach its obligations of secrecy and confidence towards D.
2. That in the present state of the law the Court could not take upon itself the power to order disclosure simply because money had been removed from the jurisdiction in anticipation of a possible arrest order.
3. Consequently his order of 10th December, 1992 would be discharged.

[Morgan Stanley International v. Puglisi - Banque Belge (Guernsey) Limited intervening - Plaids de Meubles (Interlocutory) 23.12.92 (JPG/EAGP)].

Recusation de juge - grounds

44. A, a company, brought an action against the States of Guernsey and applied, as a preliminary matter, for the proceedings, including the recusation itself, to be heard by an English judge. A alleged, inter alia, that the Bailiff should not hear the matter because he was acquainted with a director of A and because he was President of the States. HELD by the Bailiff -

1. that he considered that it was appropriate for him to hear the application in order that he might give his views which could, if necessary, be reviewed by the Court of Appeal;
2. that he was not embarrassed or affected by his acquaintanceship with A's director : such a situation was inevitable in a small community and would not affect his undertaking of the duties of a judge;
3. that, in relation to the constitutional issue, his first duty in exercising his functions in the Royal Court and the States was to the Crown and he did not espouse causes of the States;
4. there could be some circumstances where the Bailiff's or Deputy Bailiff's previous rôle as Her Majesty's Procureur might cause him to view himself as disqualified from sitting on a particular case, such as where he had given advice to the States on the matter in issue;
5. generally, the only real grounds of objection on the authorities were that the judge, his close friends or relatives had a pecuniary or other interest in the matter or where he had a strong tie of friendship or was a member of a close organisation in which he had occasion to espouse a common cause.

The application would be dismissed.

[Bordeaux Vineries Limited v. the States of Guernsey - Plaids de Meubles 13.11.92 (CMF/HER)].

Registration of interlocutory act - application to order vacation without payment into court where sale proceeds alleged to be insufficient to pay off prior registries

45. In 1990 BB bought a house with the assistance of a bank loan secured by a bond. They then arranged to have some building work done on the property by P1 and P2, who were not paid. Individually they issued proceedings in February 1991. The proceedings were defended. In July 1991 P1 and P2 each registered, with permission of the Court, the Acts of Court placing the actions against BB on the pleading list. BB, who now wished to sell the property, applied to lift both registrations without paying any money into court as security for the two claims, arguing that the sale proceeds would be insufficient to pay off their indebtedness to the bank; and they called evidence from an estate agent that the sale price was fair despite the fact that it was much less than what they had paid two years previously. BB further argued that to order the payment of any money into Court would prejudice the rights of the bank as first registered creditor who on the figures before the Court would clearly suffer a loss on this loan. On behalf of P1 and P2 it was argued that to accede to the application would prejudice P1 and P2 who, if a saisie was to be put in motion, would have the opportunity of investigating further the possibility of a purchaser being found for the property at a price that would mean that some payment of their claims could be made.

HELD by the Deputy Bailiff:

1. Under the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987, the Court is given a wide discretionary power in matters such as these.
2. On the evidence that he had heard he was attracted to the argument that the property was not worth anything near the figure that would be required to pay off the bank and that if he were to order that security for the claims of P1 and P2 be paid into Court he could be giving them a preference to which they would not be entitled in the normal course of events.
3. However, the bank could be obtaining a substantial benefit as a result of proceeding in the way proposed in that the bank would be able to look to other assets of BB to satisfy the shortfall. This would not be the case if they were to proceed to saisie because under Guernsey Law once a creditor obtained a preliminary vesting order he elected to proceed against the real estate of the debtor and was precluded from making any claim against the personal estate in the event that the final proceeds of sale were less than the amount of the indebtedness.
4. Accordingly, he would only direct H.M. Greffier to vacate the registries in favour of P1 and P2 on BB's advocate's undertaking to place in the joint account of his firm and that of P1 and P2's advocate a sum representing the amount of the two claims and security for costs in each case pending their obtaining judgment against BB. To meet the point of unfair preference in respect of these claims BB and/or the bank would be at liberty to apply to the Court for release of these funds to the bank in priority to any amount due under such judgments in the event that they could satisfy the Court that the bank had not been able to obtain full payment from other sources.

[Brown v. De Carteret and Vivyan: Plaids de Meubles (Interlocutory) 22.12.92 (RPO/CMF)].

Security for costs - principles upon which the Court acts - Rule 3(3) of the Royal Court (Costs and Fees) Rules 1990

46. P, a US Corporation (acting through its liquidator) which had been used to perpetrate an alleged fraud on investors in America sued D, a Liberian Corporation with a presence and assets in Guernsey, which was alleged to have received some of the proceeds of the fraud on behalf of one of the fraudsters. D applied for security for costs. In its draft bill D had applied a multiplier of 4 to the various proceedings or matters referred to in Rule 3(3) of the Royal Court (Costs and Fees) Rules, 1990. It further claimed for the Advocates' fees for the trial and substantial travelling expenses for the likely witnesses. P, referring to the notes on Rule 23 of the Rules of the Supreme Court, submitted that the Court had a discretion as to whether or not to award security for costs and that, relying on evidence in the form of a judgment of the Kansas Court against the alleged fraudsters and certain documents seized from the local representatives of D, there was a strong likelihood that P would succeed, alleging that this was a factor which militated against any order for

security for costs being made.

HELD by the Deputy Bailiff that -

1. This was a case involving tracing money which had passed through a number of jurisdictions into the hands of D and that it was not possible at this stage to take the view that the likelihood of P's succeeding was so strong that no order for security for costs should be made.
2. The Court should be cautious about forming a view as to the eventual success of an application under Rule 3(3) and only in exceptional circumstances would it be appropriate to include a multiplier in the draft bill of costs when making application for security.
3. The application for security of costs in respect of the trial and the witness expenses should stand over until such time as the matter was placed on the witness list. P would have to lodge security for the listed items to cover matters arising before trial, but only in the sums provided for in the Rules without applying any multiplier. P should lodge security within two weeks and defences should not be called for until at least two weeks after security had been lodged.

[Cultivator Farms Inc. and another v. Balestra Inc. Plaids de Meubles (Interlocutory) 1.9.91 (RPB/JPG)].

PRISON

Parole

47. Resolution of the States of 30.9.92. - Directing the preparation of legislation implementing minor changes to the composition of the Parole Review Board and reducing the minimum period which a person has to serve before becoming eligible for parole to one quarter of his sentence or 6 months (whichever is greater).

PUBLIC ASSISTANCE

48. Ordinance: The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 1992. - Increases rates of outdoor assistance.

In force 26.11.92. (No. XXXVII of 1992).

RATING

Tax on Rateable Value

49. Ordinance: The Tax on Rateable Value (Amendment) (Guernsey) Ordinance, 1992. - Increases the rates at which the tax is to be assessed (in the

case of domestic premises, to £1.10 per pound).

In force 9.12.92. (No. XXXIX of 1992).

ROAD TRAFFIC AND PUBLIC TRANSPORT

Driving tests - fees

50. Ordinance: The Driving Tests (Increase of Fees) Ordinance, 1992. - Increases fees payable prior to taking a test for a permit to drive various vehicles.

In force 5.10.92. (No. XXV of 1992).

Island Traffic Committee - transfer of functions to States Traffic Committee

51. Ordinance: The Island Traffic Committee (Transfer of Functions) (No. 2) Ordinance, 1992. - See paragraph 7.

Offences - penalties

52. Ordinance: The Vehicular Traffic (Amendment) Ordinance, 1992. - Amends the penalties for careless driving contained in Article V(2) of the "Ordonnance relative au Trafic Véhiculaire" of 2nd March, 1929, as amended. Accordingly, a first offence is now punishable by a fine not exceeding level 3 on the uniform scale and a second or subsequent offence by a fine not exceeding level 4. These penalties apply only to offences committed after the Ordinance came into force.

In force 30.9.92. (No. XXIX of 1992).

Prohibited and One-Way Streets

53. Ordinance: The Prohibited and One-Way Streets (Amendment) (No. 2) Ordinance, 1992. - Makes various amendments to Schedules 1 and 2 of the principal Ordinance.

In force 30.9.92. (No. XXVII of 1992).

Public transport

54. Resolution of the States of 29.10.92. - Directing the preparation of legislation amending the Public Transport Ordinance, 1986 and the Road Traffic (Permits to Drive Public Service Vehicles) Ordinance, 1986 to permit the States Traffic Committee to operate and licence various public transport services.

Road humps

55. Ordinance: The Road Humps Ordinance, 1992. - Gives statutory approval to

the 21 road humps at Les Genats Estate.

In force 25.11.92. (No. XXXIV of 1992).

SECURITY INTERESTS

56. Projet de Loi - The Security Interests (Guernsey) Law, 1992. - Addresses the questions of obtaining and enforcing security over intangible moveable property by -
- establishing more directly expressed, clearly recognised methods of obtaining and enforcing such security pursuant to specific written security agreements;
 - seeking to remove any residual doubt surrounding the law of set off;
 - declaring, again for the removal of doubt, the capacity of Guernsey companies and individuals to give security governed by foreign Law.

This Projet does not purport to effect significant changes of substance to the law of Guernsey, but only to establish a statutory framework within which the principles of the customary law can be applied with confidence to modern commercial circumstances.

The Projet sets out four methods by which a security interest may be created in moveable property which is intangible. "Leases" are the only type of intangible moveable property excluded from its ambit. The universally available method is for the secured party to obtain title to the collateral pursuant to a security agreement; such title may be obtained by delivery with any necessary endorsement in the case of a bearer certificate or negotiable instrument, but in any other case there must be an assignment with notice. Securities and life assurance policies may be made subject to a security interest through a security agreement giving to the secured party (or to some person on his behalf other than the debtor) possession of the documents of title thereto, as in the case of a pledge. Finally, a security agreement may create a security interest in a bank account in favour of the bank by giving control over the account to the bank.

Common to these methods of creating a security interest is the requirement for a written, dated security agreement containing specified particulars. The creation of subsequent security interests is quite possible under this system if the first secured party is prepared to hold the collateral or evidence of title to it on behalf of somebody else as well as on his own behalf, and priority in such a case is determined by the order of creation, subject to any agreed postponement.

On a debtor's insolvency or désastre, the Projet affords priority to the secured party's claim where title is not vested in him and makes it clear that his rights are unaffected; the arresting creditor in a désastre can apply for those rights to be vested in him, but H.M. Sheriff must deal with the collateral as in the case where a power of sale or application is exercised (see below).

A secured party to whom the secured obligation has been performed must return the collateral and provide a certificate of discharge in prescribed form. This is subject to any contrary agreement, for example where a new obligation is envisaged or where the security is for an overdraft.

Where the secured party does not comply despite performance of the obligation, or where the collateral is arrested or winding-up proceedings are commenced against the secured party and the debtor has promptly tendered full discharge of his obligations, the Court is given wide powers, including a power to award damages which have priority over all unregistered debts.

Upon the occurrence of an event specified in a security agreement as an event of default a power of sale or application arises. The event of default must be notified to the debtor before the power can be exercised, and if, pursuant to the agreement, the authority of a Court order is required, then the Court may impose conditions and may order the debtor to take any steps necessary for its effective execution. Where the power arising is one of sale the sale must take place within a reasonable time and at the market or best obtainable price; and the order in which the proceeds must be applied is set out. A power of application must be exercised on the same basis. A power may be exercised in respect of all or part of the collateral.

A security interest terminates when the conditions of its creation cease to exist, when the Court so orders or, unless express provision is made to the contrary (for example in the instances mentioned above), when the secured obligation is discharged, paid or performed.

As respects set-off agreements, which may continue to play a role in relation to security and are in any event important in the ordinary course of commerce, the Projet recasts section 1(1) of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979, firstly, to include a more explicit statement that only the difference between the mutual debts is capable of enforcement or susceptible to any other action at any time (and not just by reference to the position on insolvency); and secondly, to dispel any residual doubts about how the 1979 Law fulfils its intention in relation to contingent and future liabilities which may be the subject of a set-off agreement.

The Projet includes another avoidance of doubt provision, designed in this case to overcome any suggestion that a Guernsey resident individual or company has no capacity to give security over foreign assets under foreign law by a method not permitted under Guernsey Law.

Amongst the saving provisions, as well as the rights of holders in due course of negotiable instruments, bona fide purchasers of securities, and takers of certificates of deposit, the Projet gives specific recognition to the important principle that *nemo dat quod non habet* and ensures respect for the rules on fraudulent preferences. The Projet is not intended to establish exclusive means of obtaining security and contains provisions designed to make this quite clear.

Subject to Royal sanction the Projet will come into force on the day after its registration and will thereafter apply in relation to agreements entered into on or after 10th December, 1992, when the States approved it.

Approved by the States 10.12.92. Awaiting Royal sanction.

SHIPPING

Pilotage

57. Ordinance. - The Pilotage (Amendment) Ordinance, 1992. - Makes various changes in the legislation governing the pilotage of vessels. In addition to a number of updating provisions and minor modifications,
- pilotage becomes compulsory for all vessels, other than British naval ships, which are longer than 131 metres or are carrying explosives in bulk;
 - the exemption for freight vessels of less than 40 gross registered tons is replaced by overall length exemptions which vary according to where the vessel is navigating; and the same tests are applied to licensed passenger boats and local motor vessels;
 - mercantile, supply and support vessels are removed from the exemption for vessels controlled by British Government departments;
 - the pilotage zone and roadstead areas are clarified;
 - the requirement for pilots to take an oath is abolished; and
 - no further special pilotage licences are to be granted for St. Sampson's.

In force 1.11.92. (No. XXXII of 1992).

SOCIAL SECURITY

Attendance and invalid care allowance

58. Ordinance: The Attendance and Invalid Care Allowance Ordinance, 1992. - Increases the weekly rates of such allowances.

In force 2.11.92. (No. XXXI of 1992).

Social insurance - rates of contributions and benefits

59. Ordinance: The Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 1992. - Prescribes new upper earnings limits for social insurance contributions; new rates of such contributions; new rates and amounts of benefits; and the amount of the Allocation to be paid by the

States into the Social Insurance Fund.

In force 2.11.92 (as to part) and 1.1.93 (as to the remainder). (No. XXII of 1992).

Social insurance - reciprocal agreements

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

In force 29.6.92. (No. XVII of 1992).

61. Ordinance: The Social Insurance (Reciprocal Agreement with Great Britain etc.) (Amendment) Ordinance, 1992. - Amends the Convention with Great Britain set out in the 1979 Ordinance.

In force 27.7.92. (No. XVIII of 1992).

Supplementary benefit

62. Ordinance: The Supplementary Benefit (Implementation) (Amendment) Ordinance, 1992. - Amends the principal Ordinance of 1971 by increasing the limits of income below which benefit is payable and the weekly requirements for the different categories of claimant.

In force 6.11.92. (No. XX of 1992).

WATER

63. Ordinance: The Water Charges (Amendment) Ordinance, 1992. - Increases water charges with effect from 1.7.92.

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

GUERNSEY STATUTORY INSTRUMENTS

64. 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 Disposal of Explosives (Exemption) Order, 1992	11.
The Milk (Retail Prices) (Guernsey) Order, 1992	12.
The Income Tax (Guernsey) (Purchased Life Annuities) (Amendment) Regulations, 1992	13.
The Animal Products Importation (Amendment) Order, 1992	14.
The Parking Places (Amendment) Order, 1992	15.
The Social Insurance (Contributions)(Amendment) Regulations, 1992	16.
The Social Insurance (Classification)(Amendment) Regulations, 1992	17.
The Social Insurance (Increase of Benefit) Regulations, 1992	18.
The Insider Dealing (Recognised Stock Exchange) Order, 1992 (see paragraph 15)	19.
The Parking Places (Amendment) (No. 3) Order, 1992	20.
The Post Office (Postal Order) (Amendment) Order, 1992	21.
The Fixed Penalties Order 1992	22.
The Deposits in the Sea (Exemptions) Order, 1992 (see paragraph 24)	23.
The Parking Places (Amendment) (No.4) Order, 1992	24.
The Fishing (Penalties)(Bailiwick of Guernsey) Order, 1992	25.
The Impôts (Temporary Variation of Rates) Order, 1992	26.
The Building Regulations, 1992 (see paragraph 5)	27.
The Income Tax (Guernsey) (Annuity Scheme Contribution Limits) Regulations, 1992	28.
The Data Protection (Fees) (Amendment) Regulations, 1992	29.
The Fixed Penalties (No. 2) Order 1992	30.

UNITED KINGDOM STATUTORY INSTRUMENTS

65. 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.

	S. I. Number
The Summer Time Order 1992	1729
The Social Security (Jersey and Guernsey) Order, 1992	1735
The Merchant Shipping (Categorisation of Registries of Overseas Territories) Order, 1992	1736
The Wireless Telegraphy (Cordless Telephone Apparatus) (Exemption) Regulations, 1992	2008

ALDERNEY

BANK HOLIDAYS

66. Ordinance: The Bank Holidays (Alderney) Ordinance, 1992. - Declares Monday, 28th December, 1992 a bank holiday.

(Ordinance of the States of Alderney of 15.12.92).

BUILDING AND DEVELOPMENT CONTROL

Application for building permit - successful appeal against refusal to grant - effect

67. In November, 1990, RR successfully appealed to the Court of Alderney under section 21 of the Building and Development Control (Alderney) Law, 1975 against the decision of the Building and Development Control Committee refusing their application for a permit to construct a dwelling. In April, 1991, no permit having been issued, RR further applied to the Court of Alderney who ordered the Committee to issue a permit, holding (inter alia) that where such an appeal was successful the Committee should not delay or refuse to issue a permit consistent with the original application and that the Committee had acted in bad faith. The Committee appealed to the Royal Court. HELD by the Bailiff that the process of considering the issue of a permit was a two fold one. Firstly, the Committee must consider the merits of development on the site in question and then, secondly, the Committee must comply with any restrictions prescribed by the States of Alderney under section 14 of the 1975 Law upon the number of permits to be issued. The subject matter of the successful appeal of November, 1990 involved "stage one" of this process and would not automatically lead to the grant of a permit. There was no ground for imputing faith on the part of the Committee and the Committee's appeal would be allowed. The Bailiff also observed, *obiter*, that the power of the States in section 14(1) to limit the number of permits that may be granted by the Committee could not be construed as conferring upon the States the power to discriminate in favour of certain classes of resident to the detriment of others. When applications had been submitted and passed the first stage of the process such applications should be dated and permits granted in strict date order up to the limit contained in the States Resolution.

[States of Alderney Building and Development Committee v. Partridge - Requête and Appeals to the Royal Court 7.9.92 (HER/RJC)].

Legislation

68. Projet de Loi: The Building and Development Control (Amendment) (Alderney) Law, 1992. - Redefines "development" for the purposes of the Building and Development Control Law of 1975 so as to include, in relation to buildings which are registered or which are in a conservation area under the Historic Buildings and Ancient Monuments (Alderney) Law, 1989, any work (by way of maintenance or otherwise) which may affect the

external character and appearance of the building. Makes other minor modifications.

Approved by the States of Alderney 15.12.92. Awaiting Royal Sanction.

CONSTITUTIONAL LAW

States of Alderney

69. Rules of Procedure of the States of Alderney, 1992. - Re-enact, with modifications, the existing rules of procedure of the States. New provisions include the power to suspend any one rule for a stated purpose and the power to eject a member of the States or the public whose conduct is grossly disorderly or, where such power is considered by the President to be inadequate, to suspend a member from the meeting.

Approved and in force 8.7.92.

CRIMINAL LAW AND PROCEDURE

70. Projet de Loi: The Corruption (Alderney) Law, 1992. - Creates a statutory offence of corruption in public office. The corrupt receiving and soliciting by, and the corrupt giving and offering to, public servants of any advantage in respect of the performance of their public functions is prohibited.

Approved by the States of Alderney 15.12.92. Awaiting Royal Sanction.

EDUCATION

71. Ordinance: The Alderney (Application of Legislation) (Education) Ordinance, 1992. - Applies the Education (Amendment) (Guernsey) Law, 1987 (see paragraph 23) to Alderney.

(No. XXXVI of 1992).

FIREARMS

72. Ordinance: The Dangerous Weapons (Amendment) (Alderney) Ordinance, 1992. - Allows visitors to the island to possess certain weapons and ammunition in order to compete in competitions without holding a weapons certificate.

In force 8.7.92. (Ordinance of the States of Alderney of 15.7.92).

PUBLIC HEALTH

Sewerage

73. Ordinance: The Sewerage (Contributions) Ordinance, 1992. - Increases to 4 the factor of the annual rateable value of buildings for the purpose of

determining the contribution to be paid under the Sewerage (Alderney) Law, 1970.

(Ordinance of the States of Alderney of 2.9.92).

RATING

Occupiers Rate

74. Ordinance: The Occupiers Rate (Level of 1993) Ordinance, 1992. - Sets the level of rate for 1993 at a level of 142 pence in the pound.

(Ordinance of the States of Alderney of 15.12.92).

ROAD TRAFFIC

75. Ordinance: The Alderney Road Traffic and Public Highways (Amendment) Ordinance, 1992. - Transfers certain functions from the Public Works Committee to the Alderney Transport Committee.

(Ordinance of the States of Alderney of 2.9.92).

SOCIAL SECURITY

Supplementary benefit

76. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) Ordinance, 1992. - Applies the Supplementary Benefit (Implementation) (Amendment) Ordinance, 1992 (see paragraph 62) to Alderney.

In force 6.12.92. (No. XXI of 1992).

TRUSTS

Variation of trust

77. Order in Council: The Saint Anne's Trust (Alderney) Law, 1992. - See 13.GLJ.67.

Royal Sanction 28.10.92. Awaiting registration.

WATER

78. Ordinance: The Alderney Water (Restrictions) (Amendment) Ordinance, 1992. - Increases the level of fines for contravention of water restrictions.

(Ordinance of the States of Alderney of 2.9.92).

79. Ordinance: The States Water Supply (Rates of Charge) (Alderney) Ordinance, 1992. - Increases rates of charge for water for 1993.

(Ordinance of the States of Alderney of 7.10.92).

SARK

FISHING

Parlour pots

80. Ordinance: The Fishing (Parlour Pots) (Sark) Ordinance, 1992. - Prohibits the use, or the carrying on a vessel, in Sark waters of parlour pots, as defined.

In force 1.11.92. Approved by Chief Pleas 14.7.92.

ROAD TRAFFIC AND PUBLIC TRANSPORT

81. Resolution of Chief Pleas of 14.7.92: Directing preparation of legislation consolidating with amendments the legislation relating to road traffic and public transport, including the issuing of vehicles licences (including bicycles and horsedrawn vehicles), driving tests, speed limits, taxation of vehicles, importation of vehicles, driving offences and penalties, parking and regulation of the Harbour Hill transport system.

THEFT (BAILIWICK OF GUERNSEY) LAW, 1983

The following table, prepared by the draftsman and updated to take into account the amendment of section 31 by the Administration of Justice (Bailiwick of Guernsey) Law, 1991, shows the sources of the Theft (Bailiwick of Guernsey) Law, 1983 (Vol. XXVIII, p.5).

[Note: Unless otherwise stated references in the column headed "Source" are to provisions of the Theft Act 1968].

The following abbreviations are used:-

- AR = Adoption Rules 1961. (ORC No. I of 1961).
- CJA = Criminal Justice Act 1972.
- CLA = Criminal Law Act 1967.
- CLA/77 = Criminal Law Act 1977.
- CPA = Criminal Procedure Act 1851.
- FA = Firearms Act 1968.
- LA = Larceny Act 1916.
- LL = Larceny (Guernsey) Law, 1958. (Vol. XVII, p.308)
- MD = Misuse of Drugs (Bailiwick of Guernsey) Law, 1974. (Vol. XXIV, p.273)
- RTA = Road Traffic Act 1972.
- TA/78 = Theft Act 1978.

<u>Law</u>	<u>Source</u>	<u>Law</u>	<u>Source</u>
1(1) - (3)	1(1) - (3)	12(1)	12(1)
2(1) - (2)	2(1) - (2)	12(2)	12(2)
3(1) - (2)	3(1) - (2)	12(3)	12(4)
4(1) - (4)	4(1) - (4)	12(4)	12(5)
5(1) - (5)	5(1) - (5)	12(5)	12(6)
6(1) - (2)	6(1) - (2)	12(6)	12(7)
7	7	13	13
8(1) - (2)	8(1) - (2)	14(1)	14(1)
9(1) - (4)	9(1) - (4)	14(2)	14(3)
10(1)	10(1); FA 57(1)	15(1) - (4)	15(1) - (4)
10(2)	10(2)	16(1)	16(1)
11(1) - (4)	11(1) - (4)	16(2)	16(2); TA/78 5(5)

<u>Law</u>	<u>Source</u>	<u>Law</u>	<u>Source</u>
16(3)	16(3)	33(1) - (3)	28(1) - (3);
17(1) - (2)	TA/78 1(1) - (2)		CJA 64(1);
17(3)	TA/78 5(1)		CLA/77 65
17(4)	TA/78 4(2)(a)	33(4)	28(4)
18(1)	TA/78 2(1)	33(5)	28(6)
18(2)(a)	TA/78 5(1)	34(1) - (5)	CJA 6(1) - (5)
18(2)(b)	TA/78 2(2)	34(6)	LL 43(1)
18(3) - (4)	TA/78 2(3) - (4)	35(1)	CLA 6(3)
18(5)	TA/78 4(2)(a)	35(2)	CLA 6(4)
19(1) - (2)	17(1) - (2)	35(3)	CLA 6(7)
20(1)	18(1); TA/78 5(1)	36	LL 35; LA 35
20(2)	18(2)	37(1) - (3)	CLA 4(1) - (3)
21(1) - (3)	19(1) - (3)	38(1) - (2)	LL 36(1) - (2);
22(1) - (2)	20(1) - (2)		CPA 9
22(3)	20(3); LL 7	39	LL 37(4)
23(1) - (3)	21(1) - (3)	40(1) - (2)	32(1) - (2)
24(1) - (4)	TA/78 3(1) - (4)	41	(Repeals etc.)
24(5)	MD 23(2)	42(1) - (2)	34(1) - (2)
24(6)	TA/78 4(2)(b)	42(3) - (4)	LL 43(2) - (3)
25(1) - (2)	22(1) - (2)	43(1) - (3)	35(1) - (3)
26	23	44	(Citation)
27(1) - (4)	24(1) - (4)	Schedule	(Consequential amendments)
28(1) - (3)	25(1) - (3)		
28(4)	25(5)		
29	Sched. 1 para 2.		
30	RTA 93(2)		
*31(1) - (4)	LL 39 (1) - (4); LA 42 (1) - (2)		
31(5)	LL 43(1)		
31(6)	26(5)		
32(1) - (5)	27(1) - (5)		
32(6)	AR 1(1)		

* As amended by section 9 of the Administration of Justice (Bailiwick of Guernsey) Law 1991 (No. I of 1991).