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GUERNSEY LAW JOURNAL

TWENTY-THIRD ISSUE

Introduction

This edition covers the six month period from 1st January to 30th June 1997.

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 in future issues will be cited using the figure and letters 23.GLJ. followed by the paragraph number.

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Compiled from sources including all Orders in Council, Ordinances, Projets de Loi and subordinate legislation and selected cases and other relevant material which became available during the months January to June 1997.

1st February, 1999

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GUERNSEY

ADMINISTRATIVE LAW

1. Judicial Review - jurisdiction to review administrative decisions generally and decisions of H.M. Procureur under the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991 in particular

See Century Holdings Ltd v H.M. Procureur, paragraph 32.

ADOPTION

2. Order in Council: The Adoption (Amendment) (Guernsey) Law, 1997. - See 22.GLJ.1.

Royal Sanction 19.3.97. Registered and in force 29.4.97. (No. VIII of 1997).

3. Ordinance: The Alderney (Application of Legislation) (Adoption) Ordinance, 1997. - Extends the Adoption (Amendment) (Guernsey) Law, 1997 (see 22.GLJ.1), which enables the Children Board to make regulations to pay adoption allowances, to Alderney.

In force 25.6.97. (No. XXI of 1997).

APPEALS

Appeal to Privy Council - application for leave to appeal - conditions imposed

4. See Vekaplast Windows (C.I.) Ltd v. Jehan & Jehan, paragraph 52.

ARBITRATION

Stay of proceedings - arbitration clause - defence pleading res judicata - whether a 'step' in the proceedings - Arbitration (Alderney) Laws 1983 and 1986, s.5(1)

5. Section 5(1) of the Arbitration (Alderney) Laws 1983 and 1986 provides that a party to an arbitration agreement could apply for a stay of legal proceedings after appearance and after inscription on the Pleading List but before delivering any pleadings or taking any other steps in the proceedings.

P sued D1 and D2, respectively an architect and building contractor, for the negligent construction of a basement to his house in Alderney. The summons particularised the alleged breaches of duty and damage in detail. The defences were also detailed and, inter alia, referred to arbitration proceedings which had commenced in England but which had been settled prior to the arbitration hearing, claiming that the action in Alderney was an abuse of process; alternatively, that the matters raised in it were res

judicata. D2 also sought, and was granted by the Alderney Court, a stay of the proceedings. On appeal by P to the Royal Court, HELD by the Deputy Bailiff that, by filing defences and pleading that P was estopped from bringing the action by virtue of the earlier arbitration in England, D2 had taken a step in the proceedings. The matter would be remitted to the Alderney Court for determination of the issue of estoppel so raised.

(Per curiam: (i) A defendant seeking a stay in these circumstances must come to the Court and unequivocally elect for the Court either to proceed or to do nothing but refer the matter to arbitration; and (ii) although it was not necessary to decide whether the arbitration agreement was domestic or non-domestic, the Court would need to be persuaded that an agreement between parties resident in Alderney concerning property situated in Alderney could be other than a domestic arbitration agreement notwithstanding a stated choice of foreign law: Driffield Estates v. Blanchard Building Supplies Ltd - Plaid de Meubles 24.2.84. considered).

[Schneider v. Partridge & Bohan - Requête and Appeals to the Royal Court 15.5.97 (AMM/NLeP)].

BANKING, INSURANCE AND FINANCE INDUSTRIES

Insurance business

6. Order in Council: The Insurance Business (Financial Guarantee Insurance : Special Provisions) (Guernsey) Law, 1996. - See 22.GLJ.4.

Registered and in force 20.1.97. (No. XIII of 1996).

7. Order in Council: The Insurance Business (Amendment) (Guernsey and Alderney) Law, 1997. - See 22.GLJ.5.

Registered 4.3.97. In force 11.3.97. (No. III of 1997).

8. Ordinance: The Financial Guarantee Insurance (Peak International Limited) Ordinance, 1997. - Makes Peak International Limited (a company incorporated in Guernsey) a designated financial guarantee insurer for the purposes of the Insurance Business (Financial Guarantee Insurance : Special Provisions) (Guernsey) Law, 1996 (see 22.GLJ.4) and subject to special supervision, as part of its statutory functions, by the Financial Services Commission. The company is only entitled to carry on business in accordance with a licence, and detailed provision is made as to resources, reserves and exposure limits, the preparation, filing and audit of accounts, and the conduct of the company's business.

In force 1.5.97. (No. XV of 1997).

Investment business

9. Order in Council: The Protection of Investors (Amendment) (Bailiwick of Guernsey) Law, 1997. - See 21.GLJ.6.

Approved by the States of Alderney 9.7.96 and by the Chief Pleas of Sark 2.10.96. Royal Sanction 12.2.97. Registered 4.3.97. (No. II of 1997).

Lloyds TSB Merger

10. Projet de Loi: The Lloyds TSB (Guernsey and Alderney) Law, 1997. - Makes provision for the transfer to and vesting in Lloyds TSB Bank (Guernsey) Limited (a Guernsey registered company) of -
- (a) the undertakings of the Guernsey and Alderney branches and offices of Lloyds Bank Plc and TSB Bank Channel Islands Limited (a Jersey registered company); and
 - (b) the rights and obligations of the Guernsey and Alderney branches and offices of Lloyds Bank Plc and TSB Bank Channel Islands Limited and any subsidiary of either of them registered in the island of Guernsey under any contract of employment governed by Guernsey or Alderney law.

The transfer will be effective on a day to be appointed by Ordinance.

Approved by the States 28.05.97. Awaiting Royal Sanction.

National Westminster Bank

11. Projet de Loi: The National Westminster Bank (Bailiwick of Guernsey) Law, 1997. - Provides for the transfer of the Bailiwick undertakings of National Westminster Bank Plc and Coutts Financial Services Limited (a private company incorporated in Jersey) to NatWest Offshore Limited (formerly Isle of Man Bank Limited), a company incorporated in the Isle of Man. The transfer will be effective on a day to be appointed by Ordinance.

Approved by the States 26.02.97. Awaiting Royal Sanction.

CHILDREN AND YOUNG PERSONS

Adoption

12. Order in Council: The Adoption (Amendment) (Guernsey) Law, 1997. - See paragraph 2.
13. Ordinance: The Alderney (Application of Legislation) (Adoption) Ordinance, 1997. - See paragraph 3.

Alderney - application and extension of legislation

14. Order in Council: The Child Protection (Amendment) (Guernsey) Law, 1997. - See 22.GLJ.7.

Royal Sanction 12.2.97. Registered and in force 4.3.97. (No. V of 1997).

15. **Projet de Loi: The Children and Young Persons (Amendment) (Guernsey) Law, 1997.** - Amends the Children and Young Persons (Guernsey) Law, 1967 so as to make all its provisions, subject to the exceptions, adaptations and modifications specified in Part I of the Fourth Schedule to the 1967 Law (substituted by the Schedule to this Law), applicable in Alderney. Initially, the Law Officers will have the power to make a place of safety order, after which the Court of Alderney will be seized of the case and empowered to make interim orders for up to 28 days at a time. When it thinks it appropriate, the Children Board may apply to have the case transferred to the Juvenile Court or ask the Court of Alderney to make a supervision order or take a parental recognisance. The proceedings before the Court of Alderney are to be held in camera. The Juvenile Court is empowered to issue witness summonses in respect of persons resident in Alderney and, in the event of non-compliance, arrest warrants to secure their attendance. Part II of the 1967 Law (Children and Young Persons in need of Care, Protection or Control) is not applied to Alderney.

Approved by the States 28.5.97. Awaiting approval of the States of Alderney and Royal Sanction.

Secure accommodation

16. **Order in Council: The Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997.** - See 22.GLJ.9.

Royal Sanction 19.3.97. Registered 29.4.97. (No. IX of 1997). In force on 25th June, 1997: The Children and Young Persons (Secure Accommodation) (Guernsey) Law, 1997 (Commencement) Ordinance, 1997. (No. XXII of 1997).

17. **Ordinance: The Children and Young Persons (Secure Accommodation) Ordinance, 1997.** - Regulates the use by the Children Board of secure accommodation for juveniles in its care. The accommodation used must have been approved for such use by the Board; juveniles under 13 cannot be placed in it without the prior approval of H.M. Procureur; the criteria for its use are modified in relation to a juvenile detained in the custody of the Children Board pursuant to section 9(1)(b) of the Juvenile Court (Guernsey) Law, 1989 where that juvenile has been charged with a violent or sexual offence or an offence which for an adult is punishable with at least 10 years' imprisonment, or where that juvenile has a recent history of absconding whilst remanded to the Board's custody and committed an offence whilst so remanded; the Board must seek the Juvenile Court's authorisation to continue a placement when the period of the placement without such authorisation aggregates to 72 hours in any 28 day period (subject to modification for Sundays and public holidays); save for Juvenile Court remands to the custody of the Board, the maximum period of each Court authorisation is 8 days, subject to an absolute maximum aggregate of 28 consecutive days for any one placement; the Board is also under a duty to inform parents and other interested parties throughout the placement, to conduct periodic reviews of the placement and to maintain records of it containing specified details.

In force 25.6.97. (No. XXIII of 1997).

COMPANIES

Amalgamation of companies

18. Ordinance: The Amalgamation of Companies Ordinance, 1997. - Provides that two or more companies may amalgamate and continue as one company, which may be one of the amalgamating companies or a new company. At least one of the amalgamating companies must be a Guernsey registered company. If any of the amalgamating companies is a supervised company or is not a Guernsey company, the companies may not amalgamate except with the consent of the Financial Services Commission. A supervised company is one which carries on controlled investment business, is registered as an insurer, is a licensed deposit-taking institution or is of any other class prescribed by regulations of the Commission.

Where it is proposed to amalgamate two or more companies pursuant to the Ordinance, an amalgamation proposal must be prepared setting out the terms of the amalgamation and the directors of each amalgamating company must resolve that the amalgamation is in the best interests of the company and that the amalgamated company will satisfy the solvency test. The directors of each amalgamating company must give at least 28 days' notice of the proposed amalgamation to members and creditors. The amalgamation proposal must be approved by special resolution of the members of each amalgamating company.

There is a simplified form of amalgamation for a company and its wholly-owned subsidiaries and for companies which are wholly-owned subsidiaries of the same company.

The Court has power, where satisfied that the implementation of an amalgamation proposal would unfairly prejudice a member or creditor, to direct that effect shall not be given to the proposal or that the proposal shall be modified.

In force 25.6.97. (No. XIX of 1997).

Companies limited by guarantee

19. Ordinance: The Guarantee Companies Ordinance, 1997. - Provides for the incorporation in Guernsey of guarantee companies. A guarantee company is one with the liability of its members limited by the memorandum not to the amount unpaid on the shares held by them but to the amount which the members have undertaken to contribute to the assets of the company in the event of its being wound up.

A company limited by guarantee may, but need not, have a share capital; and if a company limited by guarantee does have a share capital, its members may, but (subject to any contrary provision of the memorandum or articles) need not, hold shares in the company.

The consent of the Advisory and Finance Committee is required for the incorporation of a company limited by guarantee which does not have a share capital. (Incorporation of a company limited by guarantee which has

a share capital will be covered by the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 in the ordinary way.)

The memorandum of a company limited by guarantee must state the amount which each member of the company undertakes to contribute to the assets of the company in the event of its being wound up and the maximum number of members which the company is to have (which number may be amended by special resolution of the company).

The liability of each member of a company limited by guarantee for the company's debts is limited to the sum of the following amounts-

- (a) the amount specified in the memorandum which he has undertaken to contribute to the company's assets; and
- (b) the amount, if any, unpaid on the shares held by him (in cases where the company has a share capital and the member holds shares therein).

The name of a company limited by guarantee must end with the expression "Limited by Guarantee" or "LBG" except in the case of a company limited by guarantee which does not have a share capital and the objects of which are the promotion of commerce, art, science, education, religion, charity or any profession.

In force 26.3.97. (No. X of 1997).

20. Ordinance: The Document Duty (Amendment) Ordinance, 1997. - See paragraph 37.

Legislation

21. Order in Council: The Companies (Amendment) (Guernsey) Law, 1996. - See 21.GLJ.11.

Royal Sanction 19.11.96. Registered 20.1.97. (No. XIV of 1996). In force 1.3.97: The Companies (Amendment) (Guernsey) Law, 1996 (Commencement) Ordinance, 1997. (No. VI of 1997).

Protected cell companies

22. Ordinance: The Protected Cell Companies Ordinance, 1997. - Provides for the incorporation in Guernsey, with the consent of the Financial Services Commission, of a type of company known as a protected cell company. Also permits the conversion of an existing company, if so authorised by its articles, into a protected cell company. The protected cell company is a single legal person; its cells are not legal persons separate from the company.

A protected cell company is able to create cells for the purpose of segregating and protecting cellular assets. Cellular assets attributable to a cell are only available to the creditors of the company who are creditors in respect of that cell. Cellular assets are absolutely protected from creditors of the company who are not creditors in respect

of that cell. Such creditors have no recourse to the cellular assets attributable to that cell.

Where a liability of a protected cell company to a person arises otherwise than in respect of any particular cell, that person may only claim against the company's non-cellular assets. Thus liabilities of a protected cell company not otherwise attributable to any of its cells must be discharged from the company's non-cellular assets. These rules, and those mentioned in the preceding paragraph, bind any liquidator of the company.

A protected cell company may, in respect of any of its cells, create and issue cell shares the proceeds of the issue of which must be comprised in the cellular assets attributable to the cell in question.

The name of a protected cell company must include the expression "Protected Cell", "PCC" or some similar expression approved by the Commission. Its memorandum must state that it is a protected cell company; a company may, in order to comply with that requirement, alter its memorandum by special resolution. Each cell of a protected cell company must have its own distinct name or designation.

At present, only a company declared to be an authorised collective investment scheme or one registered as an insurer can be a protected cell company.

A protected cell company is required to inform any person with whom it transacts that it is a protected cell company and, for the purposes of that transaction, identify the cell in respect of which that person is transacting (unless that transaction is not in respect of a particular cell). In default, the directors can incur personal liability on the transaction.

Part II of the Ordinance permits a receivership order to be made in relation to any cell of a protected cell company if the Court is satisfied that the cellular assets attributable to that cell are or are likely to be insufficient to discharge the claims of creditors in respect of that cell. A receivership order is an order directing that the business and cellular assets attributable to the cell in question shall be managed by a receiver for the purposes of -

- (a) the orderly winding up of the business of the cell; and
- (b) the distribution of the cellular assets attributable to the cell to those entitled to have recourse to them.

Part III of the Ordinance permits the making of an administration order in relation to a protected cell company or any of its cells if the Court is satisfied -

- (a) that the cellular assets attributable to a particular cell are insufficient to discharge the claims of creditors in respect of that cell; or

- (b) that the company's cellular assets and non-cellular assets are insufficient to discharge the liabilities of the company.

An administration order is an order directing that, while the order is in force, the business and assets of or attributable to the cell or, as the case may be, the company, shall be managed by an administrator for the purposes of the survival as a going concern of the cell or the company, or the more advantageous realisation of the business and assets of the cell or the company than would be achieved by a receivership or liquidation of the company.

In force 1.02.97. (No. V of 1997).

COURTS

Magistrate's Court

23. Ordinance: The Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996 (Commencement) Ordinance, 1997. - Brings section 1(a) of the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996 (see 21.GLJ.15) into force on 13th January, 1997.

Made by the Legislation Committee and in force 13.1.97. Laid before the States 27.2.97. (No. VIII of 1997).

24. Ordinance: The Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996 (Commencement) (No. 2) Ordinance, 1997. - Brings the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996 (see 21.GLJ.15), except section 1(a), into force on 1st February, 1997.

In force 29.1.97. (No. III of 1997).

CRIMINAL LAW AND PROCEDURE

25. Drug trafficking - proceeds - external confiscation Order - registration in Guernsey - application to realise realisable property - whether application for registration can be made ex parte - Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 ss.1, 5, 11 & 21.

On 23rd November, 1993, the English Court made a Confiscation Order after the conviction of one, S, for a drug trafficking offence in respect of a large sum of money, which included £165,020.00 deposited by W in a bank in Guernsey. On 13th April, 1995, H.M. Procureur applied ex parte for registration of the English Order and it was registered by the Ordinary Court as an external confiscation order under section 21(1) of the 1988 Law. H.M. Procureur then applied to the Full Court for a further Order under section 11 of the Law to empower H.M. Sheriff to realise the sum deposited in the local bank as 'realisable property' under section 5. W gave evidence that he was a resident of South Africa. In breach of Exchange Control regulations he had remitted SA rands to a third party in the South Africa in exchange for which his overseas bank account would be credited with hard currency.

The Deputy Bailiff gave the following directions to the Jurats:

- (i) The amendments made by the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 (Specified Countries & Territories) Ordinance, 1991 to the 1988 Law required that in cases where an external confiscation order had been made the order could only be registered in Guernsey if the conditions stated in section 21(1) of the Law were satisfied.
- (ii) While the first two conditions of the subsection had been met, as to the third condition, there was nothing in the record to indicate that enforcement of the Order in Guernsey would not be contrary to the interests of justice, as W had not been heard on that application and the Court had not been able to consider the merits of his claim that the money was not the proceeds of drug trafficking.
- (iii) It was not possible to relate the inter partes nature of the hearing under Section 11 back to the earlier one under Section 21, and since the 1988 Law did not operate to deprive a third party of his rights if he had acted in good faith, and the power to attach and realise realisable property only applied if the external order had been validly registered in Guernsey, the application under Section 11 should be dismissed. (Re K (restraint order) 1990 2 AER 562 considered).

[H.M. Procureur v. Van der Westhuizen - Full Court 24.1.97. (JRF/PTRF)].

Interception of communications

26. Order in Council: The Interception of Communications (Bailiwick of Guernsey) Law, 1997. - See 21.GLJ.18.

Royal Sanction 20.05.97. Registered and in force 17.06.97. (No. XIII of 1997).

Misuse of drugs

27. Ordinance: The Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997. - Replaces the principal provisions of the Misuse of Drugs (Bailiwick of Guernsey) Ordinances of 1976 to 1991 with a revised system governing the production, possession, supply and destruction of controlled drugs. Controlled drugs are those specified in the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, and this Ordinance deals with the circumstances in which, and conditions subject to which, various categories of controlled drugs may lawfully be possessed, prescribed or used. In addition to exceptions permitting the use of drugs for medicinal purposes the Ordinance imposes requirements on doctors, pharmacists and others, as to prescriptions and other documentation, the maintenance of records and registers, and the furnishing of information.

In force 1.6.97. (No. XVI of 1997).

28. Ordinance: The Misuse of Drugs (Notification of and Supply to Addicts) (Bailiwick of Guernsey) Ordinance, 1997. - Requires medical practitioners to provide the Medical Officer of Health with specified details in relation to patients considered to be addicted to certain identified controlled drugs, except where continued administration of the drug is considered necessary in the treatment of organic disease or injury. Requires that the supply or administration of those drugs and certain other specified substances to such people be carried out only under a licence issued by the Board of Health.

In force 1.6.97. (No. XVII of 1997).

29. Ordinance: The Misuse of Drugs (Safe Custody) (Bailiwick of Guernsey) Ordinance, 1997. - Lays down detailed requirements as to the safe storage of all controlled drugs other than those exempted from those requirements under the Ordinance.

In force 1.6.97. (No. XVIII of 1997).

Sentence - fishing unlawfully within British fishery limits

30. A1 and A2, both French fishermen, were charged with fishing within the six mile limit to the west of Guernsey. They pleaded guilty in the Magistrate's Court and were fined £22,500 and £17,500 respectively. On their appeals to the Royal Court, the Court, presided over by the Deputy Bailiff, HELD that they should be given credit for their guilty pleas but the evidence against them was strong and they had adequate navigational equipment. AA's contention that the penalties imposed were far greater than would have been imposed by another jurisdiction administering the same legislation was not necessarily true and, even if it were, there was no reason in law why any sentence up to the maximum of £50,000 should not have been imposed. AA had also argued that the Magistrate had failed to take into account their impecuniosity: although the Court had a duty to take account of a defendant's ability to pay a fine, to take to its limit the argument that fines should not be imposed on impecunious people would give to foreign vessels with impecunious masters in charge of them a licence to poach in the Guernsey fishery with impunity. The Magistrate could not be criticised for imposing an immediate fine as AA were not resident within the jurisdiction. The Court would also take note of the fact that the enforcement sanctions in such cases allow the boat itself to be seized and sold in order to pay the fine, or detained until the fine is paid. However, despite the fact that A1 was apparently directing operations and had the larger vessel, the two were acting in partnership and the Magistrate was wrong to impose a differential in their fines. The fine imposed on A2 would be reduced to £17,500.

[Law Officers of the Crown v. Bouley and Vincent - Requête and Appeals to the Royal Court 20.3.97 (HMC/JJLM)].

Sentence - misuse of drugs - importation of Class A drug

31. A, a local man aged 26 with a bad criminal record including one previous conviction for a drugs offence, was convicted on his guilty plea of importing a small quantity (2.16 grammes with an estimated street value of

£400-£1,000 in Guernsey) of "crack" cocaine. He was sentenced by the Royal Court to a term of imprisonment of one year and applied for leave to appeal. The facts were that he had flown to London and was involved in the packaging of the cocaine in a padded greetings card which was then sent to a private address in Guernsey to which he had access but which was not his own address. There was no evidence that he intended to sell the drug. During the investigation he had told a succession of lies before eventually pleading guilty. Referring to the case of Scarlett (1995) 16 Cr. App. R. 745, in which Roch LJ observed that cocaine in the form of crack cocaine was an absolute menace because it was highly addictive and led on to serious crime, and that it should be appreciated that a substantial prison sentence would be imposed for simple possession, the Court of Appeal HELD that the sentence was in no way excessive and the application would be dismissed.

[Law Officers of the Crown v. Peden - Court of Appeal 6.1.97 (HMC/ADNH)].
For full judgement of the Court of Appeal, see paragraph 84.

Serious fraud - power of Court to restrain or inquire into H.M. Procureur's powers of investigation into serious fraud - whether Court can issue orders of certiorari or prohibition - Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, s.1(1) - extent of powers of judicial review - powers of Court of Appeal to review Ordinary Court decision thereon

32. On 10th March, 1997, H.M. Procureur issued notices under the 1991 Law to three companies in a local banking group ("the banks") to answer questions, furnish information and to produce documents in connection with the provision of banking and other services to two of their clients who were charged in the United States with rendering fraudulent tax returns and false accounting. The applicant company, A, which was one of the entities about which information was being requested, sought: (a) orders restraining H.M. Procureur from taking any further steps or disclosing any part of the records or information received pursuant to the notices, in particular to the U.S. Government; (b) declarations that H.M. Procureur had no power to issue or act on the notices; (c) Orders of Certiorari to quash the notices and any consequent decision to disclose information; (d) an Order of Prohibition to prevent disclosure of the records; (e) a consequential stay; and (f) costs.

At the conclusion of the hearing of these applications, on 18th March, 1997, the Deputy Bailiff refused the applications and indicated that he would issue a written judgment. In the meantime he refused leave to appeal to the Court of Appeal on the basis that that Court had no jurisdiction to review his decision and refused a stay of the order which was due to be complied with on 24th March.

On 24th March, 1997, before the Deputy Bailiff's judgment was handed down, the Court of Appeal granted the relief sought by A to preserve the status quo pending a substantive hearing, namely the matters set out in (a) above.

In his judgment on the substantive application, handed down on 2nd April, 1997, the Deputy Bailiff HELD:

- (i) That in the absence of express provision allowing a right of appeal or review, the Court had no right to interfere with the exercise of a statutory power, nor to grant an injunction or the other orders sought, to restrain H.M. Procureur from exercising his powers under the 1991 Law (Moore Stephens v. H.M. Procureur [1992] 14.GLJ.19, followed).
- (ii) (Distinguishing the Jersey case of McMahon v. Attorney General [1993] JLR.35) there were no grounds for adopting in Guernsey a residual form of control over the functions of H.M. Procureur by enquiring into whether he had power to make the decision to issue the notices, or into the extent or exercise of the power, as to do so would entail exploring the information available to the Procureur as to whether there was a 'suspected offence', which, in turn, would require him to disclose sensitive material which would be prejudicial to the investigation.

After drawing attention to the Review Board system the Deputy Bailiff noted that the very fact that the Court had not had to intervene in reviewing decisions of States Departments other than in cases where there is a statutory right of appeal pointed to the fact that most grievances were settled at a political rather than at a judicial level. In a small jurisdiction channels of communications were shorter than in a large one. Interference by the Courts in matters of administration and government could if allowed to develop in a haphazard and unstructured way defeat the legitimate aims of the elected Island government.

There were instances in which the States recognised that decisions of Committees so affected the vital interests of individuals that an appeal should lie to the Royal Court, and it was for the elected Island legislature, which created the mandates for those Committees, and not the Court, to extend those instances.

Cases (in addition to the foregoing) considered:

Barnett Christie & Firth v. The States [1981] Civil Appeal 10
Perkins v. Housing Authority [1995] 20.GLJ.66.
Gold v. Administrator of Income Tax [1996] 21.GLJ.28.
Fairview Farm v. I.D.C. [1996] Jersey Court of Appeal, 30.10.96.

Subsequently, on 16th April, 1997, the Court of Appeal heard A's application for leave to appeal against the Deputy Bailiff's decision and for an extension, pending the final determination of the substantive appeal, of the order of stay and restraint imposed by the Court on 24th March, 1997. Dismissing the application, the Court of Appeal HELD that it had no jurisdiction to grant leave to appeal because the appeal was of a criminal nature and thus did not fall within the terms of section 13(1) of the Court of Appeal (Guernsey) Law, 1961; nor did it fall within the terms of section 24 of that Law. The Court further held that it did not have power to grant leave to appeal to the Privy Council against its decision because it was an interlocutory matter (following Havilland Estates Ltd v Channel Island Ceramics Ltd - see 15.GLJ.50) but it granted an order for a stay and restraint in similar terms to that of 24th March, 1997 upon A's undertaking to take all reasonable steps to bring the matter before the

Privy Council on an application for special leave as timeously as possible and to seek an expedited hearing.

On 26th June, 1997 an application to the Judicial Committee for special leave to appeal to Her Majesty in Council was dismissed.

[Century Holdings Ltd. v. H.M. Procureur - Plaids de Meubles 18.3.97 and 2.4.97; and Court of Appeal 24.3.97 and 16.4.97 (RICEH/JRF). For full report of judgment of Deputy Bailiff, see 1997/1998 2 OFLR 220. For full reports of Court of Appeal judgments, see paragraphs 87 and 88.

Social insurance offences - appeal to Court of Appeal

33. A was convicted by the Magistrate's Court of two offences contrary to section 104 of the Social Insurance (Guernsey) Law, 1978 and applied for leave to appeal to the Court of Appeal, his appeal to the Royal Court having been dismissed. The Court of Appeal HELD, dismissing the application, that the question at issue, that is to say, whether A's activities constituted work, was a question of fact and degree and that the Magistrate had been perfectly entitled to have reached the conclusion which he reached.

[Law Officers of the Crown v. Young - Court of Appeal 24.3.97 (JRF/St.JAR)]. For full judgment of Court of Appeal, see paragraph 85.

CUSTOMS

Import and export of goods

34. Statutory Instrument: The Import and Export of Goods (Control) (Guernsey) (Amendment) Order, 1996. - Prohibits, except under licence, the importation from, and exportation to, the U.K., Jersey, other islands of the Bailiwick and the Isle of Man of prescription only medicines (whether for human or animal use).

Made and in force 27.06.97. (G.S.I. 1997 No. 22).

DIVORCE AND MATRIMONIAL CAUSES

Ouster orders - principles on which orders can be granted

35. In the course of divorce proceedings in which W claimed custody and orders for financial provision, W applied for, and was granted by the Deputy Bailiff, ex parte, an order for the ouster of H from the matrimonial home. At a subsequent inter partes hearing the Deputy Bailiff refused to vary the ouster order. The order was unlimited as to time. H appealed to the Court of Appeal. HELD, the principles of English Law formed the basis of the relevant law of Guernsey in the following respects:

(1) An ouster order was an extremely serious and drastic order and would not be made unless it was proved that was impossible for the spouses to live together.

(2) Such an order should not be made ex parte save in the most exceptional circumstances.

(3) In considering whether to make an ouster order, there was no principle of law that the first and paramount duty of the Court was to consider the welfare of the children.

(4) The needs of the children were one of the factors which the Court would need to take into consideration but other factors included the conduct of the spouses, the needs and financial resources of the parties, and all the circumstances of the case.

(5) The Court in each case must consider each of those factors and give it such weight as it merits.

(6) The Court must undertake a balancing exercise and seek to arrive at a solution which was just and reasonable in all the circumstances.

In the present case, the ouster order should not have been made ex parte and should not have been unlimited as to time. Furthermore, the Deputy Bailiff was in error in stating that the welfare of the children was, in considering the making of such an order, a first and paramount consideration. The appeal would be allowed and the order remitted to the Deputy Bailiff for reconsideration along with the other ancillary matters for which a date had been set. In the meantime, in the circumstances of the case, a further ouster order would be made until completion of the ancillary proceedings.

[C v. C - Court of Appeal 25.3.97 (JPG/SRM)].

Evidence in undefended cases

36. Projet de Loi: The Matrimonial Causes (Amendment) (Guernsey) Law, 1997. - Amends the Matrimonial Causes Law (Guernsey), 1939 by inserting Article 60D so as to permit evidence on a petition for divorce, judicial separation or nullity of marriage which is unopposed to be given by means of affidavit and without attendance at Court by the petitioner, unless the Court otherwise directs.

Approved by the States 29.1.97. Awaiting Royal Sanction.

DOCUMENT DUTY

Companies limited by guarantee

37. Ordinance: The Document Duty (Amendment) Ordinance, 1997. - Provides for the levying of and method of calculation of document duty on the incorporation of a company limited by guarantee.

In force 26.3.97. (No. IX of 1997).

EMPLOYMENT

Employers' liability insurance

38. Ordinance: The Employers' Liability (Compulsory Insurance) (Subsidiary Companies) Ordinance, 1997. - Provides that for the purposes of the Employers' Liability (Compulsory Insurance) (Guernsey) Law, 1993 (which requires employers to insure against liability for injury sustained by their employees in the course of their employment), in the case of a company with subsidiaries, the company and its subsidiaries shall be deemed to have satisfied the requirement as to the minimum amount of insurance cover (currently £2,000,000) if the company maintains cover both for itself and its subsidiaries for that amount against claims relating to its own employees and to the employees of its subsidiaries.

In force 29.1.97. (No. I of 1997).

FIREARMS

Legislation

39. Projet de Loi: The Firearms (Guernsey and Sark) Law, 1997. - Consolidates with modifications the Firearms (Guernsey) Law, 1983 and all amendments thereto. The principal modifications are -
- (a) the offences of possession, manufacture, sale, transfer, repair, testing and proving firearms are extended to shot gun ammunition;
 - (b) the barrel of a shot gun may be shortened by a registered firearms dealer for the sole purpose of repair;
 - (c) controls are imposed on the possession, manufacture, sale, transfer, repair, etc., of imitation firearms which can be readily converted into a firearm;
 - (d) the classes of prohibited weapon are greatly widened to include (for example) automatic firearms, self-loading or pump-action rifles and smooth-bore guns, rocket launchers and mortars. Conversion of the weapon does not affect its prohibited classification;
 - (e) controls are imposed on the possession, manufacture, sale, transfer, repair, etc., of deactivated weapons (a deactivated firearm certificate being required);
 - (f) auctioneers, carriers and warehousemen are required to take precautions for the safe custody of firearms and ammunition and to report any loss or theft thereof;
 - (g) a visitor to the islands may, if he is the holder of a current firearm permit issued in his country of residence, have a

firearm in his possession if the Chief Officer of Police has issued him with a visitor's temporary permit;

- (h) a firearm certificate must bear a photograph of the holder;
- (i) a shot gun certificate cannot now be granted or renewed unless the Chief Officer is satisfied that the applicant has a good reason for having the shot gun in his possession or for purchasing or acquiring the gun;
- (j) where a firearm certificate is revoked the Chief Officer may (subject to a right of appeal) require the holder to surrender forthwith the certificate and any firearms, shot guns and ammunition in the holder's possession;
- (k) any person who sells, lets on hire, lends for a period of more than seventy two hours or gives a shot gun or shot gun ammunition to another person (not being a registered firearms dealer) must within 48 hours of the transaction give notice of the transaction to the Chief Officer;
- (l) any person who sells, lets on hire, lends or gives a firearm, shot gun or ammunition to another person, whether or not a registered firearms dealer, must, where the firearm, shot gun or ammunition is intended to be exported permanently, within 7 days of the transaction give notice of the transaction to the Chief Officer;
- (m) police officers may now demand, from any person whom he believes to be in possession of any shot gun ammunition, production of the requisite certificate;
- (n) the definition of firearm is extended to guns operated by compressed gas over a certain power.

Approved by the States 16.4.97. Awaiting approval by the Chief Pleas of Sark.

GAMBLING

Crown and Anchor

40. Ordinance: The Gambling (Crown and Anchor) (Amendment) (Guernsey) Ordinance, 1997. - Amends the Gambling (Crown and Anchor) (Guernsey) Ordinance, 1983 by (i) permitting the game to be played at additional events held principally out of doors, where either the event includes participation in or support of sports, games or cultural activities, or where the main objective of the event is to raise proceeds which are devoted to purposes other than purposes of private gain; (ii) extending the latest time at which the game may be played from 10.00 p.m. to 11 p.m.; and (iii) increasing the maximum penalty in respect of an offence

under section 16(2) to level 3 on the uniform scale.

In force 18.4.97. (No. XIII of 1997).

HEALTH AND MEDICINE

Abortion

41. Order in Council: The Abortion (Guernsey) Law, 1997. - See 22.GLJ.33.

Royal Sanction 12.2.97. Registered and in force 18.3.97. (No. VI of 1997).

Tobacco

42. Projet de Loi: The Tobacco Advertising (Guernsey) Law, 1997. - Imposes a general ban on the local advertising and promotion of tobacco products, and empowers the Board of Health to make regulations prescribing the form and content of warnings to be exhibited on the packaging of tobacco products. A transitional provision will allow 12 months after commencement for advertising boards etc. to be removed from the exterior of tobacconists' premises.

Approved by the States 30.1.97. Awaiting Royal Sanction.

43. Ordinance: The Sale of Tobacco (Amendment) Ordinance, 1997. - Raises from 16 to 18 the minimum age of persons to whom it is lawful to sell or supply cigarettes, cigars, smoking tobacco or cigarette papers.

In force 29.1.97. (No. IV of 1997).

HORTICULTURE

Repeal of legislation

44. Projet de Loi: The Glasshouse Control (Repeal) (Guernsey) Law, 1997. - Repeals the Glasshouse Control (Guernsey) Law, 1965 which Law contained the enabling powers for the States to make Ordinances controlling the erection, etc. of glasshouses.

Approved by the States 16.4.97. Awaiting Royal Sanction.

45. Ordinance: The Glasshouse Control (Repeal) Ordinance, 1997. - Repeals the Glasshouse Control Ordinance, 1968, which Ordinance required a person to obtain a permit from the Committee for Horticulture for the erection of a glasshouse.

In force 18.4.97. (No. XII of 1997).

HOUSING

Control of Occupation - Housing Register

46. Ordinance: The Housing (Control of Occupation) (Amendment of Housing Register) Ordinance, 1997. - Permits the Housing Authority to inscribe specified dwellings in Parts A and B of the Housing Register.

In force 29.1.97. (No. II of 1997).

INCOME TAX

Pensions

47. Projet de Loi: The Income Tax (Pension Amendments) (Guernsey) Law, 1997. - Allows the Administrator of Income Tax to approve an occupational pension scheme under which proprietary directors and employees who work full time for a trading company are allowed to be members. As part of a wider package of improvements to the tax position of contributors to retirement annuity and retirement annuity trust schemes (which are used by the self-employed and others who are unable to gain maximum benefits from an occupational pension scheme), the projet changes the basis on which lumpsums may be paid out of such schemes whilst retaining approval for the purposes of the Income Tax Law, and sets out requirements as to the deduction of tax from such lump sums.

Approved by the States 25.6.97. Awaiting Royal Sanction.

Reliefs and allowances

48. Order in Council: The Income Tax (Group Loss Relief Amendment) (Guernsey) Law, 1997. - See 22.GLJ.37.

Royal Sanction 12.2.97. Registered and in force 4.3.97. (No. IV of 1997).

INTERNATIONAL LAW

49. Salvage Convention

Order in Council: The Salvage Convention (Bailiwick of Guernsey) Law, 1997. - See 21.GLJ.32 and 22.GLJ.38.

Royal Sanction 20.5.97. Registered 17.6.97. In force on a day to be appointed. (No. XIV of 1997).

LAND LAW

Conveyancing - legislation

50. Ordinance: The Conveyancing (Guernsey) Law, 1996 (Commencement)

Ordinance, 1997. - Brings the Conveyancing (Guernsey) Law, 1996 (see 21.GLJ.34 and 22.GLJ.39) into force on the 1st March, 1997.

In force 26.2.97. (No. VII of 1997).

PAROCHIAL MATTERS

Parochial taxation

51. Order in Council: The Parochial Taxation (Reserve Funds) (Guernsey) Law, 1997. - See 22.GLJ.42.

Royal Sanction 8.4.97. Registered 13.5.97. In force 1.6.97. (No. XII of 1997).

PRACTICE AND PROCEDURE (CIVIL)

Appeals - appeal to Privy Council - application for leave to appeal - conditions imposed

52. A applied to the Court of Appeal for leave to appeal against three judgments. The Court of Appeal rejected the application in respect of the first two judgments: the first, because it was a decision of the Royal Court and no appeal lay direct from that Court to the Privy Council; and the second (see 22.GLJ.78), because the decision against which A sought to appeal related to A's allegations of bias on the part of the Jurats, which was an interlocutory matter and therefore no leave could be granted under section 16 of the Court of Appeal (Guernsey) Law, 1961, following Havilland Estates Ltd v Channel Island Ceramics Ltd (No. 3) (see 15.GLJ.81). In relation to the third matter, where A sought leave to appeal against a decision of the Court of Appeal dismissing his appeal (see 22.GLJ.79), he was entitled to leave but such leave would be granted subject to conditions as to time of lodging of the record and as to the lodging of security for costs.

[Vekaplast Windows (C.I.) Ltd v Jehan and Jehan - Court of Appeal 6.1.97 (Unrep/JPG)]. For full report of Court of Appeal judgment, see paragraph 86.

Costs - full indemnity costs - no valid defence to claim - plaintiff put to unnecessary expense in proving case - whether recoverable or full indemnity costs should be awarded

53. During the summer of 1996 D was unable to accommodate several guests overbooked in its hotel. A telephone arrangement was made by the manager with P's hotel that they would be accommodated there, but no reference was made to the charges that would be made. In due course P presented its account to D, who failed to pay and alleged that there was a trade custom that clients placed in another hotel in such circumstances were allowed a reduced rate. In the ensuing action D made a bare denial as to one third of the claim and put P to strict proof thereof. P applied for summary judgment, supporting the application with an affidavit from the Tourism

Association contradicting the existence of the alleged trade custom. At the hearing of this application D's advocate stated that he would file an affidavit, but then wrote to P's Advocate repeating an earlier offer to pay the sum due, and recoverable costs, as he was unable to secure the attendance of his principal witness. P claimed full indemnity costs. HELD, by the Deputy Bailiff, P's advocate having at an early stage pointed out that there was no defence to the claim and asked for settlement, and D's Advocate having then offered the sum claimed in final settlement, D's conduct of the case justified an order for costs on a full indemnity basis. However it had not been shown that D was acting perversely in initially defending the proceedings and accordingly there would be an order that P should contribute £250 towards its own costs, which would have been a reasonable charge for the Advocate to have made if the claim had been settled earlier when the case was summoned for defences. (Quin v. Brooman - see paragraph 54) considered.)

[Hotel Dunchoille Ltd. v. Old Government House Hotel (1984) Ltd - 30.5.97 (SGD/JJLM)].

Costs - full indemnity costs - small claim - defendant disputing liability without justification

54. P was a taxi driver who had agreed to take his taxi to England and drive D up to Scotland. When the journey was completed D refused to pay either the fare or the various expenses to which P had been put. He raised a number of defences all of which were rejected by the jurats who awarded P judgment in the full amount claimed of approximately £1,500 with interest. P applied for full indemnity costs. HELD by the Deputy Bailiff that, P having been fully vindicated in his claim, it was inequitable that he should bear any part of the costs of a full trial particularly having regard to the amount at stake. Full indemnity costs would be awarded.

[Quin v. Brooman - Plaids de Meubles 25.2.97 (DGLem/Unrep)].

Execution of judgment - attachment of furniture - judgment in favour of States Income Tax Authority - appeal pending against judgment - dispute over ownership of furniture - necessity for resolution of appeal prior to disposal of claim

55. On his arrival in Guernsey, D settled all his assets on trustees but was alleged to have continued to receive benefits from the settlement which he failed to disclose. The Administrator of Income Tax raised an assessment for over twenty years' arrears of tax on the benefits and obtained judgment for £245,400.90. Pursuant to the judgment the Sheriff attached the contents of the house occupied by D. A, a company, claimed that it was the owner of the contents, being the third purchaser in succession from P Ltd, which had initially purchased them from D. HELD by the Deputy Bailiff, in the absence of disclosure of the identity of the person for whose benefit A was being operated, so that he could be available for cross-examination on the hearing of the application, there would be no purpose in the hearing and disposal of A's claim prior to the resolution of D's appeal when the details of any alleged avoidance or evasion of tax would be available for consideration by the jurats, who would then have all the information necessary for a proper decision on the application.

[Debolte Anstalt v. The States of Guernsey - Plaids de Meubles 14.1.97 (NJB/HER)].

Joinder - application for actions to be tried together - Rule 28 of the Royal Court (Civil) Rules 1989 - principles upon which the Court acts

56. P was an incorporated firm of stockbrokers. It started proceedings against D, one of its former associates, for breach of duty in connection with various transactions relating to share dealings in a company, X Ltd. Following the obtaining of a Mareva Order P had commenced substantive proceedings. Shortly thereafter D's wife applied for an order lifting the Mareva so far as certain shares in X Ltd were concerned on the basis that she had, by means of a loan from a third party, obtained cash which she had duly paid to P for the shares. P argued that there were common issues to be tried in the two actions and therefore an order should be made under Rule 28 that they be consolidated (crocheté) or be tried at the same time. In rejecting P's application the Deputy Bailiff HELD stated that in exercising his discretion under Rule 28(1) he should consider the appropriate entries in the Supreme Court Practice (White Book) relating to Order 4, Rule 9(1), the wording of which was identical. The main purpose of consolidation was to save costs and time. Following Payne v. British Time Recorder Co. [1921] 2 KB 1, the Court would allow joinder where claims by or against different parties involve or may involve a common question of law or fact bearing sufficient importance in proportion to the rest of the action to render it desirable that the whole of the matter should be disposed of at the same. In the present case there was no common question of law or fact arising in the two actions and the rights to relief claimed were quite separate.

[Matheson Securities (C.I.) Ltd. v. Hulme - 27.5.97 (MGF/PTRF)].

Jurisdiction - accident in Austria - parties resident in Guernsey and England - whether Guernsey forum conveniens

57. During a skiing holiday in Austria, D, who was resident in England, collided with P, a resident of Guernsey, as a result of which he was injured and brought home for treatment in Guernsey. All the medical evidence as to P's injuries, disability and loss of earnings would be given by witnesses in Guernsey, although it might be necessary to call expert witnesses from England. There was a possibility that two witnesses as to fact, one in England and one in Austria, might be called. D's advocate submitted, first, that the Guernsey Court did not have jurisdiction to hear the case, and should not have given leave to serve the summons in England, and, second, that Guernsey was not the forum conveniens. HELD, by the Deputy Bailiff, having regard to English principles of conflicts of laws:

- (i) The Court had jurisdiction to try the action in Guernsey because the alleged act was actionable both by Guernsey and by Austrian law and P had suffered damage in Guernsey.
- (ii) The duty of the Guernsey Court, in considering whether to give leave to serve the summons in England, was to exercise its

discretion on the basis of whether or not Guernsey was the forum conveniens for the action.

- (iii) All the evidence relating to physical damage and incapacity, and that relating to loss of earnings, was to be found in Guernsey and, although D might wish to call expert witnesses from England, the balance of convenience must be that those witnesses would find it easier to travel to Guernsey than would the Guernsey witnesses to travel to England.

Accordingly, Guernsey was the correct forum conveniens.

[Singleton v. Zetshock - Plaids de Meubles 28.4.97 (JMW/LCH)].

Péremption d'instance - action for personal injury - P's advocate under impression that cause adjourned sine die after delivery of exceptions de forme - cause becoming perimé - inaction for 18 months

58. P was seriously injured in an accident at work in November 1991. P's then advocate wrote to D, the employer, informing it of the claim in January 1992 but heard nothing more until D's insurers responded to a further letter in August 1994 when they asked for further particulars and a medical report. P's advocate issued proceedings within the three year timelimit and was prompt in summoning for defences in December 1994. D's advocate then asked for further and better particulars and the summons for defences was withdrawn but P's advocate's recollection was that it had been adjourned sine die and took no further steps in the proceedings. Consequently the action became perimé in November 1995 at the expiry of one year after the matter was placed on the pleading list. No response to the request for further and better particulars was given until August 1996 at which stage D's advocate raised péremption. On P's application to restore the action to the Pleading List, HELD by the Deputy Bailiff, after considering his judgments in Saromaje Limited v. Janet Holdings Limited 15.GLJ.53 and Le Moigne v. Harquetion 20.GLJ.51:-

- (i) P's Advocate had not been energetic in the way he had progressed the matter. He had not investigated questions of liability and had merely assumed that liability would be admitted. There appeared no evidence that the medical condition of P was such as to justify deferring the pursuit of the claim.
- (ii) Although memories would have faded there was no indication that D would not be able properly to defend the claim.
- (iii) That it appeared that in enacting the 1989 Rules the Royal Court recognised that the Rules relating to péremption could cause injustice in the absence of a discretion to restore. Taking the broader view, P had been seriously injured in an accident at work and if it was due to the default of some other person then it was right that he should be compensated. It would be his employer who would be able to show whether or not the serious injuries he suffered were the result of some neglect on the part of the employer or whether the accident was P's fault. If the delay meant that the employer was in no position sensibly to

defend the action then it would be right that it be struck out and P left with a remedy against his legal advisers.

(iv) Whilst noting that it appeared from recent English decisions that time limits were being strictly applied he felt that the position in Guernsey was somewhat different. There were fewer cases before the Courts. There was no publicly funded legal aid scheme and impecunious victims of accidents at work were dependent on the goodwill of members of the Bar in taking cases on in the hope that their proper fees would be settled if and when the claim was met.

(v) Even after taking into account the laches of P's Advocate he felt that justice would be done by restoring the case to the Pleading List.

(The Deputy Bailiff subsequently granted the Defendant leave to appeal against this decision.)

[Haines v. Guernsey Annandale Tile Company (1980) Ltd - Plaids de Meubles 13.5.97 (JPG/FJH)].

ROAD TRAFFIC AND PUBLIC TRANSPORT

Driving Licences

59. Ordinance: The Driving Licences (Amendment) (No. 3) (Guernsey) Ordinance, 1996. - Amends the Driving Licences (Guernsey) Ordinance, 1995 so as to entitle holders of Category 1 or 2 licences issued under the earlier legislation who do not meet the age requirements of section 12 of, and Schedule 6 to, the 1995 Ordinance upon the expiration, surrender or revocation of their old licences to receive Category A1 or A licences respectively.

Made by the Legislation Committee 14.11.96. Deemed to be in force 1.9.95. Laid before the States 29.1.97. (No. XXXIV of 1996).

Registration marks

60. Order in Council: The Registration Marks (Sale and Retention) (Guernsey) Law, 1997. - Introduces enabling powers under which the States may by Ordinance provide for rights to use particular vehicle registration marks following a sale by the Traffic Committee or after retention for future use under specified conditions.

Approved by the States 26.2.97. Royal Sanction 20.5.97. Registered 17.6.97. In force on a day to be appointed. (No. XV of 1997).

SOCIAL SECURITY

Hospital benefit

61. Ordinance: The Health Service (Alderney Hospital Benefit) Ordinance, 1997. - See paragraph 81.

Reciprocal Agreements

62. Ordinance: The Social Security (Reciprocal Agreement with Jamaica) Ordinance, 1997. - Gives effect to the Convention on Social Security between the United Kingdom and Jamaica which provides for reciprocity in matters of social security between Guernsey and Alderney and Jamaica.

Made 18.4.97. Deemed to be in force 1.4.97. (No. XIV of 1997).

63. Ordinance: The Social Security (Reciprocal Agreement with the United States of America) Ordinance, 1997. - Gives effect to the Agreement on Social Security between the United Kingdom and the USA which provides for reciprocity in matters of social security between Guernsey and Alderney and the U.S.A.

In force 25.06.97. (No. XX of 1997).

WATER

Charges

64. Order in Council: The States Water Supply (Amendment) (Guernsey) Law, 1997. - Empowers the Water Board to vary water charges by order by an amount not exceeding any increase in the retail price index.

Approved by the States 26.2.97. Royal Sanction 26.6.97. Awaiting registration.

Restriction on use

65. Ordinance: The Water Restrictions (Amendment) Ordinance, 1997. - Sanctions Byelaws made by the States Water Board on 5th June, 1997. The effect of the Byelaws, which are set out in a Schedule to the Ordinance, is to enable the Water Board, when prohibiting by notice the use of water for filling or replenishing swimming pools, to distinguish between pools of the different descriptions therein identified.

In force 9.6.97. (No. XXIV of 1997).

GUERNSEY STATUTORY INSTRUMENTS

66. 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.

Title	Date made	Coming into force	No.
The Attendance Allowance (Amendment) Regulations, 1997	6. 1.97	6. 1.97	1
The Invalid Care Allowance (Amendment) Regulations, 1997	6. 1.97	6. 1.97	2
The Health Service (Payment of Authorised Appliance Suppliers) (Amendment) Regulations, 1997	7. 1.97	1. 1.97	3
The Health Service (Payment of Authorised Suppliers) (Amendment) Regulations, 1997	7. 1.97	1. 1.97	4
The Parking Places (Amendment) Order, 1997	10. 2.97	10. 2.97	5
The Insider Dealing (Securities and Regulated Markets) (Amendment) Order, 1997	14. 2.97	14. 2.97	6
The Abortion Regulations, 1997	18. 3.97	18. 3.97	7
The Income Tax (Registered Friendly Societies: Tax-Exempt Business) (Amendment) Regulations, 1997	20. 3.97	20. 3.97	8
The Health Service (Physiotherapy Benefit) (Amendment) Regulations, 1997	1. 4.97	1. 1.97	9
The Health Service (Alderney Hospital Benefit) Regulations, 1997	1. 4.97	26. 3.97	10
The Wreck and Salvage (Restricted Areas) Order, 1997	1. 4.97	1. 4.97	11
The Rent Control (Variation) Order, 1997	9. 4.97	1. 7.97	12
The Income Tax (Limit of Retirement and Other Benefits) (Amendment) Regulations, 1997	10. 4.97	10. 4.97	13
The Criminal Justice (Attendance Centre) (Occupation and Instruction) Order, 1997	12. 5.97	12. 5.97	14

The Post Office (Postal Order) (Amendment) Order, 1997	20. 5.97	1. 5.97	15
The Health Service (Medical Appliances) (Amendment) Regulations, 1997	29. 5.97	1. 6.97	16
The Health Service (Payment of Authorised Suppliers) (Amendment No. 2) Regulations, 1997	29. 5.97	1. 6.97	17
The Hay, Straw and Litter (Importation) Order, 1997	20. 5.97	30. 5.97	18
The Misuse of Drugs (Modification) Order, 1997	30. 5.97	1. 6.97	19
The Water Restrictions (Amendment) Byelaws, 1997	5. 6.97	5. 6.97	20
The Social Insurance (General Benefit) (Amendment) (Guernsey) Regulations, 1997	27. 6.97	6. 1.97	21
The Import and Export of Goods (Control) (Guernsey) (Amendment) Order, 1997 (see paragraph 34).	27.6.97	30. 6.97	22
The Milk (Retail Prices) (Guernsey) Order, 1997	30. 6.97	2. 7.97	23

UNITED KINGDOM STATUTORY INSTRUMENTS

67. 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.

	<u>S.I. Number</u>
The United Nations Arms Embargoes (Liberia, Somalia and Rwanda) (Channel Islands) Order, 1996	3154
The Wireless Telegraphy (Channel Islands) (Amendment) Order, 1997	283
The United Nations (International Tribunals) (Former Yugoslavia and Rwanda) Order, 1997	281
The Wireless Telegraphy (Television Licence Fees) Regulations, 1997	290

ALDERNEY

ARBITRATION

Stay of proceedings - arbitration clause - defence pleading res judicata - whether a 'step' in the proceedings - Arbitration (Alderney) Laws 1983 and 1986, s.5(1)

68. See Schneider v. Partridge & Bohan, paragraph 5.

AVIATION AND AIRPORTS

69. Ordinance: The Air Transport Licensing (Alderney) Law, 1996 (Commencement) Ordinance, 1997. - Brings the Air Transport Licensing (Alderney) Law, 1996 (see 21.GLJ.43), other than Part I thereof, into force on the 1st February, 1997. Part I in force on the 1st June, 1997.

Ordinance of the States of Alderney of 15.1.97.

CHILDREN AND YOUNG PERSONS

Adoption

70. Ordinance: The Alderney (Application of Legislation) (Adoption) Ordinance, 1997. - See paragraph 3.

Application and extension of legislation

71. Projet de Loi: The Children and Young Persons (Amendment) (Guernsey) Law, 1997. - See paragraph 15.

CONSTITUTIONAL LAW

Transfer of functions

72. Ordinance: The States Committees (Transfer of Functions) (Alderney) Ordinance, 1997. - Transfers all existing functions of States of Alderney committees to two new Committees, the Policy and Finance Committee and the General Services Committee.

Ordinance of the States of Alderney of 2.4.97.

DWELLINGS PROFITS TAX

73. Order in Council: The Dwellings Profits Tax (Alderney) (Repeal) Law, 1997. - See 22.GLJ.65.

Royal Sanction 8.4.97. Registered and in force 13.5.97. (No. XI of 1997).

FEEs

Boats

74. Ordinance: The Fees (Amendment) (Alderney) Ordinance, 1997. - Increases fees for the issue of boat licences and boatmen's licences.

Ordinance of the States of Alderney of 5.3.97.

Work permits

75. Ordinance: The Fees (Amendment) (No. 2) (Alderney) Ordinance, 1997. - Increases fees for the issue and renewal of work permits.

Ordinance of the States of Alderney of 4.6.97.

GAMBLING

76. Order in Council: The Gambling (Amendment) (Alderney) Law, 1997. - See 22.GLJ.68.

Royal Sanction 19.3.97. Registered and in force 29.4.97. (No. X of 1997).

HEALTH

Alderney Hospital Benefit

77. Ordinance: The Health Service (Alderney Hospital Benefit) Ordinance, 1997 - See paragraph 81.

HOUSING

Exemptions

78. Ordinance: The Housing (Exemptions) (Alderney) Ordinance, 1997. - Provides that Bonne Terre Limited is prescribed for the purposes of section 1(1)(c) of the Housing (Control of Occupation and Development) (Alderney) Law, 1994. The Ordinance applies in relation to the construction of dwellings at the Grand Hotel site. The effect is that the Committee is able to grant permission to the company under the Building and Development Control (Alderney) Law, 1975 for the construction of the dwellings.

Ordinance of the States of Alderney of 7.5.97.

Restrictions on grant of permission

79. Order in Council: The Housing (Control of Occupation and Development) (Amendment) (Alderney) Law, 1997. - See 22.GLJ.70.

Royal Sanction 12.2.97. Registered and in force 18.3.97. (No. VII of 1997).

ROAD TRAFFIC

Speed Trials

80. Ordinance: The Speed Trials (Alderney) Ordinance, 1997. - Closes Tourgis Hill and the Whitegates/Mannez Lighthouse road to public traffic, and disapplies certain road traffic rules (such as speed limits), for the purposes of the September speed trials.

Ordinance of the States of Alderney of 7.5.97.

SOCIAL SECURITY

Hospital benefit

81. Ordinance: The Health Service (Alderney Hospital Benefit) Ordinance, 1997. - Provides, for the purposes of the Health Service (Benefit) (Guernsey) Law, 1990, a new class of benefit called Alderney hospital benefit. A person who satisfies the conditions as to residence and presence specified in section 3(1) of the Law is entitled to the benefit which comprises the provision, at the Mignot Memorial Hospital, Alderney, for in-patients (other than long-term residential in-patients), of all medical consultations and treatment available at the Hospital.

In force 26.03.97. (No. XI of 1997).

WATER

Charges

82. Ordinance: The States Water Supply (Rates of Charge) (Alderney) Ordinance, 1997. - Increases charges for the supply of water both for metered and unmetered properties with effect from 7th May, 1997.

Ordinance of the States of Alderney of 7.5.97.

SARK

INTERNATIONAL LAW

International relations

83. Order in Council: The Vienna Document (Privileges and Immunities) (Sark) Law, 1997. - Provides that persons designated by a foreign state as observers, inspectors, evaluators or auxiliary personnel under the Vienna Document shall enjoy, during their mission, the like privileges and immunities as in the United Kingdom are accorded to diplomatic agents by the Diplomatic Privileges Act 1964. The "Vienna Document" refers to the Vienna Document 1990 of the Negotiations on Confidence and Security Building Measures.

Royal Sanction 12.2.97. Registered and in force 4.3.97. (No. I of 1997.)

JUDGMENTS OF THE GUERNSEY COURT OF APPEAL

A

84.

[CRIMINAL DIVISION - APPEAL NO. 215]

1997 JANUARY 6

THE LAW OFFICERS OF THE CROWN

v.

MARLON ALVARO PEDEN

B

Before: COLLINS, HARMAN and SUMPTION, JJ.A.

Criminal appeal - sentence - misuse of drugs - importation of Class A drug

See para. 31 of this issue.

A.D.N. Havard, for the Applicant.

G.R. Rowland, Q.C. (H.M. Comptroller), for the Crown.

C

HARMAN, J.A.: This Applicant appeared before the Royal Court on 1st November, 1996, and pleaded guilty to an indictment which charged him that between 9th and 15th days of August 1996 he was knowingly concerned in the fraudulent evasion of the prohibition on the importation of a controlled Drug of Class A, namely cocaine, contrary to the prohibition on importation imposed by Section 2(1) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended. At an adjourned hearing on 7th November, he was sentenced to a term of imprisonment of 1 year to run from 14th August. His application for leave to appeal against that sentence having been refused by the Bailiff on 11th December, he now renews his application for determination by this Court.

D

The facts are as follows:-

The Applicant is aged 26 and lives in St. Peter Port with his girlfriend and their young daughter aged 2. He had an unhappy childhood and his parents were divorced when he was 10. Thereafter he was continually before the Juvenile Court in particular for offences associated with motor vehicles. In 1986 he was sentenced to a period of Borstal training for possession of a Class A drug, Psilocyn, and theft. After his release he was again persistently in trouble for offences including burglary, causing grievous bodily harm with intent, and for firearms offences for which he was sentenced to terms of imprisonment. He has, however, only the one previous conviction for a drugs offence, although he had, at least until his recent period in custody, been severely addicted to hard drugs including cocaine and heroin. At his trial his Counsel, Mr. Havard, gave this as an explanation for the fact that while otherwise employable as a builders labourer he had recently been unable to work. These matters were covered in a Social Inquiry Report which was before the sentencing Court, and in which it was stated that he is now physically free of heroin and is determined to remain so. However, the evidence in this case discloses a serious offence.

E

F

During the first week of August the Applicant flew from Guernsey to London, and said after his arrest that the purpose of his trip was to attend an Oasis concert at Knebworth in Hertfordshire. It appears that he probably did attend the concert while staying with his half-brother in Kingston-upon-Thames.

G

A During this visit he was involved in the packaging of a small quantity of crack cocaine in a padded greetings card contained in a box which was addressed to a Mr. and Mrs. Williams at a flat in St. John Street in St. Peter Port, to which he had access.

B On 13th August the Applicant returned by air to Guernsey, and he was observed at the airport between 5.20 and 5.40 p.m. He was arrested the next day after his package was intercepted at Postal Headquarters. It was postmarked Kingston-upon-Thames, dated 13th August, and had been franked at 5.15 p.m. The cocaine inside was wrapped in cling film. The Applicant's palm print was later detected on the greeting card and when this was put to him, at a fourth and final interview two days after his arrest, he continued to deny any involvement with the package or its contents. The package contained 2.16 grammes of 87% cocaine powder in a freebase form otherwise known as 'crack.' Its street value was estimated by the Prosecution to be between £400/£1,000 in Guernsey, but it was acknowledged that there was no evidence that the Applicant intended to sell the drug. It is his case that it was intended for personal consumption over C perhaps two days.

The Deputy Bailiff when passing sentence stated that this was the first case to come before the Court involving the importation into Guernsey of crack cocaine and that a firm sentencing policy would be applied even where the amount imported was small. He also said:-

D "Further aggravation in this case is the way in which these drugs were imported, involving a serious misuse of the postal services. You showed sophistication in the way in which this package was sent to the Island, to an address other than your own, thus potentially exposing innocent people living at that address to suspicion."

E At the trial the Prosecution submitted that the succession of untruths which the Applicant told to the investigating officers during four interviews was an additional aggravating factor, and this was apparently conceded by the defence. However, we prefer to consider the Applicant's initial lies only in the context of the mitigation arising from his eventual plea of guilty. We have been referred to the case of Scarlett, (1995) 16 Cr. App. R. (S.) 745 and to the judgment of Roch, LJ. This was a case of simple possession of 1.69 grammes of crack cocaine, and the applicant was sentenced as a man of good character who had pleaded not guilty. He appealed against the sentence of 6 months imprisonment, which appeal was dismissed. The judgment concluded with these words:-

F "The observations made by the judge about cocaine in the form of crack cocaine being an absolute menace because it is highly addictive and leads on to serious crime, are observations which this Court would endorse. We would make this further observation: that if the members of this court had been passing sentence in this case the sentence would have been longer than the 6 months that was imposed. We think that the sentence imposed was not one day too long for this offence, and the sooner it is appreciated that for simple possession of cocaine in this particular form prison will follow and that the G sentence will be a substantial term the better."

The facts of that case are readily distinguishable from the present case before A this Court, which is clearly more serious for a variety of reasons. Nevertheless, the observations quoted above are relevant and should not be forgotten. In our opinion the sentence was in no way excessive and we do not find it necessary to vary its terms. The application must be dismissed.

Application for leave to appeal dismissed.

85.

[CRIMINAL DIVISION - APPEAL NO. 216]

B

1997 MARCH 24

THE LAW OFFICERS OF THE CROWN

v.

GORDON EDWARD YOUNG

C

Before: CALCUTT, CARLISLE and CLARKE, JJ.A.

Criminal appeal - social insurance offences - appeal to Court of Appeal

See para. 33 of this issue.

St. J.A. Robilliard, for the Applicant.

J.R. Finch, for the Crown.

D

CALCUTT, J.A.: The Applicant, Gordon Edward Young, was charged in the Magistrate's Court with two offences in these terms:-

"That you, on 17th November, 1993, in the Island of Guernsey for the purposes of obtaining any benefit under the Social Insurance (Guernsey) Law, 1978, or for the purpose of providing information to the Administrator E of the Guernsey Social Security Authority in connection with the said Law, knowingly made a false statement, namely 'That I have not worked since claiming Sickness Benefit', whereas you had done work during that period contrary to Section 104 (2) (c) (i) of the said Law."

"Further, that you, on or about 23rd November, 1993, in the Island of Guernsey, for the purpose of obtaining any benefit under the Social Insurance (Guernsey) Law, 1978, produced or furnished a document, a Medical F Certificate No. 100295, which you knew to be false in a material particular, namely a signed declaration that 'I declare that, because of incapacity, I have not worked since the date of the last Medical Certificate which I submitted', whereas you had worked since that date; contrary to Section 104 (2) (c) (ii) of the said Law."

The Applicant was convicted on each charge and was fined. An appeal to the Royal Court both against conviction and sentence was dismissed. The G Applicant now applies to this Court for leave to appeal.

The Magistrates Court (Criminal Appeals) (Guernsey) Law, 1988, is in these terms:

A "7(1) A person whose appeal is dismissed by the Royal Court, or the prosecution whose appeal against the acquittal of an accused person is dismissed by the Royal Court, may appeal to the Court of Appeal against that conviction or acquittal, as the case may be:

PROVIDED that no such appeal may be brought without the leave of the Court of Appeal.

B (2) The appeal may be-

(a) on any ground which involves a question of law alone..."

I do not need to read (b) or any further part of that section of the Law. It is common ground that any right of appeal is confined to questions of law.

C The Magistrate reserved his judgment at the end of the hearing which finished on 1st May, 1996, and he delivered his judgment on 24th May. In reaching his findings he set out the facts and I cannot improve on his exposition of them. He said this:

"The Defendant is the owner of a vinery known as Le Marais Vinery, Les Landes in the Castel, which I shall call 'the vinery.' He was strong and healthy in his prime but he sustained injuries in a car accident in 1969 or 1970 which caused damage to his neck and spine which progressively impaired his ability to do heavy manual work.

D

On 9th January, 1992, the Appellant claimed sickness benefit on a claim form K9277 containing a Medical Certificate from Dr. Sweet (Exhibit WAH1). This was acknowledged by a standard form letter from the Insurance Authority sent on the same day which contained notes for persons in receipt of Sickness Benefit (Exhibit WAH2) defining the expression 'incapable of work' and informing the recipient that he must inform the States Insurance Office if 'you do ANY work', the word 'any' being in capitals.

E

Similar claim forms were submitted by the Defendant every month up to and including 28th October, 1993, (Exhibit WAH6B). The Defendant submitted a form signed and dated 23rd November, 1993, (Exhibit WAH6A), containing the words: 'I declare that because of incapacity I have not worked since the date of the last medical certificate which I submitted.' The last medical certificate submitted by the Defendant was that dated 28th October, 1993. I now turn to events between 28th October and 23rd November, 1993. On 6th November, the Defendant drove a tractor drawing a trailer full of bags of logs along the Maison au Compte Road in the Vale and returned some 20 minutes later with the trailer unladen. A Mr. Rault was on the tractor. On 9th November at 3 p.m. a van and tractor and a large heap of logs together with some 200 stacked bags of logs were seen at the Defendant's vinery as shown in photographs EMA1, produced by Mr. Ashton, an Officer of the Insurance Authority. In the vinery there was a large chicken run and many chickens, nobody was seen in the vinery but voices were heard from inside the greenhouse.

F

G

On 10th November, a chain saw was heard operating from the vinery and Mr. Rault was heard talking to an unidentified person. On 12th November, the Defendant was driving a tractor with Mr. Rault who was moving the logs. The Defendant got off the tractor and worked with Mr. Rault for some 15 minutes, the Defendant was moving large logs. On the cessation of this work, the Defendant shouted something about 'tomorrow morning' to Mr. Rault. Six photographs, (Exhibit EMA2), were taken of the Defendant and the vinery on this date. When Mr. Rault and the Defendant had finished work they left the vinery in a Fiat driven by the Defendant to Mahy's Mowers. The Defendant entered the shop, returned after a while and the two men drove away. A

On 15th November at about 1.40 p.m. nobody was on the vinery. Thin branches were burning. On 16th November, at 11.15 a.m. Rault and the Defendant were moving about in the vinery. The Defendant was moving in a purposeful manner and Mr. Rault was preparing chicken food. A water pump and log splitter were in action. B

On 17th November, at 7.50 a.m. Mr. Rault arrived at the vinery and opened the gates. He prepared food for the chickens and lit the fire. At 10.40 a.m. the Defendant filled some coal sacks with logs and moved them aside from the main heap. Four photographs, (Exhibit EMA5), were taken of the Defendant on this occasion. I do not accept the Defendant's explanation that he was in the hospital giving blood samples at this time. On the afternoon of 17th November, Mr. Bean, an Officer of the Insurance Authority, visited the vinery with other officers, and recorded a statement, TMB1, from the Defendant. This statement which commenced with the words '... that ... I have not worked since claiming sickness benefit.' was signed by the Defendant. C

The Defendant's explanation of the actions which I have described is that he was pottering about and doing the sort of light tasks which Mr. Sweet had told him he might do to avoid the stiffening up of his joints and muscles. Dr. Sweet has testified that the Defendant told him that he wanted to do a little light work around the greenhouses, and that he, Dr. Sweet, had said it may be good to do some light work to avoid stiffening up. On occasions the Defendant delivered logs and eggs to customers on behalf of Mr. Burnard and the Defendant's son respectively. The Defendant did not receive payment for any of these activities." D

That is the end of the summary of facts by the learned Magistrate. E

In the view of this Court, two questions arose in respect of each charge and plainly they were each interlinked. First, was a false statement made, and if so, was it made with knowledge of the falsity. Secondly, was a document which was false in a material particular produced, and if so, was it produced with knowledge of the falsity. The falsity alleged was, as indicated in the charge in respect of the statement, "I have not worked since claiming sickness benefit", whereas, in truth, it was said he had done work during that period; and in respect of the signed declaration "Because of incapacity I have not worked since the date of the last medical certificate which I submitted", F

A whereas, in truth, it was submitted that he had worked since that date and it was alleged that he knew in each case of the alleged falsity.

The Magistrate made his findings in this respect at p.92 of the appeal file, beginning at letter C, and he said this:

B "Turning now to the charges an issue common to both is whether the Defendant was working. It is clear from the judgment of the Court of Appeal in Law Officers of the Crown v. Rault (19.GLJ.75), applying Clear v. Smith [1981] 1 WLR 399, that there is no general proposition of law that there has to be remuneration before an activity qualifies as work, and that whether an activity does qualify as work is a matter of fact and degree."

And then the Magistrate said:

C "I find as a matter of law that the activities of the Defendant which I have set out above amount to work. I also find that the Defendant was aware that he was working and that his statements to the contrary in the medical certificate dated 23rd November and in his statement recorded by Mr. Bean on 17th November were to his knowledge untrue. I find further that the medical certificate was produced by the Defendant for the purpose of obtaining benefit. It was held in Clear v. Smith, a prosecution under Section 21 of the Supplementary Benefits Act 1976, which is closely similar to Section 104 (2) (c) (ii) of the Social Insurance (Guernsey) Law, 1978, that if it was established that the Defendant had worked at the relevant time and knew when he signed the declaration that it was false, the offence was made out."

And the Magistrate concluded:

E "I therefore find the first charge which concerns the medical certificate is proved. I find that the statement was made for the purpose of providing information under the provisions of Section 103 of the Social Insurance Law and was therefore made in the words of Section 104(2)(c) of that Law 'for any other purpose connected with this Law.' For the above reason I find the second charge which concerns the statement of 17th November 1993, is proved."

F In the case of Rault, 27th March, 1995, reported in 19.GLJ.75, this Court held, following the decision of the English Divisional Court in Clear v. Smith, that it was not necessary in order to prove a false statement for the purposes of this law that the Defendant was remunerated for his activities, and whether or not a man's activities constituted work was a question of degree and was essentially one for the good sense of the Magistrate who tried the case.

G It is true that in the documentation before us inferences could be drawn in some instances that where the word "work" is referred to, paid work may have been what was in the mind; but there was also evidence which pointed the other way, so as to make a wider interpretation appropriate. It was for the Magistrate to make up his mind and he was perfectly entitled to have reached the conclusion which he did. In our view it is a question of fact and degree,

whether on consideration of all the facts in each particular case, a person has A
or has not worked.

So far as knowledge of the falsity is concerned, there was in our view evidence
on which the Magistrate could conclude that the Defendant knew of the falsity
if he saw fit to do so, as indeed he did. There was a conflict of evidence
between the prosecution and the defence about the extent of the Applicant's
activities. In relation to the evidence relating to 17th November, 1993, the
evidence was in these terms (p.84 of the appeal file, beginning at letter H). B
Advocate Finch was asking questions of the Defendant and he said:

"Q. You were at the hospital in the morning having blood tests, you have
told us about that. In the afternoon you were helping to move sacks
of logs about, weren't you? A. No sir, I was there specifically
to see my nephew for an appointment which I had at 3 o'clock, and he
never turned up because he was at home ill in bed.

Q. So the evidence they gave about seeing you moving logs about is C
wrong, is it? A. That's right.

Q. That's wrong, they made that up? A. They are wrong."

I leave out a few exchanges between the Magistrate and Mr. Finch and I come
down to letter E on p.85, where Mr. Finch said this:

"Q. So I just want to make sure in fairness to you Mr. Young I have got D
that right, 17th November, your birthday, the day you had the blood
tests, it is wrong to say that you and Rault were working on the
vinery filling old coal sacks with logs and then stacking them? A.
I was not working sir, no.

Q. Well, what were you doing? A. I have just told you, sir.

Q. Tell me again please? A. I went to the hospital in the morning on E
17th November, I had eleven blood samples taken out of my arm. In
the afternoon I went down there at roughly quarter to three to see my
nephew because I had an appointment to see my nephew to do repairs on
my vinery. That is the only reason I was there when I was
confronted by Mr. Bean and his associates.

Q. So just really for my own mind to get it straight Mr. Young, you were
not stacking any logs, you weren't handling sacks of logs? A. F
No."

The Magistrate preferred the evidence of the prosecution, as he was entitled to
do. Not only does this go to the extent and nature of the Applicant's
physical activities which would have been more arduous than he was prepared to
admit, but also showed that he was attempting to conceal them by telling
untruths about them. In our view the Magistrate was perfectly entitled, if he
saw fit to do so, to find the requisite knowledge. In our view this
application for leave to appeal should be dismissed. G

Legal aid granted; application for leave to appeal dismissed.

A 86.

[CIVIL DIVISION - APPEAL NO. 214]

1997 JANUARY 6

VEKAPLAST WINDOWS (C.I.) LIMITED

Appellant

v.

BARRY KENNETH JEHAN & MRS. LESLEY JEHAN

Respondents

B

Before: COLLINS, HARMAN and SUMPTION, JJ.A.

Appeal to Privy Council - application for leave to appeal - conditions imposed

See para. 52 of this issue.

T.A. Picot, managing director, for the Appellant.

J.P. Greenfield, for the Respondents.

C

COLLINS, J.A.: On 18th October last year, this Court, having dismissed the appeal of the Appellant and dismissed its action, adjourned to the next sitting of the Court consideration of any application on behalf of the Appellant for leave to appeal to Her Majesty in Council. That matter has now come before us in accordance with that order.

D

The Appellant requests that we grant leave to file appeals with the Judicial Committee of the Privy Council in respect of three judgments. The first relates to the hearing at first instance between the Appellant and the Respondents of 16th August 1994, in which the Appellant's action was dismissed in favour of the Respondents by the Royal Court. This is not an appropriate subject for the grant of leave to appeal. It was the decision of the matters by the Court of trial which then later went to the Court of Appeal from which the appeal lies to the Privy Council. An appeal does not lie direct from the decision of the Royal Court, so therefore, the application in so far as it comes under para. 1 of the application is rejected.

E

Under para. 2 of the application, the Appellant asks for leave in relation to the decision of the Court of Appeal on Wednesday 24th July on a preliminary application by the Respondents, when grounds 1, 2 and 3 of the Appellant's amended grounds of appeal alleging bias on the part of the Jurats through their involvement along with the Respondents' family in Freemasonry, were struck out. In relation to that ground it is clear to us that any matter arising in that connection, either in relation to the decision of that Court or as to the jurisdiction of the Court at that time, related to an interlocutory matter and therefore is not appropriate for this Court to make the subject of leave, having regard to Havilland Estates Limited v. Channel Island Ceramics Limited 15.GLJ.81, and other similar decisions in this Island and in Jersey, where the statutory provisions are similar. So, therefore, leave is not granted under para. 2 of the Appellant's application.

F

G

As to 3 however, the matter is different. There the Appellant asks that it have permission to file an appeal to the Privy Council from the decision of the Court of Appeal of 18th October 1996, when it dismissed the Appellant's appeal on those grounds remaining in its amended notice of appeal. In this case, appeal lies as of right under s.16 of the Court of Appeal (Guernsey) Law, 1961,

subject to the procedural rules of the Judicial Committee of the Privy Council of 18th October 1983. Those rules require leave by this Court and allow for the imposition of conditions. We have considered it appropriate to impose two conditions in granting leave in relation to para. 3 of the Appellant's application. A

First of all, we impose a condition that the Appellant lodge the record with the Registrar of the Judicial Committee of the Privy Council by 15th March of this year; secondly, we impose a condition that by the same date, it lodge a further sum of £10,000 with Her Majesty's Greffier, by way of security for costs; that being a security ensuring the due prosecution of the appeal and payment of all such costs as may become payable to the Respondents in the event of the Appellant not obtaining the relief which it seeks or the appeal being dismissed for non-prosecution or it being ordered to pay the costs before Her Majesty in Council. B

- i) Leave to appeal to Her Majesty in Council from the decision of the Royal Court on 16th August, 1994 and of the Court of Appeal on 24th July, 1996 refused; C
- ii) Leave to appeal to Her Majesty in Council from the decision of the Court of Appeal on 18th October, 1996 granted, subject to the conditions as to lodging of record and payment of security for costs.

87. [CIVIL DIVISION - APPEAL NO. 235] D

1997 MARCH 24

CENTURY HOLDINGS LIMITED	Applicant
and	
FEPOR S.A. suing on behalf of	Applicants
TRANSATLANTIC AIR DISCOUNTER	
LIMITED (Liquidated)	E
v.	
HER MAJESTY'S PROCUREUR	Respondent

Before: CALCUTT, LORD CARLISLE and CLARKE, JJ.A.

Serious fraud - power of Court to restrain or inquire into Procureur's powers of investigation into serious fraud - interim relief pending final hearing F

See para. 32 of this issue. See also para. 88.

R.I.C.E. Harris, for the Applicant.
J.R. Finch, for the Crown.

CALCUTT, J.: The Court proposes to grant the relief sought, namely, to stay and restrain H.M. Procureur whether by himself, his servants or agents, or otherwise howsoever from (1) taking any further steps pursuant to the three notices dated 10th March 1997 issued pursuant to Section 1 of the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, in respect of G

A all documents, records, and information held by the three Meespierson companies to whom such notices were addressed, namely, Meespierson (C.I.) Limited, Meespierson Management (Guernsey) Limited and Meespierson Management Services (C.I.) Limited; and (2) disclosing any part of such documents, records and information which he may receive or may have already received pursuant to the notices to any third party, and in particular to the Government of the United States of America or any agent or agency thereof, pending the delivery of the Deputy Bailiff's judgment in this matter and the determination of the Plaintiff's application for leave to appeal.

B For the avoidance of doubt, by the expression "taking any further steps", we intend to include the receipt of any documentation by H.M. Procureur from the three Meespierson companies.

We make it plain that our purpose in granting this relief is to preserve the status quo, as best we can, pending future consideration of the matter. We express no view on the merits, in respect of the various issues which have been raised before us.

Are there any applications? (No response from Counsel)

We take the view, subject to anything you may say, that the right course is to reserve costs.

D 88. [CIVIL DIVISION - APPEAL NO. 235]

1997 APRIL 15, 16

	CENTURY HOLDINGS LIMITED	
	and	
	FEPOR S.A. suing on behalf of	
E	TRANSATLANTIC AIR DISCOUNTERS	Plaintiffs/ Applicants
	LIMITED (Liquidated)	
	v.	
	HER MAJESTY'S PROCUREUR	Defendant/ Respondent

Before: COLLINS, HARMAN and CRILL, JJ.A.

F Serious fraud - power of Court to restrain or inquire into Procureur's powers of investigation into serious fraud - whether Court can issue orders of certiorari or prohibition - Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991, s.1(1)) - extent of powers of judicial review - powers of Court of Appeal to review Ordinary Court decision thereon

See para. 32 of this issue. See also para. 87.

G R.I.C.E. Harris, for the Applicants.
J.R. Finch, for the Crown.

COLLINS, J.A.: The judgment which I shall give is the judgment of the Court. Century Holdings and Fepor SA, the latter company acting on behalf of a

liquidated company entitled Transatlantic Air Discounters Limited, brought proceedings against the Law Officers of the Crown seeking injunctions, declarations and orders of certiorari and prohibition in respect of three Notices issued under the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991 ("the Law of 1991"). They did so by a Cause served on or shortly after 10th March. A

Prior to the delivery of the Cause the advocate acting for the Plaintiffs had been sent a copy of correspondence from the United States Department of Justice, notifying Her Majesty's Procureur of the existence of what were described as "disclosure directives" signed by a Mr. Harris and a Mr. Bell, and requesting his assistance in the obtaining of evidence from others in connection with criminal proceedings against those two persons. The disclosure directives having been obtained under threat of proceedings for contempt of court, Advocate Harris on behalf of the present Plaintiffs who were (inter alia) persons from whom disclosure was to be required, applied for and obtained injunctions against those to whom the requests were apparently to be directed, namely the companies in the MeesPierson group to which I refer below. The barest documentation is required for the presentation of an application for such an injunction, and Advocate Harris was asked to prepare and lodge a Cause making the nature of his case plain. That was the Cause which came before the Deputy Bailiff on 18th March 1997, and which led to the judgment handed down on 2nd April, 1997 in respect of which leave to appeal is now sought. B C

The proceedings were brought in order to challenge the validity of the three Notices issued by H.M. Procureur to which I have referred; they were addressed to three Guernsey companies, namely MeesPierson (C.I.) Limited, MeesPierson Management Services (C.I.) Limited and MeesPierson Management (Guernsey) Limited. D

The Notices had been issued by the Procureur in his capacity as Attorney General of Guernsey, and in purported pursuance of the Law of 1991.

By these Notices the three companies were required to produce to the nominees of the Procureur thirteen classes of documents, the companies required to produce those documents being identified in the Notice and including the Plaintiffs in these proceedings. E

The Deputy Bailiff, while accepting jurisdiction to hear the Cause held that the validity of the Notices was not amenable to any of the remedies sought both by their nature and by reason also of the absence of any law of judicial review or of any remedy of certiorari or prohibition in this Island. F

The matter comes before this Court on an application for leave to appeal to the Court of Appeal. Having considered the terms of the Notice of Appeal and the contentions of the parties, this Court decided to address first the question as to whether this Court has jurisdiction to hear such an appeal in the light of the terms of the Court of Appeal (Guernsey) Law, 1961 ("the Guernsey Appeal Law"), from which this Court derives its jurisdiction.

The Guernsey Appeal Law makes separate provision for appeals in civil matters and appeals in criminal matters. G

A The former is contained in Part II of the Guernsey Appeal Law and (so far as is material) provides as follows:-

"13.(1) On such day as shall be appointed in that behalf by Ordinance of the States there shall be vested in the Court of Appeal the appellate jurisdiction in civil matters which immediately before that day was vested in the Royal Court, sitting as a 'Cour des Jugements et Records.'

B 13.(2)

14. For all the purposes of and incidental to the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the power, authority and jurisdiction which vested in the Royal Court sitting as a 'Cour des Jugements et Records' and shall have power, if it appears to the Court of Appeal that a new trial ought to be had, to order, if it thinks fit, that the verdict and judgment be set aside and that a new trial be had."

C

The Royal Court sat as a "Cour des Jugements et Records", comprising the Bailiff and a minimum of seven and a maximum of twelve Jurats, to hear civil appeals from the Ordinary Court. The Royal Court sitting as a Full Court, also comprising the Bailiff and a minimum of seven and a maximum of twelve Jurats, exercised and continues to exercise its own functions at first instance, including original criminal jurisdiction in respect of indictable offences, and has power, derived from legislation, to hear criminal appeals from inferior courts in the Bailiwick and appeals from certain administrative bodies such as the States Housing Authority. The Ordinary Court comprised the Bailiff with a minimum of two Jurats. There is here a parallel with the Superior Number and the Inferior Number in Jersey, and there is a strong similarity between the terms of the sections quoted above and their equivalent in article 12 of the Court of Appeal (Jersey) Law, 1961 ("The Jersey Appeal Law").

D

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The Ordinary Court had had a dwindling jurisdiction in criminal matters and the Cour des Jugements et Records had no appellate criminal jurisdiction.

Thus, the provisions of section 24 of the Appeal Law do not operate by way of transfer of any pre-existing jurisdiction in respect of criminal matters, but launch straight into the right of appeal (in some cases subject to leave) of a person convicted on indictment or summarily in the Royal Court sitting as a Full Court. That section provides as follows:-

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"24. A person convicted on indictment or summarily convicted in the Royal Court sitting as a Full Court on or after such day as shall be appointed in that behalf by Ordinance of the States may appeal under this Part of this Law to the Court of Appeal-

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- (a) against his conviction, on any ground of appeal which involves a question of law alone; and
- (b) with the leave of the Court of Appeal or upon the certificate of the judge who presided at his trial that it is a fit case for appeal against his conviction, on any ground of appeal which

involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal; and A

- (c) with the leave of the Court of Appeal, against the sentence passed on his conviction, unless the sentence is one fixed by law."

Again, this is similar to the equivalent provision in the Jersey Appeal Law, allowing for the fact that there is no trial by jury in Guernsey, and therefore, no reference to such trial in the article in the Guernsey Appeal Law. B

The Procureur's power to issue such a Notice as has led to this litigation, derives from section 1 of the Law of 1991. Before commencing an examination of its terms, it is of assistance to set this Law in its context. In 1987 the United Kingdom Parliament passed the Criminal Justice Act of that year. As well as setting up the Serious Fraud Office it gave power to the Director of that Office to require a person whose affairs were to be investigated "or any other person" to answer questions or to furnish information and to produce documentation. There was an express reference to Guernsey, as well as to other Islands, in that the Director was able to exercise his powers of the nature that I have described "on a request from the Attorney General of Guernsey ... under legislation corresponding to that section." C

It occasions no surprise therefore to find the Law of 1991 being passed at the time when it was. That Law provides as follows so far as is directly relevant to this application. D

"1.(1) The powers of Her Majesty's Procureur under this section shall be exercisable in any case in which it appears to him-

- (a) on reasonable grounds that there is a suspected offence involving serious or complex fraud, wherever committed; and E
- (b) that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person.

(2) Her Majesty's Procureur may by notice in writing require the person whose affairs are to be investigated ("the person under investigation") or any other person whom he has reason to believe has relevant information to attend before Her Majesty's Procureur at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation. F

(3) Her Majesty's Procureur may by notice in writing require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to Her Majesty's Procureur to relate to any matter relevant to the investigation or any documents of a specified class which appear to him so to relate; and G

- (a) if any such documents are produced, Her Majesty's Procureur may -

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

B

.....

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

C

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
- (b) Her Majesty's Procureur has authorised the making of the requirement.

D

(10) Her Majesty's Procureur may authorise any person to exercise on his behalf all or any of the powers conferred by this section but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority."

From the terms of subsection 1(9), it is clear that it is the intention of the legislature to override in cases where such a Notice is given the obligations of confidence which normally attach in banking or fiduciary business. This was to be an instance where the public good was seen by the legislature to override private rights, as is to be found expressed in the speech of Lord Mustill in R. v. Director of Serious Fraud Office, Ex parte Smith, (1992) 3 WLR 66 at p.87.

E

The issue of the Notices in this matter derived from the request of the prosecuting authority in the United States of America, namely the United States Department of Justice, which sought assistance in connection with an ongoing prosecution in the United States District Court, Eastern District of the State of Missouri, that prosecution having been instituted against Mr. David Kay Harris and Mr. Abraham Bell. The request was originally based upon the Disclosure Directives to which we have referred, and was accompanied by details of the allegations made against Mr. Harris and Mr. Bell. The fullest detail is provided in the Indictment against Mr. Harris and Mr. Bell in the proceedings in the United States District Court, Eastern District of Missouri.

F

A copy of that Indictment was before the Deputy Bailiff and was before us. Mr. Harris was a taxpayer and Mr. Bell was his accountant, responsible for the taxation affairs of Mr. Harris and his travel consolidator company. Mr. Harris has been charged, and was standing trial, on numerous counts charging him with fraudulent evasion of income tax and criminal conspiracy. Mr. Bell was charged with counts alleging his complicity in those offences and in that

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conspiracy. The criminal proceedings are based on an alleged series of arrangements under which certain receipts are alleged to have been siphoned off from an escrow account maintained by Mr. Harris' company, Unitravel III Corporation, and passed through accounts in Guernsey to accounts in New York for the eventual use of Mr. Harris, the scheme involving the use of false invoices for one way flights, both flights and documentation being fictitious in their nature. A

To insert a further layer of detail, Unitravel III Corporation, Mr. Harris' company, maintained this escrow account for receipt of monies from people paying for flights. This was alleged to have operated normally in the case of flights arranged by Unitravel itself and in these instances operated lawfully, whereas it is alleged that in the case of other flights and payments there was no transfer to the operating account. The operating account only was the account used for the return of tax to the Revenue Authorities, and the other items in the escrow account were ignored for this purpose, the profit which would otherwise have been thrown up being alleged to have been concealed by the false invoices. B C

It was then alleged that the profit was siphoned off abroad. Thus, is it alleged that in twenty one cases disbursements from the escrow account were transferred to Transatlantic Air Discounters Limited of Guernsey, and in another twenty cases to a company called Flight Shop, which maintained an account under the name of Walkabout Club with National Westminster Bank PLC in London. The total involved exceeded \$5 million, according to the allegations made in those criminal proceedings. D

It is alleged that it was the company called Pierson Heldring and Pierson (C.I.) Limited in Guernsey which itself formed the company Transatlantic Air Discounters Limited, referred to in the Notices, and that payments were made to them either directly or through Flight Shop. It was alleged that the money was then transferred to J.P. Morgan or to Brown Brothers in New York (both being well known bankers) from which it could be drawn and was drawn, it was alleged, without any indication of the identity of the beneficial owner of the money. E

It was further alleged that Century Holdings Limited, also referred to in the Notices and one of the Plaintiffs in these proceedings, was used to mask Mr. Harris' ownership of a mansion called 25 Carswold, which was alleged to have been purchased for Harris, but of which, it was alleged, he posed as a tenant.

It appears from the letter from the United States Department of Justice, dated 10th December 1996, to the Procureur, that Pierson Heldring and Pierson Limited were later named MeesPierson (C.I.) Limited, who for the purpose of setting up Century Holdings and Transatlantic Air Discounters Limited, acted through their associated company, Pierson Management (Guernsey) Limited. F

It was against the background of these charges that the Notices were issued on 10th March 1997.

So far as is material those Notices provided as follows:- G

A

"NOTICE REQUIRING ATTENDANCE TO ANSWER QUESTIONS,
FURNISH INFORMATION AND PRODUCE DOCUMENTS

PERSONS UNDER INVESTIGATION:
THOSE PERSONS, COMPANIES AND ENTITIES DESCRIBED BELOW

B

1. The Law Officers of the Crown have powers to investigate suspected offences, wherever committed, or serious or complex fraud by virtue of the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991 ("the Law").

C

2. I have reason to believe that you have relevant information about the affairs of the persons or companies under investigation, and I therefore require you to answer questions or otherwise furnish information to my nominees listed hereunder with respect to matters relevant to the investigation on Friday, 14th March, 1997 at 10.00 a.m. at your offices at Bordage House, Le Bordage, St. Peter Port. I also require you to produce to my said nominees at the same place, on the same date and at the same time, the following documents and copies thereof which appear to me to relate to matters relevant to the investigation:" (There follows a number of different classes of documentation.)

The Notices went on to provide in para. 3:-

D

"3. I authorise in accordance with section 1(10) of the Law my said nominees to require the disclosure of information or the production of documents in any circumstances where an obligation of confidence is owed within the meaning of section 1(9) of the Law."

Thereunder the persons, companies, or entities under investigation are set out in the Notices and those include Unitravel III Corporation, Transatlantic Air Discounters Limited and Century Holdings Limited.

E

We were informed that by now the matter has proceeded to trial and conviction, but that enquiries are still continuing.

It was the submission of Mr. Finch, the Crown Advocate appearing on behalf of the Law Officers, that this Court has no jurisdiction to hear the appeal from the Deputy Bailiff in respect of which leave is sought and therefore no jurisdiction to grant leave to appeal.

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Mr. Finch relies on the terms of the Guernsey Appeal Law, on a decision of the Court of Appeal for Jersey in a similar matter, McMahon v. Attorney General (1993) JLR 108, and on certain English authorities bearing on the nature of criminal causes or matters as understood in the provisions of English statutes.

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Advocate Harris on the other hand submitted both that McMahon was distinguishable and that the nature of the Cause and the relief sought was of a civil nature in that the Plaintiffs were using private remedies in seeking to protect a private right, namely the right to confidentiality in banking matters. He further relied upon the fact that these remedies were sought in a civil court which accepted jurisdiction. He submitted that not only were the remedies of declaration and injunction of a civil nature, as was obvious, but

also, as he established by reference to two unreported cases in the Court of Appeal in England, judicial review was tested likewise in that jurisdiction. A

In our judgment however, the identification of a matter as a civil or criminal matter is not dependent on the remedy sought, on the nature of the right sought to be protected or on the particular Court before which the remedy is sought. To adopt the words of Sir Godfray Le Quesne in the McMahon case, at p.115, when considering the similar provisions of the law in force in Jersey:-

"The purpose of the power is to facilitate the investigation of a suspected crime- what is commonly called a criminal investigation. If information is obtained as a result of the order, the use of it allowed by article 3 of the Law is disclosure for the purposes of investigation of an offence or of a prosecution. B

The purpose of the proceedings in the Royal Court was to stop a particular step in the investigation of the suspected offence which the Attorney General's order would have made possible. In other words, to curb the criminal investigation. The Attorney General's power is a power to authorise a form of criminal investigation. The object of the proceedings was to invalidate the exercise of the power and so restrict the criminal investigation. C

We bear in mind the legislative and historical context of the Court of Appeal (Jersey) Law 1961, but we find it impossible to characterise proceedings brought with this object in relation to this power as a civil cause or matter. In considering this question we do not find any ambiguity in those terms in para. 1 of article 12 of the Court of Appeal (Jersey) Law. Giving to those words "in any civil cause or matter" their ordinary meaning which, in our judgment, is the meaning which they bear in that paragraph, we consider it impossible to bring within them the proceedings now before us." D

We conclude that the nature of the statutory power afforded by the Law of 1991, the terms of the Notices and the background presented by the proceedings in Missouri, together with the request by the US Justice Department, make it clear that this appeal would be of a criminal nature and thus not within the terms of section 13(1). E

Some further assistance is to be derived from the English authorities which are concerned with the meaning of "criminal cause or matter" in English statutes. As has been recognised in a succession of authorities in England, starting with Amand v. Home Secretary (1943) AC 147 and leading up to Carr v. Atkins (1987) 3 WLR 529 and in re O. (Restraint order: Disclosure of assets) (1991) 2 WLR 475, in English Law the nature of the matter, criminal or otherwise, has to be treated as dependent on the nature of the act sought to be impugned or questioned and not on the means which the person complaining adopts to protect his private right. Certain matters, for example the estreatment of recognisances, and the enforcement of a fine by civil means, have been treated as being collateral to criminal matters and retaining their civil identity, whereas a challenge to a requirement under statute to give information to a police constable in connection with criminal investigations has been treated as a criminal matter. As was pointed out by Sir Godfray Le Quesne in the McMahon case the statutes in respect of which these authorities have developed have F G

A been concerned with the construction of "criminal matters" or "criminal causes" but we respectfully agree that they are of assistance in determining a matter of the nature which is before this Court, in particular in approaching the question as to whether this appeal can be said to relate to a civil matter.

Advocate Harris sought to distinguish McMahon on two grounds. First, he drew attention to the fact that in McMahon the person to whom the Notice was directed was the person under investigation, as distinct from the situation in the present case. We do not consider this to be a realistic distinction, and it is to be observed that it would result in the curious situation that a challenge to a Notice addressed to "the person under investigation" would, on Advocate Harris' view of the matter, be a criminal matter, whereas a challenge to a Notice addressed to "any other person", being the next words in the same phrase, would have the contrary effect and be a civil matter. We observe that such an outcome can hardly have been the intention of the legislature.

Secondly, Advocate Harris sought to rely on the fact that the Plaintiffs were seeking to protect their private right of confidentiality. This is not however an essential distinction from the situation in McMahon in which the proposed Appellant was seeking to protect his right to silence and to the privacy of his own affairs.

Thirdly, Advocate Harris referred to the contention of the Applicants that this was not a matter of an investigation but a collection of evidence. We see no substance in this submission so far as the matter before us is concerned.

D Clearly, there is no right of appeal under Section 24 of the Guernsey Appeal Law, treating as it does with the conviction and sentence of a person charged with a criminal offence. There having been no conviction or sentence there can be no right of appeal under Section 24.

E For the reasons given above, we conclude also that there is no right of appeal under Section 13, the matter in respect of which leave is sought not being properly categorised as in respect of a civil matter, and not falling within the terms of Section 24. For these reasons this application is dismissed.

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F COLLINS, J.A.: Advocate Harris has made two applications consequent upon our judgment. The first is for leave to appeal to Her Majesty in Council against the judgment and decision of this Court delivered this day, the application being made pursuant to Section 16 of the Court of Appeal (Guernsey) Law 1961 and Section 2 of the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 (S.I. No. 1676 of 1982.)

G Advocate Harris has referred the Court to its previous decision in Havilland Estates Limited v. Channel Island Ceramics Limited 15.GLJ.50, in which this Court held that there was no power to give leave to appeal to Her Majesty in Council in interlocutory matters; in that case the Court referred back to the case of Salter Rex & Co. v. Ghosh (1971) 2 QB 597 and to a passage in the Annual Practice relating thereto. Advocate Harris has realistically accepted that since this was an application for interlocutory relief and was heard by the Interlocutory Court the essence of the matter is that the nature of the application made in the Court below was interlocutory. In those circumstances

we do not have jurisdiction to grant leave to appeal to Her Majesty in Council A
and it will be for the Plaintiffs to make application for special leave.

Advocate Harris also asked for the grant of an order for a stay and restraint
in similar terms to those granted by the Court of Appeal on 24th March 1997,
and in that connection he undertakes that the Plaintiffs will take all
reasonable steps to bring the matter before Her Majesty in Council on an
application for special leave as timeously as possible and will seek to bring
about an expedited hearing in that respect. Upon that undertaking we do B
extend the stay and restraint in the terms of this Court's stay of 24th March
1997.

Advocate Finch applied for costs and Advocate Harris has not opposed that,
leaving the matter to the discretion of this Court. We consider that the costs
of this appeal should be in favour of the Law Officers of the Crown and order
accordingly.

Application for leave to appeal to the Court of Appeal dismissed, with costs; C
application for leave to appeal from this decision to Her Majesty in Council
dismissed; further stay and restraint on Her Majesty's Procureur granted,
pending any application to Her Majesty in Council for special leave to appeal,
such application to be brought as timeously as possible. (On 26th June, 1997
an application for special leave to appeal was dismissed by Her Majesty in
Council).

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