

ORDER IN COUNCIL

IV
2008

ratifying a Projet de Loi

ENTITLED

The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006

(Registered on the Records of the Island of Guernsey
on the 7th April, 2008.)



2008

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

7th day of April, 2008 before Geoffrey Robert Rowland, Esquire, Bailiff; present:- David Charles Lowe, OBE, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Keith Bichard OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Barbara Jean Bartie, David Osmond Le Conte and John Ferguson, Jurats

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 12th February 2008 approving and ratifying a Projet de Loi entitled The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law 2006, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ORDERED that the said Order in Council be registered on the records of this Island.



At the Court at Buckingham Palace

THE 12th DAY OF FEBRUARY 2008

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolutions of 24th February 2005 and 27th September 2006, the States of Deliberation at a meeting on 27th September 2006 approved a *Projet de Loi* entitled *The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law 2006* and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction *The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law 2006*, and to order that it shall have force of law in the Island of Guernsey.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Island of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Judith Simpson

PROJET DE LOI

ENTITLED

The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006

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PROJET DE LOI

ENTITLED

The Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006

THE STATES, in pursuance of their Resolutions of the 24th February, 2005^a and the 27th September, 2006^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

REMOVAL OF DISCRIMINATION AGAINST ILLEGITIMATE PERSONS

Removal of discrimination against illegitimate persons.

1. (1) The provisions of this section shall apply to -
 - (a) the intestate succession to the estate, whether real or personal, of a person dying after the date of the commencement of this section ("the said date"),
 - (b) the testamentary succession to, and légitime in, the personal estate of a person whose will of personalty is executed after the said date,

^a Article IV of Billet d'État No. II of 2005.

^b Article I of Billet d'État No. XVI of 2006.

(c) the testamentary succession to the real estate of a person whose will of realty is executed after the said date, and

(d) the provisions of any relevant instrument.

(2) Any rule of law (whether statutory or otherwise) or custom by or pursuant to which, for the purposes of succession to any property, whether real or personal, an illegitimate person is, by reason of his illegitimacy, distinguished from a legitimate person, is abolished.

(3) Any reference in any will or relevant instrument, however expressed, to any relationship between two persons shall be construed, unless the contrary intention appears, without regard to whether either of those persons, or any person through whom the relationship is deduced, is legitimate or illegitimate.

(4) For the purposes of this section an illegitimate person shall be presumed not to have been survived by his father, or by any person related to him only through his father, unless the contrary is shown.

(5) For the purposes of this section -

(a) the fact that a person is named as the father of an illegitimate person in that person's birth certificate or in an official register of births shall constitute prima facie evidence of paternity,

(b) subject to paragraph (c), a finding in affiliation proceedings that a person is the father of an illegitimate child shall constitute conclusive evidence

of paternity,

(c) the Court may make a declaration as to paternity on the application of a person claiming to be entitled to succeed to any property or, with the leave of the Court, any other interested person, provided that no such application shall, except with the leave of the Court (which shall only be granted in exceptional circumstances), be commenced after the expiration of six years beginning on the date of the death of the person in respect of whose property the application is made,

(d) the burden of proving paternity shall be on the person seeking to establish the fact.

(6) Nothing in this section shall affect -

(a) the succession to the property of a person who has died prior to the commencement of this Part, or

(b) a direction made by any person by his will of personalty pursuant to the provisions of section 1 of the Law of Inheritance (Guernsey) Law, 1979 that any illegitimate child of his shall be treated for the purposes of the Law entitled "Loi relative à la portion disponible des biens-meubles des pères et mères" registered on the 20th January, 1930 as if that child were a child of his born in lawful wedlock.

(7) In this section -

"affiliation proceedings" means proceedings in a court of competent jurisdiction by or as a result of which a person is declared by the court to be the father of an illegitimate child, whether or not the principal purpose of those proceedings was to establish the paternity of the child, but excluding proceedings the recognition or enforcement of which would be contrary to public policy,

"illegitimate child" and **"illegitimate person"** shall mean a person whose father and mother were not married to each other at the time of his birth and who has not been legitimated or adopted and who is not otherwise treated in law as legitimate, and **"illegitimate"** shall be construed accordingly,

"official register of births" means -

- (a) the register of births kept by the Registrar-General of Births and Deaths of the Island of Guernsey, or
- (b) a register of births kept elsewhere by an authority with functions comparable to those of the Registrar-General,

"relevant instrument" means an instrument executed after the said date and which is -

- (a) an instrument by which a trust is created, whether immediately or with effect from a future date, or

- (b) a policy of insurance effected by any person for the benefit of his children, whether or not his spouse is also a beneficiary, pursuant to the provisions of section 12 of the Married Women's Property Law, 1928, as amended^c, and

and includes any instrument which is made pursuant to, or for the purposes of, any instrument or policy of insurance referred to in subsections (a) or (b) above.

(8) For the avoidance of doubt, the provisions of this section do not apply to the testamentary succession to the estate, whether real or personal, of a person whose will was executed before the said date notwithstanding that one or more codicils to that will were executed after the said date.

(9) For the purposes of this section, the time of a person's birth shall be taken to include any time during the period beginning with -

- (a) the insemination resulting in his birth, or
- (b) where there was no such insemination, his conception,

and (in either case) ending with his birth.

Power to make Ordinances in respect of Part I.

2. The States may, by Ordinance -

- (a) amend the provisions of section 1(5),

^c Ordres en Conseil Vol. VIII, p. 215.

- (b) make provision for proof of paternity,
- (c) amend the definition of "**affiliation proceedings**" in section 1(7), and
- (d) amend the definition of "**relevant instrument**" in section 1(7) so as to amend or add to the classes of instrument included in that definition.

Consequential amendments.

3. In section 4 of the Law of Inheritance, 1954^d -

- (a) paragraphs (c) and (e) of subsection (1), and
- (b) subsection (5),

are repealed.

PART II

UNASCERTAINED HEIRS TO REAL PROPERTY

Administration orders.

4. (1) Where a person ("the deceased") dies intestate as to Guernsey real property, or having made a will of real property, and immediately before his death he was the owner of any such property ("the property"), and -

- (a) no heirs to the property have been identified but there

^d Ordres en Conseil Vol. XVI, p. 10; Vol. XXVII, p. 164.

is reason to believe that heirs exist,

- (b) some heirs to the property have been identified but there is reason to believe that other heirs exist,
- (c) whether or not all heirs have been identified, some or all of the identified heirs cannot be found after proper and extensive enquiries, or
- (d) in any other case where ownership of the property after the death of the deceased is, for any reason, uncertain,

the Court may grant an administration order in accordance with the provisions of this Part.

(2) An administration order under this section may be made at the instance of any person included in the following classes -

- (a) Her Majesty's Procureur,
- (b) any heir to the property, whether presumptive or absolute, who is of full age,
- (c) the legal guardian of a person who would be included in the class described in paragraph (b) but who is subject to a legal disability, whether as to age or otherwise, or
- (d) such other class or classes of persons whom the States

may by Ordinance prescribe,

and, where the applicant is a person within paragraphs (b), (c) or (d), Her Majesty's Procureur shall have the right to make representations at the hearing of the application.

(3) An administration order made under this section shall appoint as the administrator of the property one or more of the following -

- (a) Her Majesty's Procureur,
- (b) the applicant for the administration order, provided that he is ordinarily resident in Guernsey,
- (c) an advocate of the Royal Court,
- (d) the Public Trustee, or
- (e) with the approval of Her Majesty's Procureur, any other person who is ordinarily resident in Guernsey,

and any such order which appoints more than one administrator may empower the survivor of them to act alone.

(4) Only a natural person may be appointed as an administrator.

Duration of administration order.

5. (1) Subject to the following provisions of this section, an administration order shall remain in force until the proceeds of sale have been distributed in accordance with this Part of this Law or otherwise as the Court may

direct.

(2) An administrator may apply to the Court to be discharged from his functions under the administration order and the Court, before discharging him, may require an account of the administration of the property or its proceeds of sale, or both, as the case may be.

(3) An administrator may be removed by the Court if, in the opinion of the Court, he becomes incapable of acting, or refuses, neglects, or is unfit, to act.

(4) An application for removal of an administrator under subsection (3) may be made by any person at whose instance an administration order could have been made in respect of the property pursuant to section 4(2).

Appointment of replacement administrator.

6. (1) Where an administrator dies, is discharged from his functions pursuant to section 5(2), or is removed by the Court pursuant to section 5(3), and no other person is empowered to act as administrator of the property, the Court shall appoint one or more persons included in the categories set out in section 4(3) to carry out the functions of administrator in place of the administrator who has died, been so discharged or removed.

(2) Where an administrator who was acting jointly with another person or persons dies or is so discharged or removed the Court may appoint one or more additional persons to act jointly with the continuing administrator or administrators as it thinks fit.

Oath.

7. An administrator appointed by the Court shall take an oath or

affirmation in the form set out in the Schedule.

Remuneration and expenses of administrator.

8. An administrator shall be entitled to reimbursement of all reasonable expenses properly incurred during the course of the administration and to such reasonable fees for acting as administrator as the Court may approve, all such reasonable expenses and fees to be recoverable from, and which shall constitute a charge against, the proceeds of sale of the property in priority to all other claims.

Powers and duties of administrator.

9. (1) Where the Court grants an administration order pursuant to section 4, the property shall thereupon vest in the administrator to hold the same as trustee for the benefit of the heirs, whether or not yet identified ("the heirs"), and the administrator shall -

- (a) subject to subsection (5), sell the property and distribute the proceeds of sale,
- (b) pending the sale of the property, administer the property, and
- (c) pending distribution of the proceeds of sale, administer the said proceeds,

in accordance with the provisions of this Part.

(2) An administrator shall, in the exercise of his functions -

- (a) observe the utmost good faith,

- (b) act only in the interests of the heirs,
- (c) act en bon père de famille,
- (d) keep accurate accounts and records of the administration of the property and of the proceeds of sale, and
- (e) at any time, at the written request of any of the heirs, or at the direction of the Court, provide full and accurate information as to the state of the property and any income received and expenditure incurred in relation thereto and, after the sale of the property, provide full and accurate accounts in relation to the proceeds of sale.

(3) An administrator, in acting en bon père de famille, shall -

- (a) so far as is reasonable, preserve the value, and
- (b) so far as may be appropriate in the circumstances, enhance the value,

of the property pending its sale and, thereafter, of the proceeds of sale thereof.

(4) An administrator, in the exercise of his functions -

- (a) shall have, subject to the provisions of subsection (5)(b), in relation to the property, all the powers vested in the deceased immediately before his death,

including (where appropriate and without limitation) the power to let the property and, in connection with the exercise of those powers, the power to incur liabilities,

- (b) may sue and be sued as administrator,
- (c) may consult professional persons in relation to the administration and sale of the property and the administration of the proceeds of sale, but may not (subject to section 12 and to any order of the Court) delegate his functions, and
- (d) may apply to the Court for directions in relation to the administration of the property or its proceeds of sale.

(5) The administrator -

- (a) may postpone, but shall not unreasonably delay, the sale of the property, but
- (b) may not, pending the sale of the property, borrow against the security of the property, or otherwise cause any charge to be attached to the property, without the prior approval of the Court.

(6) The administrator selling, letting or otherwise dealing with real property in accordance with this Law, shall be deemed to have, and to be able to convey, all such right, title and interest in the property as was vested in the deceased immediately before his death, to the exclusion of any other person and for

all purposes.

(7) The administrator shall take all such steps as are reasonably practicable to identify the heirs entitled to the property and their respective interests therein.

(8) Following the sale of the property, which may be by private treaty or public auction, the administrator shall -

(a) hold the proceeds of sale, and any income accrued in relation to the property prior to the sale, less any fees and expenses properly deductible pursuant to section 8, separate from his own property and separately identifiable from any other property of which he is administrator, for a minimum period, subject to subsection (9), of six years commencing on the date of the sale, and

(b) as soon as reasonably practicable after the expiration of the said period of six years, apply to the Court for permission to distribute the proceeds of sale, less any further fees and expenses properly deductible pursuant to section 8, to the persons whom the administrator has identified as the heirs entitled to the proceeds of sale or, if no such heirs have been identified, or the administrator has reason to believe that some only have been identified, apply to the Court for directions.

(9) Notwithstanding the provisions of subsection (8)(b), the Court may, on application by the administrator, order the distribution of the proceeds of

sale of the property, less any further fees and expenses properly deductible pursuant to section 8, before the expiration of the said period of six years.

(10) Where the Court has ordered distribution of the proceeds of sale before the expiration of the said period of six years -

- (a) such distribution shall be made without prejudice to any claim during the remainder of that period by any heir to whom distribution has not been made against the heirs to whom distribution was made, and
- (b) any such heir to whom distribution has not been made shall, until the expiration of the said period of six years, have a lien on the proceeds of sale, but
- (c) the administrator, having made the distribution in accordance with the order of the Court, shall be discharged from personal liability in respect of the distribution.

(11) An application made under subsection (8)(b) or (9) shall -

- (a) describe, by affidavit, the steps taken by the administrator to identify the heirs, and state whether or not, and to what extent, the administrator is satisfied that all the heirs have been identified, and identify the heirs to whom the administrator proposes to distribute the proceeds of sale, or
- (b) make such application for directions as the

administrator thinks fit.

Liability for breach of trust.

10. (1) Subject to the provisions of this Law, an administrator who commits or concurs in a breach of trust is liable for -

- (a) any loss or depreciation in value of the property or the proceeds of sale resulting from the breach, and
- (b) any profit which would have accrued had there not been a breach.

(2) An administrator is not liable for a breach of trust committed by another person prior to his appointment.

(3) An administrator is not liable for a breach of trust committed by a co-administrator unless -

- (a) he was aware, or becomes or ought to have become aware, of the breach, or of the intention of his co-administrator to commit the breach, and
- (b) he actively conceals the breach or intention, or fails within a reasonable time to take proper steps to protect or restore the property or the proceeds of sale or to prevent the breach.

(4) Where co-administrators are liable for a breach of trust, they are liable jointly and severally.

(5) An administrator who becomes aware of a breach of trust to which subsection (3) applies shall take all reasonable steps to remedy the breach.

Non-disclosure of deliberations etc.

11. Subject to an order of the Court to the contrary, an administrator is not obliged to disclose any documents which reveal -

- (a) his deliberations as to how he should exercise his functions as administrator,
- (b) the reasons for any decision made in the exercise of those functions, or
- (c) the material upon which such a decision was or might have been based.

Appointment of attorney.

12. An administrator may appoint any person as his attorney for the purpose of executing any document (including a document creating or evidencing any charge on the property) or attending in court to consent to a sale of the property, but, in any such case, subject to the prior approval of the administrator to the terms of the document or the sale: and nothing in this section shall relieve the administrator from any liability therefor.

Court may relieve administrator of liability.

13. The Court may relieve an administrator wholly or partly of liability for a breach of trust if the Court is satisfied that the administrator -

- (a) has acted honestly and reasonably, and

(b) ought fairly to be excused -

(i) for the breach, and

(ii) for failing to obtain the directions of the Court in the matter in respect of which the breach arose.

Power of Court in event of default.

14. If an administrator does not comply with an order of the Court requiring him to do anything, then without prejudice to its other powers, the Court may, on such terms and conditions as it thinks fit, order that the thing be done by another person nominated for the purpose by the Court, at the personal expense of the administrator or otherwise as the Court directs; and a thing so done has effect in all respects as if done by the administrator.

Dealings by administrator with third parties.

15. (1) Where, in a transaction or matter affecting the property or the proceeds of sale, an administrator informs a third party that he is acting as trustee, a claim by the third party in respect of the transaction or matter shall, subject to subsection (3), extend only to the value of the property at the time of the transaction, or the amount of the proceeds of sale from time to time, as the case may be.

(2) If an administrator fails to inform the third party that he is acting as trustee and the third party is otherwise unaware of the fact -

(a) the administrator incurs personal liability to the third party in respect of the transaction or matter, and

- (b) he has a right of indemnity against the property or the proceeds of sale in respect of his personal liability, unless he acted in breach of trust.

(3) Nothing in this section prejudices an administrator's liability for breach of trust or any claim for breach of warranty of authority.

(4) In this section "third party" means a person other than any person mentioned in section 4(2), except where the administrator is transacting with such a person.

Applications for directions.

16. An administrator may apply to the Court for directions as to how he should or might act in the course of his administration, and the court may make such order as it thinks fit.

General powers of the Court.

17. (1) On the application of any person mentioned in subsection (2), the Court may -

- (a) make an order in respect of -
 - (i) the execution or enforcement of the administration of the property,
 - (ii) the administrator, including (without limitation) an order as to the exercise by the administrator of his functions, the removal of the administrator, the appointment, remuneration or conduct of the administrator, the keeping

and submission of accounts, and the making or payments, whether into court or otherwise,

(iii) the heirs, or any person connected or concerned with the administration,

(iv) any property, real or personal, subject to the administration, including an order as to its vesting, preservation, application or recovery,

(b) rescind or vary an order or direction, or make a new or further order or direction.

(2) An application under subsection (1) may be made by Her Majesty's Procureur, the administrator, or an heir, or, with leave of the Court, any other person.

(3) Where the Court appoints or removes an administrator under this Part, it may impose such requirements and conditions as it thinks fit, including (without limitation) requiring an administration bond to be given in any case.

Power to make Ordinances in respect of Part II.

18. The States may by Ordinance amend the provisions of this Part.

Interpretation of Part II.

19. In this Part, unless the context otherwise requires -

"**the administrator**" shall include more than one administrator acting jointly,

"Her Majesty's Procureur" shall include Her Majesty's Comptroller.

PART III
LAW RELATING TO WILLS

Will disposing of real and personal property.

20. A will of real property may be made in the same document as a will of personal property.

Signing and attestation of wills and codicils.

21. (1) No will or codicil shall be valid unless -

- (a) it is in writing and signed by the testator or by some other person in his presence and by his direction,
- (b) it appears that the testator intended by his signature to give effect to the will,
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and
- (d) each witness either -
 - (i) attests and signs the will, or
 - (ii) acknowledges his signature,

in the presence of the testator (but not necessarily in

the presence of any other witness),

but no form of attestation is necessary.

(2) Any person who has attained the age of 14 years, and who is not the spouse or a descendant of the testator, is competent to attest the execution of a will in accordance with the provisions of subsection (1).

(3) Any gift in a will to a person, or to the spouse of a person, who attested the execution of the will, shall be void and of no effect.

(4) No person shall, on account of his being an executor of a will, be incompetent to attest the execution of such will.

(5) Nothing in this section shall affect the making or validity of a holographic will of personal property pursuant to Article 2 of the Loi relative aux Testaments de Meubles of 1847^e.

Saving as to wills of soldiers and mariners.

22. Nothing in this Law shall prevent any soldier being in actual military service, or any mariner or seaman being at sea, from disposing of his estate as he might have done before the commencement of this Part.

Will not to be void on account of incompetence of attesting witness.

23. Where any person who attests the execution of a will is, whether at the time of such execution or at any time thereafter, incompetent as a witness to prove the execution of that will, such will shall not for that reason be invalid.

^e Ordres en Conseil Vol. I, p. 163.

Revocation of wills.

24. A will or codicil may be revoked -

- (a) by another will or codicil executed in accordance with the formalities set out in this Part,
- (b) by a declaration in writing of the testator's intention to revoke such will or codicil, executed in accordance with the said formalities, or
- (c) by the physical destruction of such will or codicil, by the testator or by some other person in his presence and by his direction, with the intention of revoking the same.

Alterations after execution.

25. (1) Subject to subsection (2), no alteration made in a will after execution shall be valid, except in so far as the words or the effect of the will before alteration are not apparent.

(2) Where an alteration is made in a will after execution, the altered will shall be deemed to be duly executed if the signatures of the testator and the witnesses are appended -

- (a) in the margin or on some other part of the will near such alteration, or
- (b) at the foot or end of, or opposite to, a memorandum referring to such alteration, written at the end of some other part of the will.

Revival of revoked will.

26. No will or codicil, or any part thereof, which has been revoked, shall be revived except by the re-execution thereof, or by a codicil executed in accordance with the formalities set out in this Part and showing an intention to revive the same; and when any will or codicil which has been partly revoked, and afterwards wholly revoked, is revived, such revival shall not extend to that part as had been revoked before the revocation of the whole, unless an intention to the contrary is shown.

Gift to testator's issue.

27. (1) Where -

- (a) a will contains a gift to a child or remoter descendant of the testator,
- (b) the intended beneficiary dies before the testator, leaving issue, and
- (c) issue of the intended beneficiary are living at the date of the testator's death,

then, unless a contrary intention appears by the will, the gift shall take effect as a gift to the issue living at the testator's death.

(2) Where -

- (a) a will contains a gift to a class of person consisting of children or remoter descendants of the testator,

- (b) a member of the class dies before the testator, leaving issue, and
- (c) issue of that member are living at the date of the testator's death,

then, unless a contrary intention appears by the will, the gift shall take effect as if the class included the issue of its deceased member living at the testator's death.

(3) This section shall apply to issue in all degrees but such issue shall receive, in equal shares if more than one, any gift or share which their parent would have taken, and shall not take if such parent is living at the date of the testator's death.

(4) For the purposes of this section, a person conceived before the testator's death and born living thereafter is deemed to have been living at the date of the testator's death.

Consequential repeals.

28. The following enactments are repealed -

- (a) Articles 15 and 16 of the Law entitled "Loi sur les Successions" registered on the 3rd August 1840^f,
- (b) sections 3 to 10 of the Loi relative aux Testaments de Meubles of 1847,
- (c) Articles 1, 4, 5 and 8 of the Law entitled "Des

^f Ordres en Conseil Vol. I, p. 51.

Formalités requises pour les Testaments d'Immeubles" registered on the 26th June 1852^g, so far as they apply to the Island of Guernsey,

- (d) subsections (2) and (3) of section 4 of the Law of Inheritance, 1954.

Interpretation of Part III.

29. In this Part of this Law, except where the context otherwise requires, the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to an appointment by will of a guardian of a child, and to any other testamentary disposition.

Application of Part III.

30. This Part of this Law shall apply to any will, or to any alteration to any will, executed after the commencement of this Part.

PART IV PRESCRIPTION

Amendment of prescription period in certain cases.

31. (1) Notwithstanding the provisions of the Law entitled "Loi relative à la Prescription Immobilière" registered on the 23rd April 1909^h ("the 1909 Law"), and subject to subsection (2), any action, proceeding, claim or right in respect of any real property by or vested in any person claiming to be an heir to that real property against a person who has acquired it, whether for value or otherwise,

^g Ordres en Conseil Vol. I, p. 212.

^h Ordres en Conseil Vol. IV, p. 281.

in good faith from the heirs, or persons purporting to be the heirs (which would otherwise be prescribed by the lapse of twenty years), shall be prescribed by the lapse of six years from the date of the acquisition.

(2) If it appears to the court in the circumstances of any case that it would be equitable to allow an action to proceed notwithstanding that the action would otherwise, pursuant to the provisions of subsection (1), be prescribed, the court may at its discretion extend the period within which the action may be brought provided that such extended period shall not exceed twenty years.

(3) Where, on the coming into force of this section ("the operative date"), a period of prescription has already commenced to run under the 1909 Law, and that period would, under the 1909 Law, expire more than six years after the operative date, that period of prescription shall be reduced to six years commencing on the operative date, subject to the court's discretion to extend the period pursuant to subsection (2).

(4) Nothing in this section shall affect any period of prescription which, at the operative date, has already commenced to run under the 1909 Law and which at that date has six years or less still to run.

(5) In this section "the court" means the court in which the action has been brought.

PART V

ABOLITION OF RETRAIT LIGNAGER

Abolition of right of retrait lignager

32. (1) Subject to subsection (3), the right of redemption of real property ("droit de retrait lignager") is abolished.

(2) The Law entitled "Loi relative au Retrait Lignager, aux Appropriements, et à la Lecture des Contrats aux Plaids d'Héritage" registered on the 12th January 1924ⁱ ("the 1924 Law") is repealed.

(3) Nothing in this Part shall affect any proceedings en retrait lignager instituted before the commencement of this Part.

PART VI

MISCELLANEOUS AND GENERAL

Additional provisions as to Ordinances.

33. (1) An Ordinance made under this Law may amend, extend, adapt, modify or disapply (so far as it has effect in Guernsey) any enactment and any rule of customary law.

(2) An Ordinance made under this Law -

(a) may be amended or repealed by a subsequent Ordinance hereunder, and

(b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit.

(3) Any power conferred by this Law to make an Ordinance may be exercised -

ⁱ Ordres en Conseil Vol. VII, p. 176.

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

Delegation of powers to the Royal Court.

34. (1) The States may by Ordinance confer on the Royal Court the power to make provision by rules of court in respect of any matter for which, under this Law, the States are empowered to make provision by Ordinance.

(2) The provisions of section 35(2) shall apply to any rules made under this section.

Rules of Court.

35. (1) The Royal Court may make provision by rules of court for

any purpose for which it appears to that Court that it is necessary or expedient that provision should be made in connection with any of the provisions of this Law.

(2) Rules made under this section -

- (a) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient,
- (b) may be amended or repealed by subsequent Rules of Court, and
- (c) may make different provision in relation to proceedings before different courts in the Island of Guernsey.

Interpretation.

36. (1) In this Law, unless the context otherwise requires -

"**Court**" means the Royal Court sitting as an Ordinary Court which, for the purposes of this Law, may be validly constituted by the Bailiff sitting alone,

"**heir**" means a person who is a beneficiary pursuant to the will of a person who dies testate or a person entitled to benefit in the estate of a person who dies (whether wholly or partially) intestate, but does not include the Crown,

"**real property**" means real property situate in the Island of Guernsey and includes (without limitation) any right or interest which by the

law of Guernsey is or is deemed to be real property.

(2) Unless the context otherwise requires -

- (a) a reference in this Law to a numbered or lettered Part, section, subsection, paragraph or Schedule is a reference to the Part, section, subsection or paragraph of, or to the Schedule to, this Law which is so numbered or lettered, and
- (b) a reference in a provision of this Law to a numbered or lettered subsection or paragraph is a reference to the subsection or paragraph of that provision which is so numbered or lettered.

(3) Unless the context otherwise requires, references in this Law to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

Citation.

37. This Law may be cited as the Law Reform (Inheritance and Miscellaneous Provisions) (Guernsey) Law, 2006.

Commencement.

38. This Law shall come into force on the day next following the expiration of one calendar month from the date of registration.

SCHEDULE

Section 7

Oath or affirmation for administrators

"You swear and promise on the faith and truth that you owe to God [or "*You promise*"] that well and faithfully you will discharge the duties attaching to the office of administrator of the real estate of the late [*name of deceased*].