

ORDER IN COUNCIL

X
1987

ratifying a Projet de Loi

ENTITLED

The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987

(Registered on the Records of the Island of Guernsey
on the 5th October, 1987.)



1987.

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of October, 1987 before Sir Charles Frossard, Kt., Bailiff; present:—Donald Pescott Plummer, Brian Ernest Herbert Joy, Esquires, Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley and Leonard Arthur Moss, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 21st July, 1987, approving and ratifying a *Projet de Loi* entitled "The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ORDERED that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 21st day of July 1987

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 13th day of July 1987 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolution of the 26th day of November 1986, the States of Deliberation at a meeting held on the 29th day of April 1987 approved a Bill or “Projet de Loi” entitled “The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987”, and to order that the same shall have force of law in the Island of Guernsey.’

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987

THE STATES, in pursuance of their Resolution of the 26th day of November, 1986, 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 1

INTERIM INJUNCTIONS

1. (1) If proceedings have been or are to be instituted before the Court, the Court may by order, at any time before it makes a final judgment in the proceedings or before the proceedings are otherwise concluded, on the application of any person who is, or as the case may be will be, a party to the proceedings (such person being referred to in this Part of this Law as "the applicant"), grant an injunction addressed to another person (such other person being referred to in this Part of this Law as "the respondent") requiring the respondent to do or not to do any thing.

Power to
grant
interim
injunctions.

(2) The injunction—

(a) may be granted ex parte;

(b) shall remain in force until—

- (i) it is discharged under section 2 of this Law;
 - (ii) the Court makes a final judgment in the proceedings or the proceedings are otherwise concluded; or
 - (iii) such other time or the happening of such other event as may be specified; and
- (c) may be granted subject to such conditions as may be specified.

(3) The Court may require the applicant to enter into such undertakings on such terms as may be specified including, where the injunction is to be granted before proceedings are instituted, an undertaking to institute proceedings within such period as may be specified.

(4) A person who contravenes or fails to comply with—

- (a) an injunction;
- (b) any condition subject to which an injunction is granted;
- (c) any undertaking entered into by him under subsection (3) of this section,

is, in addition to any penalty to which he may be liable under subsection (5) of this section, guilty of a contempt of court and liable to be proceeded against and punished accordingly.

(5) The Court may grant an injunction subject to such penalty as may be specified, and if the respondent contravenes or fails to comply with—

- (a) the injunction;

- (b) any condition subject to which the injunction was granted,

the penalty shall be enforceable against him and, if it is a pecuniary penalty, payable to the applicant.

(6) Proceedings under subsection (4) of this section for a contempt of court or under subsection (5) of this section for the enforcement of a penalty shall be instituted by way of summons issued by the applicant, or by the respondent where the contempt is that of the applicant, and shall be dealt with by the Court.

(7) An injunction may in exceptional circumstances be granted notwithstanding that proceedings have not been and are not to be instituted before the Court.

2. The Court may by order, on the application of either party vary or discharge—

Variation
and
discharge of
injunctions.

- (a) an injunction;
- (b) any condition or penalty subject to which an injunction is granted;
- (c) any undertaking entered into by the applicant under section 1(3) of this Law.

3. (1) The Court may direct that an application for an injunction under section 1 of this Law or for an order under section 2 of this Law shall be heard notwithstanding that notice of the application has not been served upon the other party to the application.

Notice of
applications.

(2) Where the Court does not make a direction under subsection (1) of this section, the Court may

direct that the period of time which must elapse between service upon the other party of notice of the application and the hearing of the application shall be reduced to such period as may be specified.

Grounds for
granting
injunction.

4. The Court shall not exercise any power conferred by section 1, 2 or 3 of this Law unless satisfied that it is just and convenient to do so.

Saving for
existing
remedies.

5. Nothing in this Part of this Law derogates from any remedy, right or power arising otherwise than under this Law.

PART II

REGISTRATION OF INTERLOCUTORY MATTERS

Leave of
Court
required to
register
interlocutory
matters.

6. An act or order of the Court made, in any proceedings, before the Court makes a final judgment in the proceedings or before the proceedings are otherwise concluded, including an order for an adjournment, shall not be registered in the *Livre des Hypotheques, Actes de Cour et Obligations*—

- (a) without the leave of the Court; and
- (b) unless the provisions of Part IV of this Law have (where appropriate) been complied with.

Orders for
leave to
register.

7. The order of the Court by which leave to register is given under section 6 of this Law—

- (a) may be made *ex parte*;
- (b) may limit the pecuniary amount which may be registered to such amount as may be specified;

- (c) may be varied or revoked on the application of either party to the proceedings;
- (d) may direct that the registration shall be removed—
 - (i) after such time;
 - (ii) upon such contingency or event;
 - (iii) upon the deposit with the Court by the defendant to the proceedings of security of such amount,
 as in each case may be specified.

PART III

PROTECTION OF MINORS' PROPERTY

8. (1) On the application of any person mentioned in section 9 of this Law the Court may, if in its opinion it would be just and for the benefit of a minor to do so—

Administra-
tion of
minors'
property.

- (a) appoint any person (such person being referred to in this Law as an "appointed person") to hold and administer any relevant property;
- (b) give such directions to any person as in its opinion are necessary—
 - (i) to achieve the holding by an appointed person of the relevant property in respect of which he has been appointed, including a direction to deliver or transfer the relevant property to him;
 - (ii) to enable the appointed person to administer the relevant property;

(c) order that any person holding or administering any relevant property, including an appointed person, shall—

(i) deposit with the Court security in respect of the relevant property of such amount and in such form as the Court may determine;

(ii) deliver to the Court an inventory of any relevant property held by or administered by him;

(iii) deliver to the Court accounts in respect of the relevant property, at such times or at such intervals and in respect of such periods as the Court may determine;

(iv) deliver up to the Court all books, papers and other documents relating to any relevant property held by or administered by him;

(d) in the event of any loss, dissipation or diminution in the value of any relevant property resulting from the act or default of any person holding or administering it, including an appointed person, order that any security deposited with the Court by that person in respect of the relevant property under paragraph (c) (i) of this subsection, or any part of that security, be sold (if appropriate) and paid over for the benefit of the minor to whom the relevant property belonged, or who was entitled to it, or for whose benefit it was held or administered, as the case may be;

(e) order that any person shall not hold or administer any relevant property;

(f) order the settlement by any person of any expenses and fees of an appointed person incurred by him in holding and administering relevant property.

(2) The provisions of subsection (1) of this section are in addition to, and not in derogation from, the law and custom relating to guardianship and tutelle.

9. An application to the Court under section 8 of this Law may be made by the mother, father or guardian of the child in relation to whose property the application is to be made, Her Majesty's Procureur or Comptroller, or any other interested party.

Persons who may apply.

PART IV

PROCEDURES TO FACILITATE CONVEYANCING

10. In this Part of this Law—

Interpretation of this Part of this Law.

“caution” has the meaning given by section 11 of this Law;

“conveyancing day” means any day on which the Royal Court sits as a Conveyancing Court;

“Register of Cautions” means the register established under section 13 of this Law;

“relevant order” means any act or order of the Court, whether interlocutory or otherwise, and includes a judgment giving permission to distrain on the effects of a defendant and a preliminary or interim vesting order; and

“scheduled document” means any document of a description specified in the Schedule to the Conveyancing (Guernsey) Law, 1969(a).

Restrictions
on registra-
tion of
relevant
orders.

11. A relevant order shall not be registered in the Livre des Hypotheques, Actes de Court et Obligations on a conveyancing day unless—

- (a) notice of intention to so register it (such notice being referred to in this Part of this Law as “a caution”) has been entered in the Register of Cautions in accordance with section 13 of this Law; and
- (b) the provisions of Part II of this Law have (where appropriate) been complied with.

Restrictions
on arrest.

12. Her Majesty’s Sheriff shall not on a conveyancing day arrest any monies, whether in pursuance of an act of Court, permission to arrest or otherwise, where such monies—

- (a) are held by an Advocate on behalf of a person; and
- (b) are required to be applied by the Advocate, pursuant to an undertaking given by him, towards the completion of a conveyancing transaction involving the registration of a scheduled document on that conveyancing day,

unless a caution has been entered against the person mentioned in paragraph (a) of this section in the Register of Cautions in accordance with section 13 of this Law.

13. (1) On the commencement of this Law, Her Majesty's Greffier shall establish and thereafter maintain a register to be called the "Register of Cautions", which may be in loose leaf form.

Procedure
for
registering
cautions.

(2) A person wishing to register a caution under section 11 or 12 of this Law shall do so by giving notice to Her Majesty's Greffier, in such form as may be prescribed by Order of the Royal Court, of the following particulars—

- (a) the full names and address of the person who is seeking to register the caution;
- (b) the full names and address of the person against whom the relevant order is proposed to be registered or against whose realty or personalty it is sought to levy execution;
- (c) the amount claimed in pounds sterling in the proceedings to which the caution relates.

(3) A caution shall not be registered later than such hour as may be prescribed by Order of the Royal Court on the last day upon which the Greffe is open prior to the conveyancing day to which the caution relates.

14. A caution may relate to more than one conveyancing day provided that there is not more than one month between the dates of the first and last conveyancing days mentioned in the caution.

Cautions
relating to
more than
one con-
veyancing
day.

Fee.

15. There shall be paid to Her Majesty's Greffier on the registration of every caution such fee as may be prescribed by Order of the Royal Court.

Cautions to be lodged by Advocates.

16. A caution may only be lodged by an Advocate of the Royal Court who shall append his signature at the foot thereof.

PART V

GENERAL PROVISIONS

Applications under Parts 1 and 2.

17. An application under part I or II of this Law shall for the purposes of section 6(2)(a) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950(b) be deemed to be a matter of procedure.

Rules of the Royal Court.

18. The Royal Court may by Order make rules—

- (a) dealing with all procedural and incidental matters arising under this Law;
- (b) generally for carrying this Law into effect;
- (c) for the purposes of Part III of this Law, as to—
 - (i) the administration of relevant property by appointed persons;
 - (ii) the form in which inventories and accounts to be delivered to the Court under section 8(i)(c)(ii) and (iii) of this Law are to be.

(b) Ordres en Conseil Vol. XIV, p. 388.

19. In this Law—

Interpreta-
tion.

“applicant” has the meaning given by section 1(1) of this Law;

“appointed person” means a person appointed by the Court under section 8(1)(a) of this Law to hold and administer relevant property;

“the Court” means the Royal Court sitting as an Ordinary Court and, in Parts I, II and IV of this Law, includes the Matrimonial Causes Division of the Royal Court;

“minor” means a person under the age of 18 years;

“relevant property” means any property, other than immovable property, which belongs to a minor, to which a minor is entitled or which is held for the benefit of a minor, and includes the income of such property; and

“respondent” has the meaning given by section 1(1) of this Law.

20. This Law may be cited as the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 and shall come into force on such day as the States may by Ordinance appoint; and different days may be appointed for the coming into force of different provisions.

Citation and
Commence-
ment.

K. H. TOUGH,

Her Majesty's Greffier.