

# ORDER IN COUNCIL

VIII

1979

ratifying a Projet de Loi

ENTITLED

## **The Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979**

(Registered on the Records of the Island of Guernsey  
on the 21st August, 1979.)



# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 21st day of August, 1979, before Charles Keith Frossard, Esquire, Deputy Bailiff; present:— Stanley Walter Gavey, Esquire, O.B.E., D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Walter Francis Robin, Richard Alan Kinnersly, Richard Oliver Symons, Albert Richard McCartney Straw, Esquires, Frederick William Winslow Chandler, Esquire, D.S.O., D.F.C., Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Donald Pescott Plummer, Esquire and Sydney Haydn Heard, Esquire, M.B.E., Jurats.*

The Deputy Bailiff having this day placed before the Court an Order dated the 26th day of July, 1979 of the Counsellors of State in Council on behalf of Her Majesty, being authorised thereto by Letters Patent dated the 16th day of July, 1979, ratifying a *Projet de Loi* entitled "The Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979", 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 of Saint James**

The 26th day of July 1979

PRESENT,

### **The Counsellors of State in Council**

WHEREAS Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 16th day of July 1979, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

AND 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 6th day of July 1979 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 28th day of March 1979, the States of Deliberation at a meeting held on the 25th day of April 1979 approved a Bill or “Projet de Loi” entitled “The Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979”, 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 in the words and figures 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 of Property (Miscellaneous Provisions) (Guernsey) Law, 1979", and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.'

"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."

NOW, THEREFORE, Her Majesty Queen Elizabeth the Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the said Letters Patent, have taken the said Report into consideration and do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf, approve of and ratify the said Projet de Loi, and order, as it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND do 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.

*N. E. Leigh*

Projet de Loi referred to in the foregoing  
Order in Council.

## PROJET DE LOI

ENTITLED

### **The Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979**

THE STATES, in pursuance of their Resolution of the twenty-eighth day of March, nineteen hundred and seventy-nine, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

1. (1) It is hereby declared for the removal of doubt that, subject to subsection (2) and subsection (3) of this section, where there is for the time being in force an agreement (whether written or oral and whether express or implied) whereby an account may be taken of what is due from one party to the other in respect of any mutual dealings between them so that any debt from one party shall be set off against any debt from the other party, then, the party to whom the balance of the account is payable shall be entitled to the payment thereof, without preference over other debts of equal rank, notwithstanding that—

Entitlement  
to benefit of  
set off by  
agreement,  
notwith-  
standing  
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"en  
désastre" or  
winding up.

- (a) the affairs of the other party have been declared in a state of "désastre" at a meeting of his arresting creditors held before a Jurat as Commissioner of the Royal Court; or
- (b) the affairs of the other party (being a body corporate which is insolvent) are being wound up.

(2) Where the Jurat presiding at such a meeting as mentioned in paragraph (a) of subsection (1) of this section has reasonable cause to believe that any such agreement as aforesaid was entered into by the party whose affairs have been declared in a state of "désastre" (hereafter in this subsection referred to as "the debtor") less than six months before the date of the meeting, the matter of the agreement shall be referred to the Royal Court sitting as an Ordinary Court (hereafter in this Law referred to as "the Court") in such manner as shall be prescribed by rules made by the Royal Court under this section; and where, on such a reference under this subsection, the Court is satisfied that the agreement was entered into as aforesaid and with a view of giving to the other party a preference over the other creditors of the debtor, the Court may make an order directing that the agreement shall be treated as being fraudulent and void as against the other creditors of the debtor.

(3) Where, in winding up a body corporate which is insolvent, the liquidator is satisfied that—

- (a) any such agreement as aforesaid was entered into by the body corporate less than six months before the commencement of the winding up; and
- (b) the agreement was entered into with a view of giving to the other party a preference over the other creditors of the body corporate;

he shall treat the agreement as being fraudulent and void as against the other creditors of the body corporate.

(4) Any person aggrieved by a decision of a liquidator under the last foregoing subsection in a voluntary winding-up of a body corporate may

appeal therefrom to the Court, and the Court may thereupon confirm, reverse or modify that decision and make such order in relation to the matter of the appeal as it thinks just.

(5) In this section "debt" includes all debts and liabilities, present or future, certain or contingent, but does not include demands in the nature of unliquidated damages arising otherwise than by reason of contract or breach of trust.

2. (1) Without prejudice to the provisions of the Bills of Exchange (Guernsey) Law, 1958(a), it is hereby declared for the removal of doubt that, subject to subsection (2), subsection (3) and subsection (4) of this section, any absolute assignment of any debt or other thing in action (with or without a proviso or condition for re-assignment) shall be effectual in law to pass and transfer—

Assignment  
of debts and  
other things  
in action.

- (a) the legal right to such debt or other thing in action;
- (b) all legal remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor;

and, in the case of the assignment as aforesaid of any debt or other thing in action to which the next following subsection applies, such transfer shall be so effectual as from the date on which the notice required under that subsection is served in accordance with that subsection.

(2) The provisions of subsection (1) of this section shall not apply to the assignment of any debt or other thing in action (not being an obligation

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(a) Ordres en Conseil Vol. XVII, p. 384.



under a bond or other instrument and transferable by the delivery or indorsement of such bond or other instrument, as the case may be) unless—

- (a) the assignment is by writing under the hand of the assignor or any person authorised in writing by the assignor to act on his behalf; and
- (b) express notice in writing of the assignment has been served on the debtor, trustee or other person from whom the assignor would have been entitled to claim the debt or other thing in action.

(3) The foregoing provisions of this section shall not apply to the transfer of shares in a body corporate which are not transferable by delivery.

(4) If the debtor, trustee or other person liable in respect of any debt or other thing in action to which subsection (2) of this section applies has notice—

- (a) that the assignment is disputed by the assignor or any person claiming under him; or
- (b) of any other opposing or conflicting claims to the debt or other thing in action;

he may institute proceedings before the Court against the person making the claim to see the Court make such order as it thinks fit as to the payment of the debt or other thing in action; and in that event the Court may make such an order.

(5) The notice required to be served on any person under paragraph (b) of subsection (2) of this section—

- (a) may be served on any person by delivering it to him, by leaving it at his proper

address or by sending it by post at that address;

- (b) in the case of any body corporate, may be served on the secretary of that body corporate; and
- (c) in the case of a partnership, may be served on a partner or the person having the control or management of the partnership business.

(6) For the purposes of the last foregoing subsection, the proper address of any person on whom such notice as mentioned in that subsection is to be served shall be his last known address, except that—

- (a) in the case of a body corporate or the secretary of a body corporate, it shall be the address of the registered office or principal office of that body corporate;
- (b) in the case of a partnership or of a person having the control or management of the partnership business, it shall be the principal office of the partnership.

(7) If the person to be served with such notice has specified an address in Guernsey other than his proper address, within the meaning of the last foregoing subsection, as the one at which he or someone on his behalf will accept a notice of the same description, that address shall also be treated for the purposes of subsection (5) of this section as his proper address.

3. (1) The assignor of a debt or other thing in action which has been assigned subject to a proviso or condition for re-assignment made in writing may institute proceedings before the Court against the assignee to see the Court make an order under this

Enforce-  
ment of  
proviso or  
condition for  
re-assign-  
ment of a  
debt or  
other thing  
in action.

subsection vesting the debt or other thing in action in the assignor absolutely—

- (a) where the assignor claims that the assignee is liable to re-assign to him the debt or other thing in action in accordance with the terms of such proviso or condition for re-assignment, at any time; or
- (b) where the assignor does not make any such claim and the debt or other thing in action has been arrested by Her Majesty's Sheriff as an asset of the assignee, at any time before the sale of the debt or other thing in action by Her Majesty's Sheriff and upon payment or the tender of payment by the assignor to the assignee of any sum due from the assignor to the assignee under and in accordance with such assignment at the time of the institution of those proceedings; or
- (c) where the assignor does not make any such claim as referred to in paragraph (a) of this subsection and the affairs of the assignee (being a body corporate which is insolvent) are being wound-up, within the fourteen days next following the commencement of the winding up and upon payment or the tender of payment by the assignor to the assignee of any sum due from the assignor to the assignee under and in accordance with such assignment at the time of the institution of those proceedings;

and in the event of such proceedings being instituted under and in accordance with this subsection the Court may, if it thinks fit, make an order vesting the whole or any part of the debt or other thing in action in the assignor absolutely so that the same

shall, as respects the execution of any judgment against the estate of the assignee and as respects the winding-up of the affairs of the assignee and otherwise, be treated as an asset of the assignor.

(2) The Court may—

- (a) instead of making any order under the last foregoing subsection vesting the whole of a debt or other thing in action in the assignor, make an order as to damages against the assignee;
- (b) in addition to making any such order vesting part of a debt or other thing in action in the assignor, make such an order as to damages.

(3) Where, in any action for breach of a proviso or condition for re-assignment as aforesaid, damages have been awarded against the assignee to which a debt or other thing in action had been assigned, then in any proceedings “*en désastre*” against the assignee or in any winding-up of the affairs of the assignee (being a body corporate which is insolvent), the amount of the damages so awarded against the assignee shall be paid in full in priority to all other debts, other than a debt secured by way of a bond consented to by the assignee or by way of a judgment, registered in the “*Livres des Obligations*” kept at the *Greffé*.

(4) Where the Court makes an order under subsection (1) of this section vesting in the assignor any shares in any body corporate incorporated under the Companies (Guernsey) Laws, 1908 to 1973(b), the provisions of those Laws relating to the transfer of shares shall apply in all respects as if the shares had been transferred by the assignee to the assignor, on

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(b) *Ordres en Conseil* Vol. IV, p. 178; Vol. X, p. 298. Vol. XVII, p. 444; Vol. XX, p. 17 and Vol. XXIV, p. 14.

the date on which the order of the Court was made, in the manner and form prescribed by the Articles of Association of the body corporate in pursuance of those provisions.

**Interpre-  
tation.**

4. (1) In this Law, except where the context otherwise requires, "thing in action" means any personal right of property which may be claimed or enforced by action and not by taking physical possession.

(2) For the purposes of this Law, the winding-up of a body corporate shall be deemed to have commenced—

(a) in the case where a resolution for the voluntary winding-up thereof has been confirmed as a special resolution, at the time of the confirmation of the resolution;

(b) in the case of the winding-up thereof by the Court, at the time of the presentation to the Court of the petition for the winding-up.

(3) Except where the context otherwise requires, any reference in this Law to an enactment shall be construed as including a reference to that enactment as amended, extended, repealed or replaced by or under any other enactment.

**Citation.**

5. This Law may be cited as the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979.

**R. H. VIDELO,**

**Her Majesty's Greffier.**