

ORDERS IN COUNCIL

(Registered on the Records on the 17th January, 1955.)

1955

AT THE COURT AT BUCKINGHAM PALACE,

The 21st day of December, 1954.

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

EARL DE LA WARR

LORD DE L'ISLE AND DUDLEY

MR. THORNEYCROFT

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 26th day of November, 1954, in the words following, viz.:—

Magistrate's
Court
(Guernsey)
Law, 1954.

“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 Resolutions of the 23rd day of July, 1952, and of the 20th day of January, 1954, the States of Deliberation at a meeting held on the 7th day of July, 1954, approved a Bill or “Projet de Loi” entitled “The Magistrate’s Court (Guernsey) Law, 1954” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto.

2. That the States of Alderney at a meeting held on the 22nd day of September, 1954, resolved that Part IV of the said Bill or “Projet de Loi” should apply to the Island of Alderney. 3. That the Chief Pleas of Sark at a meeting held on the 12th day of October, 1954, resolved that the said Part IV should apply to the Island of Sark. 4. 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 Magistrate's Court (Guernsey) Law, 1954" and to order that the same shall have the force of Law, as regards Parts I, II, III and V, in the Islands of Guernsey, Herm and Jethou and, as regards Part IV, throughout the Bailiwick 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, as it is hereby ordered, that the same shall have the force of Law as regards Parts I, II, III and V, in the Islands of Guernsey, Herm and Jethou and, as regards Part IV, throughout the Bailiwick 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.

W. G. AGNEW.

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Projet de Loi referred to in the foregoing Order in Council. 1955

PROJET DE LOI

ENTITLED

THE MAGISTRATE'S COURT (GUERNSEY)
LAW, 1954.

ARRANGEMENT OF SECTIONS

Section No.

PART I

Constitution of the Magistrate's Court

1. Constitution of the Court.
2. Composition of the Court.
3. Qualifications for appointment as Magistrate.
4. Period of office and salary.
5. Performance by Magistrate of other public functions.
6. Oath.
7. Appointment, qualifications, etc. of Acting Magistrate.
8. Officers of the Court.

PART II

Jurisdiction of the Magistrate's Court

9. Inquests.
10. Powers and duties of the Court.
11. Bail, etc.
12. Jurisdiction of Court in civil actions.
13. Judgments.

PART III

Appeals in Civil Actions

14. Appeals in civil actions.

PART IV

Criminal Matters arising in Alderney and Sark

15. Continuance and extension of jurisdiction of Ordinary Court as respects Alderney and Sark.
16. Cases beyond the jurisdiction of the Court of the Seneschal.
17. Jurisdiction of Ordinary Court and the Court to deal with cases transferred, etc.
18. Summary jurisdiction of Ordinary Court as regards matters arising in Alderney and Sark.
19. Power of the Ordinary Court, the Court of Alderney and Court of the Seneschal to admit to bail, etc.
20. Amendment to Government of Alderney Law, 1948.

PART V

General

21. Law Officers in the Court.
22. Time and place of sitting.
23. Administration of the oath.
24. Continuance of existing Magistrate and Acting Magistrate.
25. Rules of the Royal Court.
26. Scale of costs where action commenced in the Ordinary Court.
27. Saving.
28. Causes, etc., pending at the commencement of this Law.
29. Repeals.
30. Citation.

SCHEDULE

ENTITLED

THE MAGISTRATE'S COURT (GUERNSEY)

LAW, 1954.

THE STATES, in pursuance of their Resolutions of the 23rd day of July, 1952, and of the 20th day of January, 1954, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law, as regards Parts I, II, III and V, in the Islands of Guernsey, Herm and Jethou, and as regards Part IV, throughout the Bailiwick.

PART I

Constitution of the Magistrate's Court

1. (1) There shall be a Magistrate's Court (hereinafter referred to as "the Court") with summary jurisdiction in criminal matters and jurisdiction in civil actions with power to exercise functions and jurisdiction in accordance with the provisions of this Law: Constitution of the Court.

PROVIDED that the Magistrate shall not have jurisdiction to hear and determine any proceedings in relation to Clameur de Haro.

(2) Nothing in the last preceding subsection shall be taken to abolish or restrict the functions or jurisdiction of the Royal Court sitting as an Ordinary Court (hereinafter referred to as "the Ordinary Court"), in civil actions.

(3) Save as respects criminal matters arising in the Islands of Alderney and Sark, the summary jurisdiction in criminal matters of the Ordinary Court sitting as a Police Court is hereby abolished.

2. (1) Subject to the provisions of section seven of this Law a Magistrate (hereinafter referred to as "the Magistrate") shall constitute the Court. Composition of the Court.

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(2) The Magistrate shall be appointed by a majority of the Bailiff and four Jurats of the Royal Court appointed by the Royal Court.

Qualifica-
tions for
appointment
as
Magistrate.

3. The qualification for the appointment of a person as Magistrate is that that person is—

- (a) a Jurat of the Royal Court, or
- (b) an Advocate of the Royal Court of Guernsey or of the Royal Court of Jersey of not less than five years standing, or
- (c) a member of the Bar of England, Scotland or Northern Ireland of not less than five years standing.

Period of
office and
salary.

4. (1) The Magistrate shall not be removable from office except by Order of Her Majesty in Council, save that the Magistrate shall retire from office on reaching the age of seventy years.

(2) Notwithstanding the provisions of the last preceding subsection the Magistrate may, with the approval of a majority of the Royal Court continue in office until he reaches the age of seventy-five years.

(3) The Magistrate shall be paid such remuneration as may from time to time be determined by the States.

Performance
by Magis-
trate of other
public
functions.

5. (1) The Magistrate shall not, during his continuance in office fill any other public office except an office to which he may be appointed by the States, the Royal Court or the Bailiff.

(2) Subject to the provisions of section seven of this Law, the office of Jurat of the Royal Court is incompatible with that of Magistrate.

(3) An Advocate of the Royal Court who is appointed as Magistrate shall not, during his continuance in office as Magistrate, practise at the Bar in this Bailiwick or be in partnership or professional association with another Advocate of the Royal Court in practice at the said Bar or with an Ecrivain.

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6. The Magistrate shall, upon taking office, subscribe to such oath as may be prescribed from time to time by the Royal Court. 1955
Oath.

7. (1) The Royal Court may, from time to time, appoint one or more persons as Acting Magistrates and may determine any such appointment. Appointment, qualifications, etc. of Acting Magistrates.

(2) A person shall not be appointed as Acting Magistrate unless he is qualified under section three of this Law for appointment as Magistrate.

(3) The provisions of section six of this Law shall apply to an Acting Magistrate in the same way as they apply to the Magistrate.

(4) An Acting Magistrate shall have all the powers and may perform all the duties of the Magistrate.

(5) The office of Jurat of the Royal Court shall not be incompatible with that of Acting Magistrate.

8. Her Majesty's Greffier, Her Majesty's Sheriff and Her Majesty's Sergeant shall, for all purposes of and incidental to the hearing of all proceedings before the Court and of and to the execution and enforcement of any judgment or order given or made by the Court in respect thereof, discharge duties analogous to those discharged by them respectively in relation to proceedings before the Royal Court. Officers of the Court.

PART II

Jurisdiction of the Magistrate's Court

9. The Court shall have jurisdiction to hold inquests into the cause of death. Inquests.

10. (1) The Court shall have jurisdiction to hear and determine the following criminal matters— Powers and duties of the Court.

- (a) offences liable to be dealt with summarily and punishable by imprisonment for a period not exceeding six months with or without hard labour or by a fine not exceeding one hundred pounds sterling or by both such imprisonment and such fine:

PROVIDED that the aggregate of the punishments which may be inflicted on the same occasion on one and the same person found guilty of several offences shall not exceed a period of twelve months imprisonment with or without hard labour or the sum of two hundred pounds sterling in fines or both such imprisonment and such fines;

- (b) offences punishable beyond the aforesaid limits which are or which may be directed by law to be dealt with summarily by the Court;

- (c) offences, other than treason, homicide, rape, arson, robbery with violence, piracy or perjury, when it has been ascertained by the Court on the facts established that, by reason of the lack of gravity of the alleged offence, the guilt of the accused, if proved, would not merit more than a period of six months imprisonment with hard labour or a fine of one hundred pounds sterling or both such imprisonment and such fine:

PROVIDED (i) that a person charged before the Court with an offence triable under this subsection, not being an assault, rendering him liable to imprisonment for a period exceeding three months, may, before he pleads to the charge but not otherwise, claim to be tried by the Royal Court;

- (ii) that the Court, before the accused pleads to the charge in respect of an

offence referred to in paragraph (i) of this proviso, shall address the accused to the following effect:—

‘You are charged with an offence in respect of the commission of which you have the right, if you desire it, instead of being tried by this Court to be tried by the Royal Court. Do you desire to be tried by the Royal Court?’.

(2) If an accused person has claimed the right of trial before the Royal Court under subsection one of this section, or if the Court is of opinion that it is not competent to try the offence, or that the punishment appropriate to the offence would exceed that which the Court is competent to inflict, the Court shall take the evidence of the witnesses in writing and shall, if satisfied that there is a *prima facie* case to answer, commit the accused for trial before the Royal Court.

(3) In all Laws and Ordinances at present in force the expressions “Police Court”, “Cour de Police Correctionnelle” and “Cour Ordinaire siégeant en Cour de Police Correctionnelle” shall be deemed to refer to the Court.

11. When committed for trial before the Royal Court or when remanded for trial before the Court or when a hearing of committal proceedings before the Court is adjourned, the accused may—

Bail, etc.

- (a) be detained in custody, or
- (b) be admitted to bail, that is to say, by taking from him a recognizance, with or without sureties, conditioned for his appearance, or
- (c) be released on oath for his appearance.

12. The Court shall have jurisdiction to hear and determine any civil action for the recovery of debt or for the recovery of damages whether arising in

Jurisdiction
of Court in
civil actions.

contract or in tort where the amount claimed does not exceed fifty pounds.

Judgments.

13. (1) Where judgment is given by the Court in any action brought under the provisions of the last preceding section, the Court may order the amount payable under that judgment to be paid either—

- (a) in one sum, whether forthwith or within such period as the Court may fix, or
- (b) by such instalments payable at such times as the Court may fix.

(2) Every order of the Court made under the provisions of the last preceding subsection may from time to time be varied by the Court.

(3) Where, under the provisions of subsection (1) of this section, the Court makes an order requiring a sum of money to be paid it—

- (a) may empower the plaintiff to levy execution against the personalty of the defendant, or
- (b) may, on the application in that behalf of the plaintiff, empower him to levy execution against the realty of the defendant which shall have effect as a Preliminary Vesting Order.

PART III

*Appeals in Civil Actions*Appeals in
civil actions.

14. After the hearing and determination by the Court of any civil action there shall be a right of appeal to the Ordinary Court—

- (a) if the amount of the debt or damages claimed exceeds twenty-five pounds, or
- (b) in any case if any party to the action is dissatisfied with the determination of the Court on a point of law,

in such manner and subject to such conditions as may be provided by rules of the Royal Court.

PART IV

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Criminal Matters arising in Alderney and Sark

15. (1) Nothing in this Law shall derogate from the original summary jurisdiction vested in the Ordinary Court in criminal matters arising in the Islands of Alderney and Sark and, after the commencement of this Law, that jurisdiction shall be exercisable by the Ordinary Court to the extent set out in and in accordance with the provisions of sections seventeen, eighteen and nineteen of this Law.

Continuance of jurisdiction of Ordinary Court as respects Alderney and Sark.

(2) The Ordinary Court shall have jurisdiction to deal with a case, in accordance with sections seventeen, eighteen and nineteen of this Law, transferred to it from the Court of Alderney or the Court of the Seneschal of Sark.

16. Notwithstanding the provisions of section twenty-three of the Reform (Sark) Law, 1951, if the Court of the Seneschal of Sark is of opinion that an offence with which a person is charged or the punishment appropriate to it, is beyond its competence, the case shall be transferred to the Ordinary Court with a view to being dealt with in accordance with the provisions of the next succeeding section.

Cases beyond the jurisdiction of the Court of the Seneschal.

17. (1) Upon a case being transferred to the Ordinary Court under the provisions of the last preceding section or under the provisions of subsection (2) of section twenty of the Government of Alderney Law, 1948, or upon the Ordinary Court being seized of a case by virtue of its original summary jurisdiction referred to in subsection (1) of section fifteen of this Law, the Ordinary Court shall—

Jurisdiction of Ordinary Court and the Court to deal with cases transferred, etc.

(a) if the offence with which the accused is charged is an indictable offence or an offence which the Ordinary Court is of opinion is, or the punishment appropriate to it is, beyond its competence or if the accused elects to be tried by the Royal Court, transfer the case to the Court with a view to

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the accused being committed for trial on indictment before the Royal Court;

- (b) if the offence with which the accused is charged is one which the Ordinary Court has power under the provisions of the next succeeding section to deal with, hear and determine the case.

(2) Upon a case being transferred from the Ordinary Court to the Court, under the provisions of the last preceding subsection, the Court shall take the evidence of the witnesses in writing and, if satisfied that there is a *prima facie* case to answer, commit the accused for trial before the Royal Court.

Summary jurisdiction of Ordinary Court as regards matters arising in Alderney and Sark.

18. The provisions of subsection (1) of section ten of this Law shall apply to the Ordinary Court in the exercise of its summary jurisdiction under this Part of this Law.

Power of the Ordinary Court, the Court of Alderney and the Court of the Seneschal to admit to bail, etc.

19. In any case before the Court of Alderney or the Court of the Seneschal of Sark or in any case before the Ordinary Court under the provisions of this Part of this Law, the accused may—

- (a) be detained in custody, or
- (b) be admitted to bail, that is to say, by taking from him a recognizance, with or without sureties, conditioned for his appearance, or
- (c) be released on oath for his appearance.

Amendment to Government of Alderney Law, 1948.

20. In subsection (2) of section twenty of the Government of Alderney Law, 1948, the words "take depositions of the witnesses in writing and commit the accused for trial before the Royal Court" are hereby deleted and the following words substituted therefor—

"transfer the case to the Royal Court sitting as an Ordinary Court with a view to its being dealt with in accordance with the provisions of Part IV of the Magistrate's Court (Guernsey) Law, 1954."

PART V

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General

21. (1) Notwithstanding any law or custom to the contrary, the presence in the Court of the Law Officers of the Crown or either of them shall not be necessary for the proper constitution of the Court at any sitting thereof.

Law
Officers in
the Court.

(2) In any civil action before the Court the Law Officers of the Crown or either of them may advise the Court on any question of law or of mixed law and fact arising in any such action.

(3) Nothing in this Law shall derogate from the right of the Law Officers of the Crown or either of them to require the holding of or to appear at inquests into the cause of death or to prosecute any criminal matter before the Court.

22. For the purposes of this Law the Court shall sit at such times and in such places as the Royal Court may from time to time direct.

Time and
place of
sitting.

23. The Magistrate may administer the oath to any person before the Court in any criminal proceedings or civil action and affidavits may be sworn before the Magistrate.

Administra-
tion of the
oath.

24. Any person who at the coming into force of this Law holds the office of Magistrate or Acting Magistrate under and by virtue of any Law repealed by this Law shall continue to hold the office of Magistrate or Acting Magistrate, as the case may be, as if he had been appointed under and subject to the provisions of this Law.

Continuance
of existing
Magistrate
and Acting
Magistrate.

25. The Royal Court may make rules to regulate the practice of the Court and the forms of proceedings therein and matters ancillary thereto and may prescribe the scale of costs.

Rules of the
Royal Court.

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Scale of costs
where action
commenced
in the
Ordinary
Court.

26. Where a civil action is commenced in the Ordinary Court which could have been commenced in the Court, then, if the plaintiff succeeds in the action he shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in the Court: PROVIDED that the Ordinary Court, if satisfied that there is sufficient reason for bringing the action in the Ordinary Court, may make an order allowing the costs on the Ordinary Court scale.

Saving.

27. Nothing in this Law shall affect any Ordinance having effect under any Law repealed by this Law and every such Ordinance shall continue in force until repealed.

Causes, etc.
pending at
the
commence-
ment of this
Law.

28. (1) In the case of any criminal matter or civil action of which, when this Law comes into operation, the trial has begun the court established in pursuance of the Law entitled "Loi ayant rapport à l'Institution d'un Magistrat en Police Correctionnelle et pour le recouvrement de Menues Dettes" registered on the Records of the Island on the 28th day of March, 1925, which was then seized of such matter or action shall remain seized thereof and shall hear, determine and deal with the same as fully and effectively as if this Law had not been enacted save that that court shall, in giving judgment and as regards the execution thereof, if not otherwise so empowered, have all the power given to the Court under the provisions of section thirteen of this Law.

(2) The jurisdiction conferred on the Court by this Law shall extend to the trial of any criminal matter or civil action which is pending but of which the trial has not begun when this Law comes into operation.

Repeals.

29. The Laws set out in the Schedule to this Law are hereby repealed.

Citation.

30. This Law may be cited as the Magistrate's Court (Guernsey) Law, 1954.

Loi ayant rapport à l'Institution d'un Magistrat en Police Correctionnelle et pour le Recouvrement de Menues Dettes registered on the Records of this Island on the 28th day of March, 1925.

Loi portant amendement à la Loi ayant rapport à l'Institution d'un Magistrat en Police Correctionnelle et pour le Recouvrement de Menues Dettes registered on the Records of this Island on the 20th day of August, 1932.

Loi étendant la Juridiction du Magistrat en Police Correctionnelle et pour le Recouvrement de Menues Dettes (1946) registered on the Records of this Island on the 31st day of August, 1946.

The Acting Magistrate's Law, 1952.
