SOME FORMER RESTRICTIONS ON ALIENS WITHIN GUERNSEY'S BAILIWICK

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Controls over aliens, including their acquisition of property, in Guernsey's Bailiwick, are being dismantled in consequence of Brexit and the reshaping of the Channel Islands' external economic and commercial relationships. This article, by particular reference to Sark and Alderney, examines aspects of restrictions placed upon aliens and foreign companies historically, including the diminishing role of the Lieutenant Governor.

Aspects of personal allegiance

1 The Postscript *mignardise*[1] to the Miscellany piece on the consequences of Brexit for free movement of EU citizens,[2] and so Jersey's immigration regime, is a reminder of an historic aspect of the role of Jersey's Governor in such matters. Whereas Guernsey's Lieutenant Governor[3] retains powers in relation to immigration and aliens within his gubernatorial remit, including (particularly) relating to admission and deportation, in Jersey these were eventually removed to the Minister for Home Affairs by the Immigration (Jersey) (Amendment) Order 2017, except for certain functions relating to acquisition of British citizenship.

2 Guernsey's regulation of aliens ("*étrangers*", though this expression has different meanings depending upon the context *e.g.* parochial settlement) from the 16th century, whilst appearing in part to have been directed towards local trades' protection (in which the Governor might be thought to have no direct interest), was clearly aimed towards

[1] (2021) 25 *Jersey & Guernsey Law Review* 151.
[2] (2021) 25 *Jersey & Guernsey Law Review* 1.
[3] The office of Governor, styled and dating as such from the late 15th century (and in early times also called Captain, reflecting its military significance) was formally abolished for Guernsey in 1835. The practice of appointing Lieutenant Governors resident in Guernsey (for the office of Governor had long become a sinecure) had by then become well established: see Ogier, *The Law and Government of Guernsey*, 2012, at pp 207/208.

securing the Island against foreign threats (in which he clearly did).[4] Early Ordinances included those of 1534 prohibiting the provision of lodgings for *étrangers*, and of 1537[5] which required the *Prevôt* to keep a register of *étrangers* arriving in Guernsey "*tant de Jersey que de Normandie et autre lieux*", besides the overarching authority of the Governor over aliens which was becoming established in those troublous times. An Ordinance of 1588[6] prohibited *étrangers* from lodging, or keeping shops selling "*aucunes marchandises*", without permission of the Governor "*durants les troubles de la France*", nor were aliens permitted to marry without permission (usually granted but for a fee), nor to remain in Guernsey unless they could demonstrate good behaviour and sufficient funds so as not to become parochial burdens. Two interesting provisions of an Ordinance of 1799,[7] made to counter "Irish and other traitors" from "trying to seduce and infect with their horrid principles" loyal subjects of the Crown, required, first, every ship's master to furnish to the Lieutenant Governor details of their passengers, besides, secondly, compelling every *étranger* to be accompanied by an *habitant* if going outside the Town (including to shoot)! Other disadvantages encountered by aliens related to legal proceedings, *colportage* (*i.e.* hawking), harbour dues and, unsurprisingly, poor relief. To make the aliens regime effective, the Lieutenant Governor was authorised by the 1799 Ordinance to issue passports, and to this day it is that Office on behalf of Her Majesty, rather than the States of Guernsey, which bespeaks free passage and assistance to their bearers.

3 In 1607, Commissioners were appointed by the Privy Council to enquire into various complaints and matters, including the Governor's exercise of certain functions. Their Orders for Guernsey included confirmation[8] that the Governor was empowered to permit *étrangers* to reside in the Island, which was reproduced and enforced by art 4 of an Ordinance of 1611 by providing that no *étranger* coming to Guernsey could set up home or work therein without informing, and so obtaining the permission of, the Governor, and introduced a fine for breach besides the power to order removal.[9] One subsequent exercise of it by Guernsey's Lieutenant Governor was not without controversy: the attempt by Lieutenant Governor Sir William Napier in June 1843 to

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[4] For an account of the status and treatment of *étrangers*, see Crossan, *Guernsey, 1814–1914: Migration and Modernisation*, 2007.
[5] *Recueil d'Ordonnances* ('RO') t.I, pp 2–5).
[6] RO t.I p 58.
[7] RO t.I p 383.
[8] *Documens relatifs à l'Ile de Guernesey*, 1814, no 11, p 65.
[9] RO t.I p 86.

direct removal of a Frenchman of "bad character" without involving the Royal Court (whom Sir William had treated contumeliously) resulted in the Privy Council confirming in 1845 that the Lieutenant Governor had the right to deport aliens without the authority of the Royal Court.[10] Shortly thereafter, the power of the Governor to order removal of aliens was stated by HM Comptroller to be of "very ancient date".[11]

4 The Postscript in translating "*étranger*" in the 1771 Code as "alien" raises the question: who were those for whom it was thought that such restrictive and punitive provisions were necessary or appropriate? Given their apparent scope and presumed intent, primarily persons of potentially hostile disposition owing and practising allegiance otherwise than to the English Crown. Loyal subjects of the Crown born or settled in the Channel Islands were not *étrangers* for such purposes, and neither would hostility to their bodies politic or institutions by a *non-natif* subject *e.g.* an Englishman residing in Jersey, necessarily suffice, of itself, to qualify him as an *étranger*.[12]

5 Concepts of nationality and citizenship, as now understood and practised, are characterised principally by reference to birthplace (at

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[10] For an account of the conflict between this fractious Governor and the Royal Court, see Tupper's *History of Guernsey etc*., 1876. The Frenchman concerned, one Du Rocher, was alleged to have committed bigamy in Jersey and sent threatening letters to his victim. In Jersey, the respective rights and responsibilities of the Lieutenant Governor on behalf of the Crown and the States in matters of immigration and aliens led to difficulties with HM Government as the States sought to assume greater responsibility: see Le Herissier, *The Development of the Government of Jersey etc*., 1972, at pp 50/51.

[11] See *Second Report of the Commissioners etc*. *Guernsey* (London, HMSO 1848), paras 4077/4078.

[12] As to *étrangers*, or *aubains*, see Le Marchant, *Remarques etc*. (Guernsey, 1826), vol 1 at p 63, and Le Gros, *Traité du Droit Coutumier* (Jersey, 1943) at p 285 *et seq.* The *droit d'aubain*e in French law (and in the Islands by custom) was the right of the King to take by escheat the property in France of aliens dying there. It was abolished in France in 1819. In Guernsey, the right extended only to an inheritance without direct heirs being subjects, if of personalty, or *héritage* on a Crown fief, the Crown took, and if of *héritage* on a private fief, the seigneur. See also Eagleston, *The Channel Islands under Tudor Government 1485–1642* (Cambridge University Press, 1949) at p 88 for an example of the right being claimed by Guernsey's Governor *per pro* the Crown over the estate of Frenchman Henry Tesser, who had bequeathed it for the relief of poverty.

common law, those born within the Crown's dominions, including the Channel Islands, were natural born subjects), descent, marriage or residence, or some other personal connection with a nation state. Acquisition of either, however styled, may also be conferred by some remoter qualification such as investment, even purchased. Allegiance to a state is nowadays more usefully considered as a consequence of nationality or citizenship, not the principle giving rise to it, and every naturalised British citizen must take the oath of allegiance as part of his prize-giving ceremony. Within the English, and subsequently British, realms, allegiance to the Crown was originally determinative of "nationality". One consequence was that English law referred to "subjects" of the Crown, derived from the notion of the correlative duties of the King to protect and defend his people, and his people to be loyal and peaceful.[13]

6 The translation towards British "nationality" and "citizenship" is largely a 20th century development. As respects British nationality, the first statutory step towards the present regime was the British Nationality Act 1948,[14] enacted in part because the somewhat feudal premise underlying subjection had become anachronistic (but see, in the context of treason, *e.g. R v Joyce*[15]). Furthermore, allegiance could only be owed by individuals and so, at common law, bodies corporate or unincorporate, or communities, were ordinarily without this possibility. The Crown by Letters Patent could confer the privileges and corresponding obligations of allegiance on resident aliens in the Channel Islands *i.e.* "denization" (in common parlance, naturalisation: *e.g.* Adrian Saravia in 1568; fn 14 *infra*). Furthermore, allegiance was more than personal to the monarch *pro tempore*; it was political, and required adherence to the laws of the realm, and law-breaking aliens were liable to deportation besides the punishments of the realm.

7 Notwithstanding that English monarchs pretended, if only as a matter of style, their claim to be "Kings of France" until George III,[16]

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[13] After the union of the Crowns in the person of James I in 1603, the Scots were as much subjects in this sense as the English even though, briefly, they became aliens under the Aliens Act 1705, enacted to pressurise the Scots into parliamentary union.

[14] Which by s 33(2) enabled British subjects of the Channel Islands and Man who so desired to be styled "Citizens of the United Kingdom, *Islands* and Colonies" on the ground of their insular connection, an option no longer available.

[15] [1946] AC 347.

[16] Abandoned in 1801 on the union of the Crowns of Great Britain and Ireland, Pitt the Younger having referred to it in a speech to the House of

allegiance to the English Crown in former times could be as readily claimed and subjection thereby acquired by a non-hostile and law-abiding Frenchman present in the realm, including the Channel Islands, as a trueborn Englishman. Residence of an alien in the realm conferred or required temporary or local allegiance. In the 17th century, subject to the constraints imposed by war and travel, and by the state of foreign relations besides domestic considerations, settlement of foreigners in the Channel Islands was commonplace, not only of those persecuted for their religion (such as Huguenots), or invited here for a beneficial community purpose,[17] but also those seeking commercial opportunity, or just a safer place to live. Provided subjects of foreign princes or natives of foreign states acknowledged owing, and practised, allegiance, even temporarily by presence, to the English Crown, and, in effect, abandoned allegiance elsewhere, and remained of good behaviour,[18] then in peacetime no let or hindrance to their remaining within the realm was put in their way, though the tendency of foreigners to congregate for social, religious and commercial convenience, and often safety, was not discouraged. One

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Commons on 10 November 1798 on the course of peace negotiations with France as a "harmless feather, at most, in the crown of England". At that time the Royal Arms quartered the *fleur de lys*, long associated emblematically with the French monarchy. By then, consequent on the French Revolution, there was, at least *de facto*, no crown of France to which to pretend; it was only restored as a result of the Congress of Vienna of 1814. (See, on the effect of union on the Royal pretence, the *Annual Register*,1801). The Treaty of Amiens of 1802, and its preliminary Treaty of London of 1801, attempting (ineffectively) to put an end to Napoleonic hostilities, styled George III as King of the "United Kingdom of Great Britain and Ireland". Neither directly referred to abandonment, but retention would have been inconsistent with the Treaties. Earlier negotiations had begun in 1797, and included a demand by the French that the Channel Islands be returned to France, which was abandoned.

[17] *E.g.* Adrian Saravia, first master of Elizabeth College (founded 1563), originally from Flanders, who made request of Guernsey's Governor in 1566 to become "naturalysed" [*sic*] as an English subject, *i.e.* denizenship, which was eventually granted by Letters Patent in 1568 on the recommendation of Sir William Cecil, Elizabeth's Secretary of State.

[18] Victor Hugo, perhaps the Islands' most celebrated *étranger*, misbehaved in Jersey, whence he had come first in self-imposed exile in 1852, by commenting on political issues in a fashion inimical to government policy, and for which he was expelled in 1855 by the Lieutenant Governor. He departed for Guernsey where he remained without let or hindrance, and with much pleasure, until 1870.

formal way of declaring allegiance was to take its oath, which brings this piece to its first point by reference to Sark.

8 The declared purpose of the colonisation of Sark was to secure this abandoned outpost of Elizabeth's realm to the Crown, though some personal advantage to its progenitor Helier De Carteret might be inferred: after all, he was one of those Commissioners (as was John Chamberlain to whom Alderney was later granted: para 9 and fn 18 *infra*) tasked *inter alia* with addressing the "Sark problem" as the result of its location and abandonment, and so opportunities for the hostile French, and, as had happened in the period before colonisation, their non-French mercenaries.[19] The scheme of settlement, and the measures adopted for Sark's defence and protection, are well known. Unfortunately, within about 30 years of the original grant of Sark in fee farm in 1563 to Helier, and the regrant (or confirmation) by Letters Patent of 1565, several of the original colonists had died, and some had left for less arduous pastures. Fragmentation of landholdings was beginning to occur, and impoverishment of the community as a result was inevitable. In order to ensure that the works and purposes of the settlement were not put at risk, Philippe De Carteret—Helier's son and *Seigneur*, 1581–1643—procured Letters Patent in 1611 by which, for the next 400 years or so, Sark's land tenure and restrictive land inheritance regimes were directed.

9 Curiously, a very similar scheme of colonisation was also drafted for Alderney at around this time, but redundantly as it was already supporting a stable population of about 700 people: colonisation *à la mode de Sercq* was obviously inappropriate, though Alderney was then a haven for malefactors, the very sort against whom the redundant scheme was directed.[20] Relevantly for present purposes, John Chamberlain was required by his grant (as in Sark, made for the

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[19] See Syvret *Chroniques etc*, 1832, in translation in Cachemaille *The Island of Sark* at pp 20–26.

[20] Alderney had been granted in 1560 in fee farm to George Chamberlain, second son of Guernsey's former Governor, Sir Leonard Chamberlain. Subsequently, on 29 May 1584, Alderney was granted by Letters Patent to his younger brother John Chamberlain, couched in such similar term in some of its recitals and operative provisions as to demonstrate that their draftsman used parts of Sark's Letters Patent as a template, as indeed were his instructions. A letter dated 3 May 1583, from England's Law Officers John Popham and Thomas Egerton, jointly instructed that Chamberlain's grant should be made "agreable in substance to a former Patent . . . to Mr Sct Owen (ie 'Mr St Ouen, namely Helier) of . . . Sark" being "very reasonable and convenient for Alderney". (I am grateful to Richard Axton for this reference.)

"twentieth part of a knight's fee") to ensure that Alderney was "occupied, possessed and inhabited by English people and others our native subjects", whose duties were to include "subduing, expelling and exterminating . . . enemies, pirates, thieves and other evil doers" who there "lurk and plot", intending the "perturbation, molestation and utmost ruin" of the Channel Islands.

10 One lesser known aspect of the 1611 Letters Patent are those provisions under which "for the better settling of loyal and obedient subjects therein, being a place of importance and subject to danger", any person wanting to settle or reside in Sark should be required to take the oath of allegiance prescribed in the "Statute made in the third year of our [James I's] "Reign", *i.e.* the Popish Recusants Act 1605 enacted *ost* the Gunpowder Plot, which was later replaced by a formulation prescribed by the Oaths of Allegiance *etc* Act 1609. Whilst both oaths were as much in their scope directed towards renunciation of papal authority as allegiance *senso strictu*, the driver for requiring the oath was counteracting the consequences of hostilities with the French and the opportunities for piracy afforded by Sark, besides controlling (by exclusion) contemporaneous outbreaks of plague and smallpox. To reinforce that requirement (in terms recollective of those of the 1771 Code), the Letters Patent enacted that no persons were permitted to take strangers not born in Sark into their houses as servants, lodgers, subtenants or otherwise, without the consent of the *Seigneur*, upon pain of the Royal "indignation and heavy displeasure" (whatever that meant). To give practical and local effect to this relief from the general proscription, the Judge of Sark[21] was enabled to administer the oath to anyone born outside Sark and coming there to "make their abode . . . any law, statute, custom or restraint notwithstanding".

11 The 1565 Letters Patent had enjoined settlement by "Englishmen and others of our natural subjects", who would have included native Channel Islanders. Furthermore, the grant required as a condition that Sark should be "continually inhabited, dwelt in or occupied by forty men at least, our subjects, or such as shall oblige themselves by oath to Our Captain" *i.e.* the Governor of Jersey or Guernsey, that "they will be true or obedient to Us, the Queen . . .": *i.e.* by oath of allegiance.

12 By about the late 1570s, the owners ("*tenants*") of the properties carved out of Sark in fulfilment of the scheme of colonisation ("*tenements*") had come formally to comprise Sark's administration,

[21] The judge of the time was Robert Slowley, formerly native of Totnes, who soon married into the Chevalier family from St Ouen, *tenants* of La Rondellerie.

known ever since as the Chief Pleas, as the first step towards establishing an independent jurisdiction. An Order in Council of 27 April 1583 confirmed *inter alia* that Guernsey customary law should apply in Sark and provided that appeals should lie to Guernsey's Royal Court, effectively making it jurisdictionally subordinate to, and a dependency of, Guernsey, but Sark's inhabitants were confirmed as having the right to make their own Ordinances for the regulation of public order. Guernsey's Royal Court retained the power to make Ordinances for Sark until 1948.[22] The *tenants* alone fulfilled their legislative and administrative role until 1922 when, for the first time, Deputies (not being *tenants*) numbering 12, elected by the resident taxpaying community (men over 20, women over 30 unless taxpayers) were admitted to govern. Thus it remained until the Reform (Sark) Law 2008, when the composition of Chief Pleas was dramatically altered by excluding the *tenants* as such from their right of membership, as well as elected Deputies, though if otherwise qualified they became entitled to stand for the newly created office of *Conseiller*; originally numbering 28, presently (post 2017, as a result of difficulty in filling that number), 18.

13 Interestingly, whereas members of Guernsey's and Alderney's States have long been required to take the oath of allegiance as a precondition of taking their seats, Sark's *tenants* as members of the Chief Pleas were not likewise required.[23] Given the original purpose for the creation of their respective *tenements*, and the terms on which they were held (including the provision by each *tenement* of at least one able-bodied man with a musket for defence), perhaps the *tenants*' loyalty to the Crown was taken as given! In any event, the requirement

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[22] The Royal Court retains the power to make orders binding on Sark's court as its subordinate (likewise Alderney): art 64 of the Reform (Guernsey) Law, 1948. In 1948, the legislative powers of the Royal Court were vested in the States of Deliberation. The Order in Council on the Constitution of the Island of Sark 1922 (*Ordres en Conseil* ("OC") vol VI p 412) confirmed (i) the power of Chief Pleas to make Ordinances for the maintenance of good order and for regulating local affairs, and (ii) the power of the Royal Court to veto Ordinances on grounds of being *ultra vires* or unreasonable. By s 39 of the Reform (Sark) Law 2008, the only ground of annulment nowadays is that the Ordinance is *ultra vires*. It remains a moot point, but doubtful, whether the States may still legislate for Sark by Ordinance without primary legislative authority or the consent of Chief Pleas.

[23] The author's late wife was much surprised to learn on taking her Chief Pleas seat in 2002 as *tenant* that the only requirement was for her to wear a hat—a chic beret thankfully sufficed!

for the seigneurial *congé* to purchase real property (ruthlessly administered by *la Dame* during her tenure from 1927 to 1974) provided another check on foreign acquisition.

14 These restrictions were more than theoretical or precautionary. Amongst the original colonists was Jean Quesle, the first *tenant* of La Ville Farm who was French, besides being Sark's first physician, and Cosmé Brevint, Sark's first Minister (or Helier De Carteret's first local Chaplain): both were Huguenots, as was Robert Jagault, first *tenant* of Pomme de Chien. So, there was no restriction on the acquisition of property on Sark put in the way of friendly (and useful) aliens, but it has not proved possible for the author to identify examples of the oath of allegiance being administered in practice pursuant to either of the Letters Patent of 1565 or 1611 and when, as a practice, it fell into desuetude, if indeed it had ever been routinely applied.[24] It may well have been the case that the original colonists were known sufficiently to Helier as to obviate the formality of the oath, and of course subsequent *tenants* by purchase would have required seigneurial *congé*, for which allegiance and commitment to the works and purposes of the colonisation would have been relevant. Further or alternatively, the court before which the grant or transfer was transacted might have required the oath or evidence of allegiance (not necessarily the Sark Court: transfers of *héritages* were routinely passed in Guernsey's Royal Court, a practice which continued until recent times, although the documents were sent to Sark for registration). Certainly, no legislation of the nature and extent about to be mentioned in connection with property acquisition in Guernsey and Alderney by aliens was ever enacted in Sark, in part as respects corporate ownership because Sark's machinery of government and inheritance precluded this for *tenements* and freeholds (mostly properties carved out of the manorial remainder), though not for leaseholds.

Aspects of property acquisition

15 So to acquisition of Guernsey and Alderney property by aliens. By late Victorian times, the threat—perceived if not actual—of foreigners' purchases of property was exercising the minds of HM Government. By this time, most continentals were suspect—the French

[24] The author is aware that the late Seigneur was advised that, as a result of the UK's accession to membership of the EU, it would be improper to withold his *congé* for the acquisition of Sark property by an EU citizen on citizenship grounds alone.

especially, though German militarism was beginning to sound alarm bells.[25]

16 Accordingly, in 1905 there was enacted the *Loi relative a l'acquisition de Propriété Immobilière de cette Ile par des Etrangers ou par des Sociétés Etrangères* ("the 1905 Law"')[26] the preamble to which being thus, in loose translation:

> "Whereas
>
> the geographical location and limited extent of this Island necessitate that special precautions be taken with regard to the settlement in the Island of foreigners who are not subjects of your Majesty;
>
> the ever increasing growth in purchase and leasing by '*étrangers*' (defined in the 1905 Law as individuals not being subjects of His Majesty) of lands, houses and buildings, both hitherto and in future, could give rise to difficulties as much political as otherwise;
>
> the transfer by individuals of lands, houses and buildings to foreign companies (defined to include foreign communities—see below) to hold '*en mainmorte*' (in the Petition bespeaking the Order in Council, reference is made to 'transfer by mortmain and otherwise', hardly a term of art in local conveyancing) could come to prejudice the ordinances and laws on parochial taxation collected by the several parishes."

(Relevantly, by the late 19th century, several French religious communities, for which the expression "mortmain" might be thought appropriate, had commenced to acquire substantial estates in

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[25] Somewhat ironically, given that the lease in fee farm of Herm had been acquired in 1889 by the Blucher family, descended from the celebrated Field Marshal who saved Wellington's bacon at Waterloo. They were dispossessed of the Island during WWI, and departed as internees for their Guernsey residence, Havilland Hall in St Peter Port, where a copy of one of David's five celebrated portraits of Napoleon crossing the Alps, which the Field Marshal had looted from the Chateau de Saint Cloud in 1814, was ostentatiously displayed! Subsequent leases post-1920 of Herm and Jethou (Sir Compton Mackenzie was for a brief period contemporaneously tenant of both) prohibited their tenants from keeping pigeons, presumably lest they be used for hostile purposes, *e.g.* message carrying. The lease of Jethou granted in 1955 for 40 years repeated this restriction, somewhat redundantly as by then it had its own wireless.

[26] OC vol IV, p 21.

Guernsey, including eventually Vimeira, Les Vauxbelets, and Les Cotils).

17 The Petition of the States founding the Privy Council's ratification of the 1905 Law refers to the "attention of both the Civil and Military authorities" having "of late been repeatedly drawn to the extensive acquisition" by aliens of insular property, which suggests security as the principal driver of the legislation, notwithstanding the reference to potential "prejudice" to parochial taxation. (In those days, there was no insular income tax.) This aspect of the declared rationale bears the whiff of a contrived deflection of the real purpose of the regime.

18 The 1905 Law required any *étranger*, or *société étrangère* (defined as any foreign company, partnership, community—presumably with religious orders in mind—or body corporate) to obtain permission by petition to the Royal Court to acquire property either freehold or on lease or for occupation for longer than one year, whether directly, or indirectly by trustees or through other intermediaries, or to hold or possess *en mainmorte*. The process was instituted by making a sworn declaration to the Law Officers setting out all relevant information including details of the prospective purchaser and the property. These details, with the Law Officers' comments, were transmitted in the first instance to the parochial authorities for consideration, and thence to the Lieutenant Governor. Thereafter, the petition bespeaking approval was dealt with by the Royal Court sitting *en corps*, *i.e.* as a Full Court, from the decision of which there was no appeal. Such petitions were not commonplace: the author dealt with only two between July 1971 and the 1905 Law's repeal on 31 December 1972.

19 Alderney's economy was ever fluctuating, but it thrived in the mid-19th and again in the early 20th centuries when the population was higher than nowadays,[27] besides and (in large part) because of the presence of a substantial garrison which created much business for this small island, and the quarrying and allied trades required to construct and maintain its forts and breakwater. It had sufficient administrative resources and local commerce to justify enacting its own company law in 1894. Its military significance[28] no doubt encouraged the enactment of Alderney alien acquisition control legislation to like effect as that of Guernsey, resulting in the *Loi relative à l'acquisition de Propriété Immobilière en cette Ile par des Etrangers ou par des Sociétés Etrangères* 1906 ("the 1906 Law").[29] The procedure to be adopted was

[27] The 1861 census records a population (excluding the garrison) of 4932, of whom 2303 were non-native civilians.
[28] According to Napoleon "*le bouclier d'Angleterre*"—England's shield.
[29] OC vol IV, p 106.

the same as in Guernsey, save that there was to be no reference to the parish authority for comment (although at that time Alderney did maintain a *douzaine* for secular parochial purposes). By an Ordinance of 1965, made under the Government of Alderney Law 1948, the functions of Alderney's *Procureur du Roi* (this ancient office having been abolished by the 1948 Law) in administering the 1906 Law were belatedly transferred to the Clerk of the Court of Alderney, who had *de facto* been exercising them since 1949.[30]

20 No legislation equivalent in scope and effect to the 1905 and 1906 Laws controlling alien acquisition of property was ever enacted for Sark.[31]

21 With the United Kingdom's accession to the EEC, Guernsey's 1905 Law was argued to be incompatible with the requirements of non-discrimination under Protocol 3, and eventually it was repealed by the European Communities (External Tariffs and Non-Discrimination) (Bailiwick of Guernsey) Law 1972. The Policy Letter[32] was somewhat disingenuous, stating that the discrimination enacted in the 1905 Law was without the provisions of art 4 of Protocol 3, which was true for nationals of EEC member states, but not for the rest of the world. Indeed, aspects of the 1905 Law were *ex facie* in breach of the ECHR, though that was not given as a reason for repeal at the time. Furthermore, and importantly, alien and immigration control were satisfactorily addressed by such measures as the Aliens Restriction

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[30] Customarily, Alderney had maintained two Law Officers, as in Guernsey. Besides the *Procureur*, there had existed the office of *Comptroller du Roi*, or *Contrôle*, which had been occupied in the early years of the 19th century, but by 1846 had fallen vacant (See *Second Report of the Commissioners etc. Guernsey*, 1848, at paras 4957 and 5065; and Havet, *Les Cours Royales etc*, 1878, at p 172. It does not appear that the office was thereafter filled, perhaps because it carried no salary and its holder would have had to rely on private work, and by the time of Alderney's constitutional changes commencing in 1916 it appears to have fallen into desuetude. In the absence of the *Procureur*, a lay *Procureur Delégué* stood in. After the Occupation, Alderney's sole resident advocate, Ralph Duplain, was concurrently *Procureur*. (For an account of the professional difficulties this singular situation engendered, see para 44 of the *Report of the Committee of the Privy Council on the Island of Alderney*, 1949.) Any lingering possibility of its revival was removed by the abolition of the office of *Procureur* by the 1948 Law. The functions of the Law Officers for both Alderney and Sark are performed nowadays by Guernsey's *Procureur* and *Contrôle.*

[31] See para 14 *supra.*

[32] *Billet d'Etat* No XIII of 1972 at p 656

(Guernsey) Law 1958 (which replaced earlier measures regulating *étrangers*, in particular local legislation arising out of the UK's Aliens Restriction Act 1914 and Aliens Order 1920), and subsequently the Immigration (Guernsey) Order 1972 made under the Immigration Act 1971. Interestingly, Guernsey and Alderney had maintained separate primary legislative regimes of aliens' control by Orders in Council: see for Guernsey (expressed to include Sark, Herm and Jethou) the *Loi portant Réglementation sur l'Admission et l'Enregistrement des Etrangers*, 1922;[33] and for Alderney, its equivalent Law of 1926:[34] the purpose of both being to assimilate the Bailiwick's regimes to that of the UK.

22 Alderney's equivalent 1906 Law was not simultaneously repealed, even though Guernsey's immigration regime applied there, and it remained in force. However, any difficulty or embarrassment potentially arising as respects a national of an EEC member state was avoided by enactment of the Acquisition of Immovable Property by Aliens or Foreign Companies (Alderney) Law 1973 ("the 1973 Law")[35] which removed individuals and bodies corporate from the scope of the 1906 Law. But as respects other aliens and foreign bodies, it still fulfilled some perceived utility, and between January 2016 and December 2021 some three alien individuals were granted permission by the Court of Alderney to purchase properties.

23 Brexit eventually forced action to remove the potential for difficulties arising because of Alderney's retention of the 1906 Law. Following the withdrawal of the UK, and the cessation of the Bailiwick's relationship with the EU, it became necessary to repeal the 1973 Law to remove the preference thereby given to EU nationals and bodies, which would have been incompatible with the OECD's codes relating to capital liberalisation. The 1906 Law, as it would have remained after repeal of the 1973 Law, was considered "archaic" and against the spirit of the new trading relationship to be forged between the Bailiwick and the rest of the world, underpinned by membership of the WTO and its resulting obligations. But further, for Alderney to have retained restrictions of no social or economic value and inapplicable elsewhere in the Bailiwick for no good reason, especially as immigration controls were in force there as in the other Islands, could well have given rise to external embarrassments, let alone internal inconsistencies. Accordingly, the 1906 Law was repealed in December 2020 by the Acquisition of Immovable Property by Aliens

[33] OC vol VI p 426.
[34] OC vol VIII p 49.
[35] OC vol XXIV p 33.

(Brexit) (Repeal) (Alderney) Regulations 2020 made under s 11 of the European Union (Brexit) (Bailiwick of Guernsey) Law 2018. Thus, this curious reminder of our lingering "suspicion" (as the Postscript puts it) of *étrangers* was consigned to the dustbin of history.

24 The position in Jersey was different. No legislation equivalent to the 1905 and 1906 Laws was enacted in about the same period, although the *Loi (1902) prohibitant l'établissement en communauté d'ordres religieux étrangers à Jersey* introduced limited restrictions, so far as the ownership of Jersey property by foreign religious orders warranted control, and which is now repealed. The restrictions in the 1771 Code were presumably deemed sufficient. The control of aliens and immigration regime, enacted as an Order in Council of 12 June 1635,[36] and confirmed by the provisions of the 1771 Code, and repealed in 1937 by the *Loi sur les étrangers*, included prohibitions against aliens undertaking commerce in Jersey and locals transacting with them, besides those controls over *étrangers* residing in Jersey which gave rise to the Postscript.

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[36] Said by Tupper in his *History of Guernsey etc*, 1878, at p 455, to have invested Jersey's Governor with "unlimited" authority to expel *étrangers*, and to have been made by "an Order of the Star Chamber", but appearing "to have been directed against the refractory English . . . seeking asylum in Jersey" rather than aliens. Whatever its motivation, it was throughout treated as an aliens' restriction measure. By its terms, it was intended to apply only in Jersey rather than throughout the Islands.