29th June, 1988.

ROYAL COURT - INFERIOR NUMBER

Before: Mr. V.A. Tomes, Deputy Bailiff

Between	H.M. Attorney General	Appellant
And	Devonshire Hotel Limited	Respondent

H.M. Attorney General in person
Advocate R.G. Day for the respondent

This is an appeal by case stated from a decision of the Police Court of the 14th April, 1988, when the Assistant Magistrate dismissed a prosecution brought against the respondent by Centenier Le Brocq of St. Helier (the Centenier) alleging an infraction of Article 80 of the Licensing (Jersey) Law, 1974. Facts which would support the charge were admitted by the defence but Mr. Day raised a preliminary plea that, as a matter of law, the charge should not have been brought.

The facts pertinent to the present case are that the manager of the business in respect of which a licence of the first category was held by the respondent and his wife, and a representative of the respondent, attended an enquiry at the Town Hall conducted by the Centenier at which he decided that he would take no further action against the respondent. I was told by Mr. Day that "in the circumstances of this particular case, although an offence had been committed, he (the Centenier) did not intend to prosecute". The Attorney General did not demur from that statement.

Neither the transcript nor counsel were entirely clear as to what transpired regarding the manager and his wife. It seems that the Centenier was minded to deal with them by way of a written caution but adjourned the enquiry in order to consult with the Attorney General.

Be that as it may, the Centenier did see the Attorney General who approved the proposal whereunder the manager and his wife should be dealt with by way of a written caution, because there were special personal circumstances relating to age, dismissal from employment, and consequential loss of their home, in other words the decision not to prosecute was made on compassionate grounds having regard to mitigating factors.

In the course of the meeting the Attorney General learned of the action already taken by the Centenier in respect of the respondent. The Attorney General disapproved, considered that the respondent should have been prosecuted, and directed the Centenier to do so. According to the Centenier, he received the directions on the ground that the offence committed by the respondent was an "absolute offence". However, the Attorney General explained that it was not made clear to him that the Centenier had already "decided" the case of the respondent and that he advised the Centenier that the respondent should be prosecuted because, and to this limited extent I have to refer to the facts relating to the actual offence, it was a serious matter that the wife of the manager should have been drunk on the licensed premises. I accept the Attorney General's version of the meeting.

Armed with the Attorney General's advice or direction, the Centenier convened a further enquiry, charged the respondent, and presented the case before the Police Court on the 14th April, 1988. Mr. Day entered a formal plea of "not guilty", although the facts were admitted and took the preliminary point that the charge was brought too late. Mr. Day relied on Article 3(4) of the Police Force (Jersey) Law, 1974, which is in the following terms:-

"Where a Connétable or, in his absence, a Centenier declines to charge any person, a member of the Force may refer the matter to the Attorney General, who may give such directions to such persons as he thinks appropriate". "The Force" is defined in Article 1 of the Law as the States of Jersey Police Force.

Mr. Day submitted, and I agree, that the Centenier is not a member of the Force.

The Assistant Magistrate asked Mr. Day if he was invoking "autrefois acquit" and Mr. Day replied that it would be straining that doctrine to invoke it here. The Assistant Magistrate then accepted the submission that proceedings could not now be brought, on the ground that it would be contrary to natural justice. He found that a charge could not be brought after the respondent had been notified by the Centenier that no further action would be taken against it. He said "I think that to bring a charge in such circumstances would be against natural justice".

In his Statement of Case, the Assistant Magistrate altered his ground somewhat. In his opening paragraph, he says this:-

"Centenier Le Brocq stated that when he heard the case at the Parish Hall enquiry he decided that he would deal with the matter by a written caution and he informed Mr. Malcolm John Burd representing the Devonshire Hotel Limited of this decision. He also told Mr. Burd that the matter would not be taken any further. Subsequently however, the Centenier referred the matter to the Attorney General who instructed him to charge the Company".

That paragraph contains two errors of fact. The Centenier did not inform the representative of the respondent that he would deal with the matter by a written caution. The Centenier went no further than to say that he would take no further action and that the matter would not be taken any further. Nor did the Centenier refer the matter of the respondent to the Attorney General; what he did refer was the matter of the manager and his wife during which the Attorney General learned of the decision taken with respect to the respondent, "accidentally" as Mr. Day put it, and advised or directed - the Attorney General accepted that for all practical purposes his advice amounted to an instruction - the Centenier to prosecute the respondent.

In the second paragraph of his Statement of Case the Assistant Magistrate says this:-

"I gave some consideration to the leading local case of autrefois acquit and autrefois convict (A.G. -v- Kelly and others 1982 J.J. 276-279). If the Centenier was acting in the exercise of a formal summary jurisdiction and had made a finding of guilt and had imposed a penalty in the form of a written caution, the accused might well be able to maintain that the defence of "autrefois convict" would apply."

The Assistant Magistrate appears here to be saying that, because the Centenier did not impose a penalty, the defence of "autrefois convict" does not apply, whereas it might well apply if a penalty had been imposed. But, according to the transcript, he said that "it (the defence of autrefois acquit) doesn't really apply in the Police Court", presumably a reference to the decision in Attorney General -v- Kelly & ors. However, in his address to me, Mr. Day submitted that an accused in the circumstances of the present case would be justified in relying on autrefois acquit or autrefois convict, the latter in the instant case. He argued that Centeniers do have power to make a decision, that in this case the Centenier had done so and had made a finding of guilt, although he imposed no penalty and, therefore, that 'autrefois convict' did apply.

The remainder of the Statement of Case relied on Article 3(4) of the Police Force (Jersey) Law, 1974. The Assistant Magistrate appears to have adopted Mr. Day's argument that a reference to the Attorney General can be made only by a member of the States of Jersey Police Force and cannot be made by another Centenier, still less the original Centenier; that the reference by the original Centenier, having already communicated his decision not to charge the respondent, did not comply with the terms of Article 3(4) which must be interpreted strictly on this point and that, therefore, the subsequent charging of the respondent that resulted from the reference must be regarded as invalid.

Strangely, the Statement of Case contains no reference at all to natural justice although from the transcript it appears to have been the sole ground of the decision.

The question whether it is proper for a Magistrate to adduce new reasons in his Statement of Case, additional to or as in this case different from, the formal order and the reasons given by him in his oral judgment set out in the official transcript was not addressed before me. Therefore, I do not propose to decide it. Counsel dealt with all the points contained in both the Statement of Case and the official transcript and I shall have to do likewise, albeit with reservations about the procedure adopted.

Out of all this confusion, the question to be determined appears to be: "Does the Attorney General have the right and the power to instruct a Centenier to prosecute even after the Centenier has decided not to do so?"

Article 13(1) of the Royal Court (Jersey) Law, 1948, provides that the Bailiff, which includes the Deputy Bailiff, shall be the sole Judge of law.

Rule 3/6 of the Royal Court Rules, 1982, as amended, provides that "notwithstanding any rule or custom to the contrary, in any cause or matter, civil, criminal or mixed wherein, pursuant to Article 13(1) of the Royal Court (Jersey) Law, 1948, the Bailiff shall be the sole Judge, the Inferior Number of the Royal Court shall be properly constituted if it consists of the Bailiff (which again includes the Deputy Bailiff) alone."

Both Counsel agreed, correctly, that the sole question to be determined in the instant case is one of law only and, accordingly I sat alone.

Autrefois acquit or autrefois convict. In Attorney General -v- Kelly & ors., one, Ferguson, had been presented upon an indictment, Count 1 of which charged Ferguson, Kelly and others with conspiracy together and with one,

Nelson, to steal jewellery. Count 2 charged Nelson with larceny of diamond rings. Ferguson entered a plea in bar in respect of Count 1 on the ground of 'autrefois acquit'. In support, there was produced an original charge sheet at the Police Court which recorded that Ferguson had been charged at the Police Court with the theft of rings. Under the heading "witnesses" the name of one witness, the Centenier, was given. Under the heading "judgment etc." were the words "Witness heard, no evidence offered, dismissed". There was no reference to a plea being entered on behalf of Ferguson. The charge related to the same rings and to the same incident as was charged against Nelson in the indictment. I cite from the judgment, commencing at page 227:-

"Counsel for Ferguson conceded that the burden of proving autrefois acquit lay on Ferguson, but that the standard of proof was on a balance of probabilities. This Court agrees. Counsel further conceded that in order to succeed in his plea in bar Ferguson must satisfy this Court on both the following matters, first that the dismissal of the charge at the Police Court on the 1st July, 1980, amounted to an acquittal, and secondly, that that acquittal was now a bar to the trial of Ferguson on the charge of conspiracy in Count 1 of the indictment.

We deal first with point one, did the dismissal of the charge at the Police Court amount to an acquittal? Counsel for Ferguson agreed that in England the dismissal of a charge in committal proceedings was no bar to raise subsequent prosecution on the same charge. The authority of that statement is to be found in Archbold 40th Edition paragraph 382a sub-paragraph 4 and also in the case of Regina v. Manchester City Stipendiary Magistrate, Ex parte Snelson [1977] 1 W.L.R. 911. But he argued that the proceedings in the Police Court against Ferguson were not committal proceedings. It was open to the Police Court Magistrate, in this case in fact the Assistant Magistrate, to deal with any case summarily however serious the charge and therefore the Police Court was a competent Court which could have convicted Ferguson on that charge and he was, therefore, put in jeopardy on that charge. Counsel asked us to apply the case of Regina v. Pressick (1978) Criminal Law Review page 377

where the summons was dismissed because the prosecution were not ready to proceed. It was held there that fresh proceedings could not be commenced notwithstanding that there had been no trial on the merits. In that case the defendant had pleaded not guilty. It appears to us that that was a Court of summary jurisdiction sitting as such. Counsel also commented that in the prosecution against Ferguson at the Police Court there was no technical failure or a failure by the prosecution to appear, the prosecution was present, but chose not to call evidence. The dismissal of the charge, therefore, amounted to an acquittal. The Attorney General argued that the dismissal of the charge at the Police Court was not an acquittal because it did not amount to a pronouncement of innocence and that there could not have been any such pronouncement because the Assistant Magistrate was not sitting as a judge of summary jurisdiction. In Jersey in criminal matters the Magistrate had three quite separate functions. The first was as a Juge d'Instruction or examining Magistrate. At the start of every case before him he sat in that capacity to examine the matter in order to decide whether the case was fit to proceed further into the judicial process and if so in what way. If the matter was fit to proceed the Magistrate had then to decide whether he would deal with the case himself as a Magistrate of summary jurisdiction or whether to sit as a Juge d'Instruction for the purpose of remanding the defendant for trial at the Royal Court if a prima facie case had been found. As a Juge d'Instruction the Magistrate could not pronounce on guilt or innocence, such a pronouncement could only be made by the Magistrate sitting as a Magistrate of summary jurisdiction or of course by the Royal Court. When the charge against Ferguson was dismissed the Assistant Magistrate was sitting in his first capacity as a Juge d'Instruction. No evidence was offered and therefore the case never got to the stage where the Assistant Magistrate became seized of the issue of guilt or innocence. It followed that Ferguson was never in jeopardy and that, therefore, the dismissal of the charge was not an acquittal. We believe that argument to be correct. We find it significant that the Law which determined the creation, method of appointment and functions of the Magistrate is entitled the "Loi (1864) concernant la charge de Juge d'Instruction". We also referred to the 1968 case of Her Majesty's Attorney General against Michael Joseph

Griffin which is to be found in Volume I Part 2 of Jersey Judgments at page 1001. That case related to the need for the Magistrate to determine whether to deal with a case himself or to send the defendant for trial before the Royal Court. We have decided that when the Assistant Magistrate dismissed the charge against Ferguson he was acting as a Juge d'Instruction and that, therefore, as in the Snelson case already cited the dismissal did not amount to an acquittal so as to act as a bar to a subsequent prosecution for the same offence."

If dismissal of a charge in committal proceedings is no bar to subsequent prosecution on the same charge, then a fortiori, a decision by a Centenier at a Centenier's enquiry not to bring a prosecution is no bar to subsequent prosecution on the same charge.

But Mr. Day submits that because the Centenier told the representative of the respondent that although an offence had been committed, he did not, in the circumstances of the case, intend to prosecute, that is tantamount to a finding of guilt and, therefore, the defence of "autrefois convict" applies.

The only authority which Mr. Day produced in support of his submission was an extract of the Commissioners Report 1847 at p.8, which reads as follows:-

"Another objection to the present system of Police appears to us to arise from the character which the superior officers assume. The word "constable" conveys to English Lawyers the idea of an authority much inferior to that which the constable, and, as acting for him, the centenier, constitutionally possesses. These officers have functions partly resembling those of our police magistrates. They may, in certain cases, take bail from a party arrested where the offence does not amount to felony; they can also bind parties to keep the peace. In numerous cases they assume the exercise of a discretion which in England would not be thought compatible with the duties of a police officer. In the case of an assault, the constable considers it part of his duty to inquire

whether the assault has not been provoked by libel or slander, if that is alleged. In some cases they consider themselves authorized to decide as to whether a Report shall be presented, that is, in effect, whether a prosecution shall go on. We do not consider that any of this latitude of authority arises from usurpation; for it seems clear to us that the whole is in the spirit of the ancient institutions, which imposed on the bas justiciers the duty of searching out crime and committing such offenders as they thought proper objects of prosecution."

Mr. Day invites me to find that, in deciding not to prosecute, the Centenier was performing a judicial function, presumably resembling that of a police magistrate or 'bas justicier', not compatible with the duties of a police officer. I have no hesitation in refusing that invitation.

The fundamental principle is that a man is not to be prosecuted twice for the same offence. By no stretch of the imagination can a decision not to prosecute be deemed a prosecution. A defence of 'autrefois convict' is based on the well established common law principle that where a person has been convicted and punished for an offence by a court of competent jurisdiction, the conviction shall be a bar to all further proceedings for the same offence and he shall not be punished again for the same matter. It is arguable whether punishment is an essential ingredient. For example, in R. -v- Sheridan (1936) 26 Cr.App. R.1, Sheridan, having consented to be dealt with summarily, pleaded not guilty and in the event was convicted. Upon hearing Sheridan's antecedents the justices committed him for trial (the power to commit for sentence did not then exist). It was held on appeal that Sheridan's plea of autrefois convict, which was entered upon arraignment and rejected, should be upheld. But in S (an Infant) -v- Manchester City Recorder (1971) A.D. 481 the House of Lords considered 'obiter' the meaning of the word 'conviction' in the context of the plea 'autrefois convict' Lord Reid at p.490 asserted that the three cases upon which the Court of Criminal Appeal founded their decision in Sheridan did not support it. Lord Guest agreed with Lord Reid. Lords MacDermott and Morris described the point as debatable. However, "The primary meaning of the word 'conviction' denotes the judicial determination of a case; it is a judgment which

involves two matters, a finding of guilt or the acceptance of a plea of guilty followed by sentence. Until there is such a judicial determination, the case is not concluded, the court is not functus officio and a plea of autrefois convict cannot be entertained. ....The law plainly took a wrong turning in Sheridan's case" per Lord Upjohn ibid at pp 506-508.

I am satisfied that the Centenier was not performing a judicial function - Mr. Day conceded that Centeniers do not have judicial powers as normally understood -, there were no "proceedings", there was no conviction, and the Centenier was not a court of competent jurisdiction.

Accordingly, the defence of 'autrefois convict' fails.

Common law or customary powers of the Attorney General in the prosecution of offences. The position of the Attorney General in relation to the prosecution of offences is very succintly put by Charles Le Quesne in his Constitutional History of Jersey published in 1856 at p.23: "He (the procureur) is, from his office, public prosecutor. No individual is allowed to prosecute for crime, except the Attorney-general, on behalf of the Crown. All reports of the police to the Royal Court are to be presented through him, and the accusations against prisoners, in consequence of those written reports, are brought forward by him. He is often consulted by the police in matters of difficulty, and they are guided by his instructions.... He is the upholder of public order, and can prosecute for all crimes and misdemeanors."

An Order of the Privy Council of the 23rd November, 1749, confirmed by a further Order of the 31st October, 1751, declares "that the Procureur is the superior Officer (as between himself and the King's Advocate) and the proper Person to Commence and Carry on all Criminal Prosecutions....." The Order also recognizes that the Procureur has a common law right to enter a 'noli prosequi' in certain cases.

The oath of office of the Constables requires them to keep Her Majesty's peace and to seize all offenders and to present them before the Court. The oath further requires the Constables to convene their officers, at least once in each month in order that they may, inter alia, declare all offenders in order that the Constable shall inform the Court and the Crown Officers of them from time to time. The oath of office of the Centeniers is in almost identical terms except that they report to the Constable in order that he may present offenders to the Court. There is nothing in either oath to suggest a judicial function; as the Attorney General said, their power and their duty is to arrest and present offenders or to bring matters to the attention of the Crown Officers.

Hemery and Dumaresq in their " Statement of the mode of Proceeding and of going to trial in the Royal Court of Jersey", 1789, confirm the common law position at page 40:-

"It is, in the first place, the duty of every constable, within his parish, assisted by his officers to apprehend all culprits particularly those who may be guilty of offences deserving a corporal punishment; and to present them before the Court. This is enjoined to the constables, by the oath they take, when admitted into office; and it is moreover enacted by the 14th article of the ordinances of the Commissioners, in 1562: "that if any transgressor of the ordinances be found deserving corporal punishment, he shall be presented, without delay, before the Court by the Constable and the sworn officers of his parish, that he may be punished, according to the exigency of the case.""

And at page 41:-

"Upon the accused's being ordered to prison or admitted to bail, the King's Procureur asks Permission d'informer, viz: leave to file an information against the offender; which is granted of course in every criminal suit: and this puts an end to the business, for that day.

On some subsequent Court day, the prisoner is again brought up, to be present at the examination of witnesses summoned by the King's Procureur. This is done before two Jurats only. The accusation is then read afresh to the prisoner, as well as his former declaration; and he is asked if he have anything to vary from what he first declared; which he may do, in any stage of the proceeding. The prisoner is also allowed to suggest such questions to the witnesses, as he thinks proper; and to point out witnesses for his justification or character.

After the witnesses have declared what they know of the matter, their deposition is taken down in writing by the Greffier, or by any of the advocates or attorneys, who may be present at Court; and it has happened sometimes, (however unintentionally) that the depositions taken down, have varied materially from the vivâ voce evidence. The depositions are then collected by the Greffier and kept in his possession. The accused is remanded to prison; and the King's Procureur obtains leave d'informer plus outre, viz: to call more witnesses.

This calling up of the prisoner before the Court, taking of depositions, and remanding him to prison, may be repeated, as often as the King's Procureur thinks proper; and it is done frequently, and during a considerable space of time."

The Attorney General also referred me to Minutes of Evidence taken before the Commissioners in 1846. At page 122, in the examination of J.W. Dupré Esq., we find the following:-

"466. We understand that the mode of proceeding is for the constable to make a written Report, which is the authority for the Crown Officers to prosecute? - Yes.

467. It is the information upon which their prosecution is founded? - Yes.

468. Is that information presented upon the oath of the constable? - He makes no oath at the time: it is supposed to be presented on his oath of office.

469. He does not make an oath applicable to each information? - No.

470. If it should happen that, upon a complaint made by a party to a constable, he should refuse to act, what course does the party take, if the constable refuses to make a Report? - If the party complained to the Procureur Général, he might bring a prosecution against the officer so refusing to act.

471. What mode is there of prosecuting the crime? - There is no mode of prosecuting the crime, unless the party is brought before the Court by the Police.

472. The Procureur Général has the general power of instituting ex officio informations which he exercises in State offences, the offences of officers, and so on. Besides the ordinary exercise of his power, has not he also the constitutional power to file an information in any case? Suppose he hears that a man has been beating another, could not he institute a prosecution in that case without the Report of the constable? - Yes.

473. Suppose, in the case of Madame Le Gendre, a constable had refused to make any report, could the Procureur Général have prosecuted for that murder? - Yes, upon the verdict of the coroner's inquest.

474. Take any case of crime in which the coroner would not interfere? - I do not know any case in which the Procureur Général has interfered by information for a crime.

475. As a question of law, giving merely a legal opinion, is it your opinion that the Procureur Général would have that power? - He would have the power.

476. That would be your remedy for the non-interference of the police? - Yes. In a case of that kind, the Procureur Général would bring an information before the Court, and would require the Court to order the party to be seized by the officer of the Court, and brought up: and, when he was so brought up, the accusation would be laid in the usual form."

The power of the Attorney General and his responsibility is further clarified by the evidence of Advocate F. Godfray, at page 126:-

"586. Presuming that the bias of a policeman in England would be rather against the prisoner, would it be the same here? - We must not compare policemen in Jersey to policemen in England. The policeman here, not being paid for what he does, has not the same feeling: and then they are not in the same position of life, as Mr. Dupré has stated. There are a great many of those police officers who are principaux' sons, constables' sons; and many of the Jurats have themselves filled the position of police officers. There is one thing I should wish to state: that the Attorney General, whenever he thinks proper, may call upon the constable or centenier, upon the Attorney General's responsibility, to arrest a person and bring him before the Court. The Bailiff and Governor have also the same power. I state this, because it was not clearly stated by the Attorney General.

587. Have you known instances of that? - A great many. The Attorney General confers with the Police; or in some cases, even against their opinion, he would exert that power.

588. You think that is quite matter of course? - Yes.

589. Have you known instances in which constables have refused to arrest till ordered to do so by the Attorney General or by the Bailiff? - Yes: there have been instances. I do not know any case in which that has been objected to by a constable or centenier. There are many cases in which, the Police refusing to act, or not thinking the person should be arrested, the Attorney General has told them to do so, and they have arrested him. I remember instances in which the constable thought a case would not be bailable unless the Attorney General has told him to bail the prisoner; and that has been done."

It is, in my view, beyond dispute, that there is nothing in any of the authorities to indicate that there was any summary jurisdiction in or to import a judicial capacity on the part of, the honorary police. It was the role of the honorary police to arrest and present offenders and the role of the Attorney General to prosecute.

Mr. Day does not dispute the customary law situation but claims that the powers of the Attorney General cease upon a determination of the case by a decision of the Centenier. He argues that the moment that the Centenier stated that he did not intend to prosecute, the matter was at an end, and he relies, for that submission, on Article 3 and, in particular, on Article 3(4) of the Police Force (Jersey) Law, 1974, which I must now go on to consider.

Article 3 of the Police Force (Jersey) Law, 1974 Article 3 reads as follows:-

"Article 3.

Power of Police Officer.

(1) Where a police officer with reasonable cause suspects that any person has committed, is committing or is about to commit, an offence he may arrest that person.

(2) There shall be expressly reserved to a Connétable and a Centenier the powers of -

(a) the customary right of search;

(b) the granting of bail to any person;

(c) the formal charging of any person with an offence, without prejudice to the customary powers of the Attorney General in the prosecution of offences.

(3) Subject to the provisions of paragraph (2) of this Article, a police officer shall have all other powers and privileges relating to policing which a Connétable or Centenier has by virtue of the common law or of any enactment for the time being in force.

(4) Where a Connétable or, in his absence, a Centenier declines to charge any person, a member of the Force may refer the matter to the Attorney General, who may give such directions to such persons as he thinks appropriate."

Mr. Day says that the breadth of the wording of Article 3(4) would appear to vest in the Attorney General a power to do almost anything. However, he argues, the information in the present case came "accidentally" to the Attorney General whereas he is, by Article 3(4) empowered to give directions only if the matter is referred to him by a member of the States Police Force. Mr. Day submits that, by the enactment of Article 3 and, in particular, Article 3(4) there was clearly a change in the common law; the legislature did not intend to give extensive powers to the Attorney General; in summary, Mr. Day's submission is that the Attorney General does have the common law power described by Advocate Godfray but only until the Centenier has dealt with the matter. Mr. Day further submits that Article 3(4) can be invoked, even by a member of the States Police Force, only before the Centenier has dealt with the matter. He put forward the very robust submission that so long as Centeniers are entrusted to assist the administration of criminal law, it would be ludicrous, farcical and unjust to have any procedure, i.e. Article 3(4) whereby their efforts can be turned to nothing i.e. by the Attorney General.

In support of his submissions, Mr. Day cited certain extracts from Maxwell on Interpretation of Statutes, 12th Edition, the first at page 28:-

""The length and detail of modern legislation", wrote Lord Evershed M.R., "has undoubtedly reinforced the claim of literal construction as the only safe rule". If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. "The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance, reference to cases.""

And at page 29:-

"The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the court is to expound the law as it stands, and to "leave the remedy (if one be resolved upon) to others.""

Mr. Day also cited Maxwell at pages 116 and 117, dealing with presumption against changes in the common law. The extract from page 116 is as follows:-

"Few principles of statutory interpretation are applied as frequently as the presumption against alterations in the common law. It is presumed that the legislature does not intend to make any change in the existing law beyond that which is expressly stated in, or follows by necessary implication from, the language of the statute in question. It is thought to be in the highest degree improbable that Parliament would depart from the general system of law without expressing its intention with irresistible clearness, and to give any such effect to general words merely because this would be their widest, usual, natural or literal meaning would be to place on them a construction other than that which Parliament must be supposed to have intended. If the arguments on a question of interpretation are "fairly evenly balanced, that interpretation should be chosen which involves the least alteration of the existing law.""

And at page 117:-

"Section 4(1) of the Criminal Evidence Act 1898 provides that the spouse of a person charged with an offence under any enactment mentioned in the schedule to the Act may be called as a witness either for the prosecution or for the defence. This was held by the House of Lords in Leach v. R. only to make a wife a competent witness against her husband, and not to have what

the Earl of Halsbury called the "perfectly monstrous" result of making her compellable. "The principle," said Lord Atkinson (at p.311), "that a wife is not to be compelled to give evidence against her husband is deep seated in the common law of this country, and I think if it is to be overturned it must be overturned by a clear, definite and positive enactment, not by an ambiguous one such as the section relied upon in this case." Unless a statute imposes an inquisitorial duty on a court, it will not be held to abrogate the common law rules of evidence."

I must say at once that these latter two extracts appear to me to be persuasive authority for the submissions of the Attorney General. Mr. Day would have me decide that Article 3(4) sweeps away the common law powers of the Attorney General in respect of prosecutions wherever a Centenier has decided not to prosecute except in those cases where a member of the States Police Force decides to refer a matter to him. The Attorney General would have lost, by the enactment of Article 3(4) his customary right to direct a Centenier to prosecute, except in those cases where a member of the Force, in his discretion, decided to refer a matter to him. But Mr. Day goes further because, he says, even where a member of the Force chooses to make a reference, that reference must be made before the Centenier has made his decision. Therefore, if Mr. Day is correct, the legislature did achieve what was, according to his own authority, in the highest degree improbable in that it departed from the general system of law without expressing its intention with irresistable clearness.

The principle that the Attorney General alone has the power and the right to prosecute is deep seated in the common law of this island and, in the words of Lord Atkinson in Leach v. R (supra), "I think if it is to be overturned it must be overturned by a clear, definite and positive enactment, not by an ambiguous one such as the section (article) relied upon in this case".

There have been examples where the power of the Attorney General alone to prosecute has been eroded by clear, definite and positive enactments.

These are to be found in the Loi (1853) Etablissant la Cour pour la Repression des Moindres Délits and the Loi (1864) réglant la Procédure criminelle in relation to "préventions". Likewise in Article 46 of the Road Traffic (Jersey) Law, 1956, which vests in the Constable or Centenier of the parish in which an offence was committed, the power to inflict and levy fines summarily. But none of these overturn the common or customary law power of the Attorney General in the matter of prosecutions generally.

Two other rules of interpretation appear to have been ignored by Mr. Day. The one is that it is an elementary rule that construction is to be made of all the parts of a statute together, and not of one part only by itself. A fortiori, this rule must apply to all the parts of an article. Here, Article 3(2)(c) expressly reserves to a Connétable and a Centenier the powers of the formal charging of any person with an offence, without prejudice to the customary powers of the Attorney General in the prosecution of offences. No restriction is imposed upon the "customary powers of the Attorney General". But Mr. Day's interpretation would require me to find that the customary powers saved by Article 3(2)(c) were so restricted that they could not operate, other perhaps than in certain specific instances, except when under Article 3(4) a States' Police Officer made a reference to the Attorney General before the Centenier had reached a decision whether or not to prosecute. This would not be construing all the parts of the Article together.

The other rule is that absurdity is to be avoided. If Mr. Day's interpretation is to be accepted one would have the absurd situation that the powers of the Attorney General - and the right of a member of the Force to refer - would depend upon who acted first. If the Attorney General, 'accidentally' or by whatever cause, learned of a potential prosecution he would, if he considered a prosecution should be brought, have to communicate his direction immediately to the Centenier in case the latter should decide not to prosecute and thus "close the door" to any possible prosecution. Moreover, if a member of the force, having investigated an offence, felt strongly that a prosecution should be brought, he would have to refer the matter to the

Attorney General in order that a direction might issue to the Centenier before he had the opportunity to consider the investigating officer's report. The latter interpretation would, in any event, fly in the face of the clear words of Article 3(4): "Where a Connétable or, in his absence, a Centenier declines to charge any person, a member of the Force may refer the matter to the Attorney General...." Applying Mr. Day's own authority at page 28 of Maxwell and construing Article 3(4) "in the ordinary and natural meaning of the words", the Connétable or Centenier must first have declined to charge and then, and then only, does the power to refer arise.

For all the reasons I have given, I have no hesitation in rejecting Mr. Day's submissions.

I accept the Attorney General's submissions upon the interpretation of Article 3 as a whole. Article 3(1) confers a right of arrest on all police officers. Carter -v- Nimmo and King (1968) J.J. 1007 and, on appeal, 1257, had decided that there was no distinction between what might lawfully be done to effect an arrest (the honorary police power) and what might lawfully be done to effect a detention (the States' police power). Article 3(1) removes this difference without a distinction. Article 3(2) reserves to a Connétable and a Centenier the powers of a) the customary right of search b) the granting of bail to any person; and c) the formal charging of any person with an offence, without prejudice to the customary powers of the Attorney General in the prosecution of offences. Article 3(3) provides that, subject to the express reservations contained in Article 3(2), a police officer shall have all the other powers and privileges relating to policing which a Connétable or Centenier has by virtue of the common law or of any enactment for the time being in force. It is transparently clear that the Article is dealing with the powers of the members of the Honorary Police and of the Force inter se because it would be absurd to suggest that the express reservations in Article 3(2)(b) effectively put an end to the power of the Courts of this Island to grant bail; and yet such is the effect that Mr. Day argues the Article has on the customary powers of the Attorney General to prosecute in any case where a Centenier has decided not

to do so. As the Attorney General says, because the Article is dealing with the powers of the Honorary Police and of the Force inter se, Article 3(4) was designed by the legislature to provide a balance with Article 3(2)(c) in order that, if a member of the Force, normally the investigating Officer, is dissatisfied with the decision of the Centenier, he can refer the matter to the Attorney General who can then give such directions to such persons as he thinks appropriate. The directions may be directions that further investigations be made before a final decision is reached or may be directions as to the future conduct of the Centenier; equally they may be directions to the Connétable to prosecute, by himself or another Centenier, thus overruling the decision of the original Centenier. The words "declines to charge any person" make it abundantly clear that the reference is to be made only after the Centenier has reached his decision and, therefore, that the decision may be overruled.

Thus, I overrule the Assistant Magistrate and declare that the charging of the respondent, which resulted from the exercise by the Attorney General of his customary powers in the prosecution of offences, was valid and that the charge should have been tried on its merits.

Natural Justice The only reason for dismissing the charge given by the Assistant Magistrate in his oral judgment set out in the official transcript and, therefore, I think probably the only reason which should have been considered under the Statement of Case, was that to bring a charge in the circumstances of the present case was against natural justice.

In his submissions on the issue of natural justice, Mr. Day used some robust language. It was "utterly wrong and contrary to all rules of justice" he said "to mislead a party as to his status", i.e. to lead a person to think that no further action would be taken and yet, later, to prosecute him. He went on to say that it was "outrageous" that a person could leave a Centenier's enquiry having been "let off" and then hear that "another authority" had overruled the Centenier.

Mr. Day referred me to McInnes -v- Onslow Fane (1978) 3 All E.R. 211 at page 219 for saying that natural justice is nothing more or less than fairness. He cited the following extract:-

"Third, there is the question of the requirements of natural justice or fairness that have to be applied in an application case such as this. What are the requirements where there are no provisions of any statute or contract either conferring a right to the licence in certain circumstances, or laying down the procedure to be observed, and the applicant is seeking from an unofficial body the grant of a type of licence that he has never held before, and, though hoping to obtain it, has no legitimate expectation of receiving?

I do not think that much help is to be obtained from discussing whether 'natural justice' or 'fairness' is the more appropriate term. If one accepts that 'natural justice' is a flexible term which imposes different requirements in different cases, it is capable of applying appropriately to the whole range of situations indicated by terms such as 'judicial', 'quasi-judicial' and 'administrative'. Nevertheless, the further the situation is away from anything that resembles a judicial or quasi-judicial situation, and the further the question is removed from what may reasonably be called a justiciable question, the more appropriate it is to reject an expression which includes the word 'justice' and to use instead terms such as 'fairness', or 'the duty to act fairly'."

But McInnes -v- Onslow Fane was a case concerning an application for a licence that had been refused and revolved around the question whether the board that refused the licence was under a duty to inform the applicant of 'the case against him' or to give him an oral hearing. In the present case, the respondent having been charged clearly knew the case against it and, indeed, admitted the facts, and was given an oral hearing in the Police Court, which it chose to use to advance a technical defence which, in my view wrongly, succeeded.

Mr. Day then referred me to Professor H.W.R. Wade's Administrative Law, 4th Edition, at p.13 and cited the following passage:-

"By developing the principles of natural justice the courts have devised a kind of code of fair administrative procedure. Just as they can control the substance of what public authorities do by means of the rules relating to reasonableness, improper purposes, and so forth, so through the principles of natural justice they can control the procedure by which they do it. It may seem less obvious that they are entitled to take this further step, thereby imposing a particular procedural technique on government departments and statutory authorities generally. Yet in doing so they have provided doctrines which are an essential part of any system of administrative justice. Natural justice plays much the same part in British law as does 'due process of law' in the Constitution of the United States. In particular, it has a very wide general application in the numerous areas of discretionary administrative power. For however wide the powers of the state and however extensive the discretion they confer, it is always possible to require them to be exercised in a manner that is procedurally fair."

But Professor Wade is here dealing with government departments and statutory authorities generally and with administrative law. Here, I am dealing with the powers of an Officer of the Crown and with criminal law. I am quite unable to see that the Attorney General was either unreasonable or had any improper purpose. He was not exercising a discretionary administrative power.

As Professor Wade says at page 394, two fundamental rules are comprised in the legal concept of natural justice: that a man may not be a judge in his own cause; and that a man's defence must always be fairly heard. In Courts of law it can be taken for granted that these rules must be observed.

Certainly, the Attorney General has not been the judge in his own cause, whether in the Police Court or in this Court. And the respondent's defence

was fairly heard and would be fairly heard on the merits if the case were to be remitted to the Police Court for further hearing.

In my judgment, the question of natural justice has no relevance to the present case except, possibly, in the context of 'autrefois acquit' or 'autrefois convict' with which I have dealt already. I cannot conceive that any person can have a legitimate complaint because the law has been correctly applied in his case. The power of the formal charge of any person is without prejudice to the customary powers of the Attorney General. A member of the Force is able, after a Centenier has declined to charge a person, to refer the matter to the Attorney General who may give directions. That is the law of this Island. It is often said that ignorance of the law is no defence. How can a person justifiably complain if the law of the Island is correctly applied to him? The "unfairness" complained of here is the fact that the law does enable a decision of a Centenier to be overturned. As Mr. Day put it: "So long as Centeniers are entrusted to assist the administration of criminal law it would be ludicrous, farcical and unjust to have any procedures whereby their efforts are turned to nothing". That is an argument which is tantamount to saying that a Centenier should be able to overrule the Attorney General. As a legal argument I reject it. As a political argument, it is a matter for the legislature but I doubt it would find much favour. I do recognize however, that a person, ignorant of the law, and told by a Centenier that he will not be prosecuted and lulled into a false sense of security because, as Mr. Day puts it, he "goes away believing he has got away with it" may then suffer a shock reversal of the decision on a direction from the Attorney General. The simple remedy to that is that a Centenier, when announcing his decision not to prosecute, whether or not he issues a caution, the validity or otherwise of which I am not called upon to decide, can inform the person concerned that the decision is without prejudice to the Attorney General's power to order a prosecution.

I reject the Assistant Magistrate's finding that there was a breach of natural justice.

Conclusion Under Article 19 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949, I may reverse, affirm or amend the determination in respect of which the case has been stated, or remit the matter to the Police Court with my opinion thereon, or make such other order in relation to the matter as may seem fit. The Attorney General stated at the outset that he would not seek to have the matter remitted to the Police Court for trial on the merits but wished merely to elucidate the important point of principle whether a Centenier could fetter the power of the Attorney General to direct a prosecution.

Therefore, I reverse the determination of the Assistant Magistrate in both the oral judgment and the Statement of Case and I declare that the charge against the respondent in the prosecution heard before the Police Court on the 14th day of April, 1988, was properly brought.

Authorities referred to in the Judgment:-

A.G. -v- Kelly et al 1982 J.J. 276 - 279

Archbold (40th edition) - paragraph 382a at sub-paragraph 4

Regina -v- Manchester City Stipendiary Magistrate, ExParte Snelson (1977) 1WLR 911

Regina -v- Pressick (1978) CLR - page 377

A.G. -v- M.J. Griffin J.J. Volume 1 - Part 2 at page 1001

Commisioner's Report of 1847 at page 8

Regina -v- Sheridan (1936) 26 Cr. App. R.1

S (an infant) -v- Manchester City Recorder (1971) A.D. 481

Charles Le Quesne's Constitutional History of Jersey published in 1856 at p.23

Hemery and Dumaresq - Statement of the mode of Proceeding and of going to trial in the Royal Court of Jersey - 1789 at p.p. 40, 41

Minutes of Evidence taken before the Commissioners in 1846 at page 122 - the examination of J.W. Dupré, Esq., and the evidence of Advocate F. Godfray at page 126

Maxwell on Interpretation of Statutes, 12th edition at p.p. 28, 29, 116, 117

Carter -v- Nimmo and King (1968) J.J. 1007 and, on appeal, 1257

McInnes -v- Onslow Fane (1978) 3 All E.R. 211 at page 219

Professor H.W.R. Wade's Administrative Law, 4th edtion, at pages 13 and 394

Other authorities referrred to:

1892 P.C. 23 p.p. 232 to 250