

JERSEY / JUDGMENT

Comprop v Moran [2002]

JRC 65 (19 March 2002)

[2002] JRC 65

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judgment

the COMMISSIONER: 1. The Plaintiffs are the publishers of the well known Perry's Guide to Jersey and other "Perry's" maps of the Island. This is an action for infringement of copyright in the various maps which underlie those publications, starting with a map made by a Mr Roy Perry in the late 1960's. 2. In the late 1980's and early 1990's the Defendant, Mr Moran, who now trades as Adsell, had produced some maps of Jersey of his own. No complaint is made about the making of these. His work came to the attention of the second Plaintiff, Perry's Ltd ("Perry's"), and in March 1993 Mr Moran was employed by Perry's, amongst other things, to help update Perry's maps of Jersey and St Helier. He left the company in June 1996 and soon afterwards he was offering his own maps of the Island and St Helier to potential customers. Mr Moran's basic map is a tourist map of a familiar kind. Unfolded, it measures approximately 12" by 22". It shows the network of roads, the towns and villages, tourist attractions and a host of other information in an attractive and informative way. On the reverse side of the map there is a detailed street plan of St. Helier. Mr Moran's intention was that the maps would go on sale to members of the public and also be provided to car hire companies and the like for use by their clients. The Plaintiffs allege that these maps are infringing copies of the maps in which they own the copyright. We will describe the various maps and the respective roles of the First Plaintiff, "Comprop" [Comprop's original name was Channel Islands Communications (Television) Ltd. This was changed to Channel Television Group Ltd on 2 nd August, 1999, and to Comprop Ltd on 12 th September, 2000], Perry's and the Perry's maps in more detail later. The allegations of infringement 3. By way of further introduction, it will be helpful to set out the Plaintiffs' claims by reference to the works in which copyright is claimed and how each is alleged to have been copied. Paragraph 2 of the Re-re-amended Order of Justice alleges that: "The Plaintiff (sic) is the owner of the original literary and/or artistic works entitled 'Perry's Guide Maps' and other maps produced by Perry's Ltd (the "Perry's Maps") [and is] also the owner of the copyright which subsists in those works." 4. In response to a Request for Further and Better Particulars of this pleading, the Plaintiffs identified the maps referred to in that paragraph as follows: "The maps of the Island of Jersey, known variously as "Perry's Guide Map", Perry's Jersey Official Guide", "Perry's Guide Map of Jersey" and all art work associated with the production of those maps, including the original art work of Roy Perry drawn in about 1969 and all original artistic work associated therewith ranging

in dates from 1969 to 2000, and in particular those maps produced in 1995, 1997, 1998 and 1999, and all work as thereafter used in the production of maps after those dates." 5. This pleading does not really set out the Plaintiffs' case with the clarity which is appropriate for an action of this kind, and the precise case only emerged in the course of Mr Young's opening and the evidence. Two types of maps are involved, first, maps of the whole Island and, second, maps of the town of St Helier. The various strands of the Plaintiffs' case are as follows: Island maps (i) The first plank of the Plaintiffs' case here is a map of the Island drawn by Mr Roy Perry in the late 1960s. It was first published, in booklet form, in 1968 as part of "Perry's Guide Maps of Jersey". The publisher was a company known as Guernsey Lithoprint Ltd, who had commissioned Mr Perry to make the map. Mr Perry made a slight revision of this map in 1978, also for Guernsey Lithoprint. Comprop claims to be the owner of this copyright, its case being that Guernsey Lithoprint owned the copyright and then assigned it to a company called Printing Stationery and Materials Ltd. Proceedings were brought against this company by a creditor in 1992 with the result that pursuant to an order of the Royal Court of Guernsey the company's copyrights were sold by way of judicial sale to a Mr Scott, who was then the owner of Perry's. In 1997, Mr Scott sold the copyright to Comprop, together with the issued share capital of Perry's. (ii) The second plank of the Plaintiffs' case in relation to the Island maps is that in 1993 Mr Moran sold and assigned to Perry's the copyright in the maps of the Island which he had made before he was employed by Perry's. In the event, these maps have played little part in this case. (iii) The third plank of the case in relation to the Island maps is that Perry's own the copyright in an updated version of Mr Perry's map which was created by Perry's between about 1993 and 1995. This is by virtue of the fact that this work was done by Mr Moran and others in the course of their employment under contracts of service with Perry's. The St Helier town map (iv) As to the map of St Helier, the case is that Perry's own the copyright in a town map which Mr Moran had made before he joined the company. This is by virtue of the same 1993 assignment as referred to in paragraph (ii), above. 6. As to infringement, the Plaintiffs' pleaded case is as follows: "The defendant ... has infringed the plaintiff's (sic) said copyrights by reproducing and authorising the reproduction of substantial parts of the Perry's Maps in a material form namely by producing maps entitled "The Handy Map"; "The Wayfinder Map of Jersey" and a "Wall Map"..." As to these, the first in time was the Wall Map, which was produced in about October 1996. It was followed at Easter 1997 by the Wayfinder map, which was a folding sheet map of the Island with a street map of St Helier on the reverse, and in the summer of 1997 by the Handy Map, which was for all practical purposes the same as the Wayfinder Map. All these publications, however, contain the same basic map of Jersey and of the town of St Helier, these maps having been produced by Mr Moran in 1996. 7. As amplified during the course of this trial, the Plaintiffs' primary case is that in making his map of the Island, Mr Moran scanned and then made a digital copy of Mr Perry's map, after which he added and altered various features. In the alternative, it is said that he carried out the same process on the updated version of Mr Perry's map which had been made by Perry's between 1993 and 1995. In either case, it is said that wherever a feature is common to both the Perry's maps and Mr Moran's map, it is the result of copying by Mr Moran. 8. At a late stage in the course of the trial, a further allegation emerged, which was that a map made by Mr Moran after these proceedings had started was also a copy, it having been based on Mr Moran's earlier map. 9. As to

Mr Moran's 1997 street map of St Helier, there is no dispute that this was based on the map which he made before he joined Perry's, and the Plaintiffs say that since Mr Moran had assigned the copyright to Perry's, this later map is an infringement. The

Facts

10. With that introduction we can turn to a more detailed account of the facts of this case. Unless it is clear otherwise from the context, what follows are our findings of fact. 11. The story starts with Mr Perry. He has been making maps since 1968. He started on a part-time basis but as his skills developed he became a full-time map maker. He officially retired in 2000. He has made maps of Jersey, Guernsey, the Isle of Man and Malta (where he now lives). His map of Guernsey was published by Guernsey Lithoprint Ltd in 1968. 12. In 1967 he was asked by Guernsey Lithoprint Ltd to make a map of Jersey. He agreed to do this for a one-off fee of £500. He started by obtaining a map of the Island published by Bartholomew's in 1906. In fact, the map which he identified in this context (P1) appears to have been published by Ward. Lock & Co Ltd. Its scale is 1½ inches to the mile and is reasonably detailed, given its scale. There was no evidence about its provenance. Mr Perry used it to give him an outline of the coastline, roads, former railways and some of the names of places. Using a grid, he divided the map into over 50 separate rectangular sections or sheets, and then enlarged each sheet to A4 size. With sections attached to a clipboard, he then spent six months travelling around the Island in 1967, in a car and on foot, adding and noting detail as he went. He used a compass and made rough estimates of distances using his car milometer. He also visited various offices in the Island, such as the parish offices and the Island Development Committee ("the IDC"), to obtain details of the road numbers, road names, new estates, etc. He also made use of other maps in libraries and elsewhere. For example, he said that he took spot heights from the 1965 Ordinance Survey 1:5,000 scale map and used other old maps, such as the Hugh Godfrey map of 1849. He has not retained any of his field work and after this interval of time could not remember precisely what information he obtained from where. This is understandable. 13. He returned to Guernsey, where he was then living, and worked up all the information into a first draft of an Island map. When this was done he returned to the Island and spent a further six months checking the detail. 14. The map was published in 1968 or 1969 by Guernsey Lithoprint Ltd as part of a booklet entitled Perry's Guide Maps of Jersey. None of Mr Perry's original materials exist and we have not seen a copy of this original publication. We have, however, had produced to us a later edition of the Perry's Guide, published in 1989 and, subject to certain changes to which we will refer, we are satisfied that the maps reproduced in this edition are good evidence of what the maps produced by Mr Perry in 1967 and 1968 looked like. As we have said, it was published in the form a booklet. It contains various other maps, including ones of St Helier and villages on the Island, with which we are not concerned. The map or maps of the Island are printed in the form of 53 separate pages, corresponding, we infer, to Mr Perry's individual sheets. It is highly detailed, with a mass of information, including hundreds of road and place names, with coastal and other geographical features. It is individual in character: all the

geographical features and roads are drawn freehand; roads, tracks and paths are shown of varying width, depending on their importance, and are named and given their road number; larger buildings are shown in block; all names, apart from the most important ones, are also drawn freehand. The inside front cover of the booklet contains a fold-out street map of St Helier and at the back there is an index of names. 15. Mr Perry has no recollection of any document which records the terms of his engagement but he accepts that Guernsey Lithoprint owned any copyright which subsisted as a result of his work. In his own words, he was commissioned by the publisher to create the map. 16. In 1978 Mr Perry redrew the map. He took the pages of the Island map as published and cut off those parts of the various pages where there was an overlap and enlarged them to A3 size. He then stuck them together and laid them out. Using what he described as a "gigantic" piece of tracing film he made a copy of the map, a job which not surprisingly took him many hours. He then added further detail, this having been obtained by driving round Jersey for a month. Thus certain additional information was drawn onto the map in red ink, for example, bus routes and the names of various tourist attractions. On this occasion he made no reference to the Ordinance Survey map, which he said was in any event now out of date. He then submitted this large map to the publishers. A further edition of Perry's Guide was then published by Guernsey Lithoprint in 1980 using this revised map, although again we have not seen a copy. We shall refer to this revised map as "Mr Perry's map". Mr Perry did this work on the same terms as his original work. 17. One of the matters which has been raised in this case is the extent to which Mr Perry used Crown copyright material, in particular Ordinance Survey maps, in his work. The Contents page of the 1968 edition of the Guide says this: "PERRY'S GUIDE MAPS OF JERSEY Compiled and Drawn by Roy S. Perry" Underneath the list of contents are the following further words: "Compiled from the 1966 Survey Maps produced for the Island Development Committee, States of Jersey. Copyright Reserved. © 1969 Guernsey Lithoprint Ltd. All rights reserved." 18. The contents page of the 1980 edition contains the following notice: "Based on the Ordinance Survey maps. Reproduced with the permission of the Controller of Her Majesty's Stationery Office. Crown Copyright Reserved." 19. There is some evidence in the correspondence that a royalty was paid to the Crown but what such royalty may have been paid for is unclear. For his part, although Mr Perry said that he only referred to the Ordinance Survey map for spot heights, he also said that there was an ongoing discussion between the Guernsey Lithoprint and the IDC, who administered Crown copyright for the Island, about use of Crown material. He said that he was asked by the company secretary how much of the Ordinance Survey map he had referred to, and he gave an estimate of about 25%. However, he left any discussions with the IDC about these matters to Guernsey Lithoprint Ltd. 20. There was very little evidence about this issue and we do not believe we heard the full story. Any connection with any survey maps produced in 1966 for the IDC was not explored in evidence. We are left wondering, of course, why Guernsey Lithoprint made payments to the IDC if substantial use was not made of Ordinance Survey maps, and about the full significance of the acknowledgements contained at the front of the Guides. We are satisfied, however, having heard Mr Perry give evidence and seen the results of his map-making, that Mr Perry's map was the product of substantial

independent skill and labour by him. Thus, the style of the map-making and the amount of information contained on the map make it quite different from any other pre-existing map which we were shown. This is immediately apparent on a visual inspection of the various maps. No doubt, of course, Mr Perry referred to other maps, including Ordinance Survey maps, for certain details and verification. We will return to this issue when dealing with the question of infringement. 21. Mr Perry's evidence was that Guernsey Lithoprint Ltd sold its assets, including any copyright which it owned, to a company called Printing and Stationery Ltd. It was not clear what the basis for this evidence was, although Mr Perry was not challenged about it. The evidence was unsatisfactory but we conclude on the basis of his evidence that such a sale occurred and that such a transaction would have been effected by a written, signed agreement or document of sale between the parties which either referred to copyright expressly or simply to Guernsey Lithoprint's assets. We think that this is a proper inference, certainly one which can be drawn on the balance of probabilities. We do not believe that such a transaction would have been effected by an informal transaction, in particular without there being anything in writing. 22. There has been produced to us an edition of Perry's Guide Maps apparently published in 1989 by Printing and Stationery Materials Ltd. This is the earliest edition which we were shown. It follows the form which we have described and contains the same references to the Ordinance Survey maps and Crown copyright as the 1980 edition. Mr Perry said that it used the same film and artwork as he had prepared in 1980. 23. Mr Perry went on to say that Printing and Stationery Ltd later went bankrupt. Whether or not this was the case, the company clearly got into financial difficulties because an Order of the Royal Court of Guernsey made on 10th September 1992 records that Midland Bank PLC had obtained a judgment against the company for £23,392 odd and goes on to order the sale, by such means as the Sheriff might consider appropriate, of all copyrights held by the company. 24. A Mr Tim Scott and his company, Perry's [Perry's was originally known as Studio Two Ltd and changed its name to Perry's Ltd in September 1993], now enter the scene. Mr Barry Wells, who was a director of Perry's, gave evidence that Perry's had been established by Mr Scott in 1992 to undertake design and similar kinds of work. He himself joined the company in August 1992. Mr Scott owned the company. The directors were Mr Scott, Mr Wells, Mr Paul Baudains and Mr Paul McGeah. The latter two were graphic artists. Mr Wells was responsible for sales. 25. As we have said, the assets of Printing and Stationery Materials Ltd were ordered to be put up for sale by the Sheriff of Guernsey. Mr Scott, on his own behalf, successfully bid for the copyrights and related assets which were being sold. A letter from the Sheriff to Mr Scott dated 22nd October 1992 reads as follows: RE: PERRYS GUIDE MAPS I hereby acknowledge receipt of the sum of £25,614.00 ... for the purchase of all copyrights relating to Perry's Guide Maps held by Printing and Stationery Materials Limited together with all documentation and artwork held by me relating in any way to Perry's Guide Maps." 26. It was not suggested by the Plaintiffs that Mr Scott bought the copyrights and associated artwork on behalf of Perry's, although what happened, as will be seen, is that the development and exploitation of these works was undertaken by Perry's rather than by Mr Scott. 27. Perry's objective was to republish Perry's Guide to Jersey, which had fallen out of print, and produce other maps of the Island. The

company had no representative in Jersey and no one to do this work. Via an intermediary, the company was introduced to Mr Moran. 28. Mr Moran had come to the Island in 1977 and at first worked in the catering industry. In 1986 he joined Falles Holdings Ltd ("Falles") as a graphic artist doing press commercials, presentations, etc. Falles was using a map of the Island for the use of its car-hire customers, this map having been drawn by a Mr Harry Fowler in about 1974 (map DM3). The map was fairly rudimentary but showed the main routes around the Island. Mr Moran was asked by a director of Falles to update Mr Fowler's map. He copied it by tracing it onto an acetate sheet, and then updated it from information obtained by his own fieldwork. Falles published this map (DM7) in about 1987 or 1988. As Mr Moran himself said, it was not hugely different from Mr Fowler's map, DM3. 29. This had whetted Mr Moran's appetite for map-making and he decided to try and compile his own map of the Island in his own time. He bought a 1934 edition of the 4" to the mile Ordinance Survey map from a second-hand shop (DM41) and used this to give him an approximation of the shape of the Island, place names and locations, the names of the Vingtaines, and certain geographical features such as quarries, churches, etc. He also went out into the field and made notes, and incorporated the information thus obtained into his evolving map. For this he used several sheets of A3 paper which he then stuck together to produce a single sheet which was about the same size as the Ordinance Survey 4" map, DM41. 30. In cross-examination he amplified this by saying that he also traced the outline of the "A" and "B" road network from DM41. As to the other, minor, roads, he copied them from DM41 by eye rather than by tracing. As to information that may have come from other sources, Mr Moran said that he relied on his own field-work and pacings, and perhaps other tourist maps, although he couldn't be precise about this. 31. Various pieces of fieldwork have survived, consisting of pieces of paper showing the layout of various road junctions and networks. He also still has an early acetate which shows the network of roads and place names (DM14). 32. He sent his map to printers in Leicester who reduced it in size for him. On this reduced map he then positioned place and road names, using a printed list which his printers had made up for him using the names supplied by Mr Moran. Mr Moran then offered this map (DM22) to Falles and they no doubt gratefully accepted it for use of their clients. It was first published at about Easter 1989. 33. The various forms of the Island map produced by Mr Moran around this time (e.g., DM22, DM23 and DM39 - which we deal with shortly) do not differ greatly as to the map of Island itself and in this judgment we shall refer to this map by the name which one of them carried, namely the Queen of the Isles map. It is a colour fold-out map, about 12" by 22" in size. It gives the names of the major places and features. The road network is marked with the major routes in orange, the lesser routes in grey and the minor roads neutral. In many cases, the routes are named and their classification (A, B or C) is marked, although the colouring does not necessarily correspond to the classification. A limited number of geographical features are shown. Around the edges of the map are advertisements, mostly for hotels. 34. Mr Moran left Falles in 1991 and set up on his own as a graphic artist, trading as Adsell. He had come to an informal agreement with Falles whereby the company could carry on using his map as long as it wanted. The main reason why he had left Falles was that he had been approached by a representative of some of the

smaller car-hire companies. He reached an agreement with them that they would use his Island map for their clients for a set period. On the basis of this commitment Mr Moran could then sell advertising space on the maps for his own account. The product which he supplied was DM39 or the "Visitor" map. This was first published in the spring of 1993. As we have said, the map itself takes the same form as the Queen of the Isles map. 35. Mr Moran had also been approached to produce a tourist map by a Sandy Luce who had secured an exclusive arrangement with certain Scandinavian tour operators. She supplied him with photographs for the advertisements to go on the map and Mr Moran worked these up using his graphical skills. This map was published in early 1993 by Sandy Luce International Marketing. This is DM23 or the Queen of the Isles map. 36. Falles had always had their own town map of St Helier which they continued to use after Mr Moran had left. Mr Moran had not yet produced a town map of his own and in about 1992 he turned to this project. His starting point was again the 1934 Ordinance Survey map (DM41), which shows St Helier in considerable detail. He enlarged this section (to produce D4) and where it was out of date added information obtained from his own field work. There were various intermediate stages which were produced on discovery as DM42 - 50. He traced the enlargement in pencil and then cleaned it up section by section in pen and ink to make it clearer and easier to use as a street map. Finally he photographed the sections using a printer's camera and reduced it down in size and pasted in the street names (map D5). 37. Mr Moran had by then read about the possibility of digitising maps and, not having the confidence or tools to do it himself, commissioned Image Group Ltd of Guernsey to do it for him in August 1992. The resulting map was sent by Image Group to the printers and the map was published at Easter 1993 on the reverse site of DM39, the Visitor map. The digitised map is recognisably based on D5 and contains the same information presented in the same way. The image is perhaps "cleaner" and has colouring added during the digitisation process. As to the nature of the map, as compared with the Ordinance Survey version it is a simplified version, with some of the minor streets and other details omitted. Streets are now shown in white with the street name printed within its borders. Hotels are shown by a reference to a key, together with the positions of various commercial outlets. Parks or areas of greenery are shown in green. Otherwise the background is plain, without the outlines of any buildings. 38. It was in the winter of 1992, while Mr Moran's Island maps, DM39 and DM23, and his St Helier town map, were being completed, that Mr Moran was approached by Perry's. He was told that Perry's was looking to update Perry's Guide maps, which Mr Moran understandably took as quite a compliment. After various discussions, he agreed to join the company. The terms of his employment are set out in an agreement dated 18th March

1993. Under the agreement Perry's Ltd engaged Mr Moran (a) to create, improve and develop guides and guide maps for Jersey and other locations, (b) to sell advertising space in such publications and (c) to carry out typesetting, design and graphic work for these publications. 39. Perry's of course knew of Mr Moran's map-making (this was one of the reasons why the company had approached him in the first place) and also his contracts with the car hire group of companies. As Mr Moran himself said in evidence, Perry's was

concerned about the possibility of his loyalties being divided. A separate agreement also dated 18th March 1993 was therefore entered into between the parties which dealt with these aspects, as follows: (i) In consideration of the payment by Perry's of £4,000, Mr Moran sold, assigned and transferred to Perry's: (a) the right to publish "the Jersey Hire Car Map" and "the Guide to Jersey" called "Visitor" [i.e. DM39] and "copyrights whereof belonged to Mr Moran"; (b) the benefit of his contracts with the car hire companies. (ii) It was agreed that on the first anniversary of the contract (or earlier if mutually agreed), provided Mr Moran was then a full-time employee of Perry's, Mr Moran would sell, convey, assign and transfer to Perry's all his interest and copyright in the above publications for: (a) £4,000; and (b) an agreed percentage of certain specified advertising revenue. 40. On 26th November 1993 Mr Wells wrote to Mr Moran saying that Perry's would be happy to agree that the date for the sale referred to in the agreement be brought forward to 30th November 1993 and asking him to countersign the letter if he also agreed to this. Mr Moran duly did so, and Perry's paid Mr Moran the £4,000 referred to in the agreement. 41. Perry's was naturally anxious to bring out some new maps as soon as possible. Apart from Mr Perry's detailed map, Perry's as yet had no Island map of its own and as an interim measure it was agreed that the company would publish a version of Mr Moran's Queen of the Isles map, which it did in the early part of 1993. This is DM71 or Map 6. The map of the Island itself is identical to the Queen of the Isles map, except for the addition of some symbolic information showing tourist information, for example, golf courses, churches, etc. Again, around the edges of the map are advertisements aimed at tourists. On the reverse is the digitised town map of St Helier made by Mr Moran and digitised by Image Group which we have already referred to. 42. Perry's also wanted a new edition of Perry's Guide as soon as possible. Mr Moran duly set to work. He was given some of the bromides used for the pages of Perry's Guide and such other workings as the company had obtained from the Sheriff of Guernsey. He started by updating the village maps (with which this action is not concerned) and the St Helier Town map. The bromide of Mr Perry's map of St Helier was in a very poor state and since there was a degree of urgency Mr Moran suggested to Mr Wells that they make use of the town map which he had already made. As he described the process, he took the road layout from his town map (D4) and where it did not contain enough information he referred to the existing town map in Perry's Guide. There was also further updating required. The product of his work can be seen from the St Helier town map which was published as part of the new edition of Perry's Guide in 1994, as we shall describe in a moment. It covers almost precisely the same area as the previous town map in Perry's Guide. The street layout, of course, is much the same but generally it is clearer to the eye. To achieve this greater clarity, some of the detail in the existing Perry's town map has, for example, been omitted. 43. As to the Island map section of Perry's Guide. It will be recalled that these were contained on 53 separate pages. What with Mr Moran's other responsibilities each page was taking Mr Moran about a week to update. In order to get something to the press in time for the forthcoming season, it was therefore agreed to update only the most out of date parts of the map. The first of these were the two sections or pages (p.50 and 51 of the 1989 Guide) covering St Helier (which were on a smaller scale

than in the separate town map). Amongst other changes, the map needed to show the area of recently reclaimed land and the town underpass and Mr Moran used a large aerial photograph of the town which Perry's had bought. Both pages were totally redrawn by Mr Moran. There were other changes brought about by estate building on the Island and for these Mr Moran used a total of five survey maps obtained from the IDC. Some of his intermediate workings are in the Bundles. 44. Mr Moran also started work on other pages. In particular, pages 6 and 7, showing the north-west corner of the Island, were redrawn and updated by Mr Moran. 45. The result of Mr Moran's work was published in about April 1994 as the 1994 edition of Perry's Guide Book to Jersey. It contains Mr Moran's fold-out town map of St Helier, the revised village maps, and the revised pages, 6, 7, 50 and 51. Otherwise it uses Mr Perry's artwork with only slight additions. For example, major routes (although not necessarily just the A roads) are coloured light red. 46. Perry's longer term plan was to update Mr Perry's map of the Island map and make it a much more versatile asset. As to this latter aim, it was perceived that there would be a market for different versions of the Island maps having different purposes. Thus a walker's map would need to show different information from a motorist's map, and so on. The only practical way to achieve this was to digitise the information and so produce computer generated maps. Any number of different levels of information (paths, roads, pubs, etc.) could be stored as different data files and so printed in whatever combinations were wanted. It was also desired to produce a full colour map and this was impossible as a practical matter without the use of digital mapping. Again, having a digitised map would make it much easier to alter or update. 47. Perry's had already started the digitisation of Mr Perry's Guernsey map, to which rights had also apparently been secured. This took about 12 months. The work was done by Mr Baudains and Mr Moran was not involved with this. 48. Some time in 1995, Perry's turned to the digitisation of Mr Perry's Jersey Island map. Mr Perry's map was chosen not just because Mr Scott had purchased the rights to it but because it was probably the most accurate map of the Island and carried the most information. It could also be trusted because it had been in existence for so long. The process adopted was as follows. This work was mostly done by Mr Baudains in Guernsey, using an Apple Mac computer. We heard no evidence from him of how this was done but we heard evidence from Mr Moran as to how he says he conducted a similar process later, and we infer that Mr Baudains used much the same method. The individual sections of Mr Perry's Island Map were first scanned, section by section. The map was then converted into the form of digital information using proprietary software. The way in which this was done can best be explained by taking the road layout as an example. The route of a particular road can be "traced" on the scanned image by following its course on the computer screen with a mouse and pointer. Each change in direction can be recorded with a mouse click, so that gradually a line of points is built up that corresponds to the road's route. Where the route being copied was drawn freehand or for other reasons is sinuous, the line of points will of course record an angular route. The software can iron these angles out if required. Using the software, the line represented by these points can be allotted a thickness and colour. By superimposing two such lines on top of each other, but of different thickness and colour,

e.g. a thin red line on top of a thicker black line, the impression can be created of a road coloured red and edged in black. 49. Names of places and roads can be superimposed on this skeleton or kept as part of a separate layer. A text box is created into which the desired name is typed in the chosen font, colour and size. The name can easily be moved around by dragging the text box to a new location. 50. Other features are added in a similar way. Different colourations, representing areas of sea, beaches, woodlands, higher ground, etc., can be introduced. Conventional symbols can be incorporated from the proprietary software and other features can be drawn onto the layer. The work is extremely laborious but once done it is a relatively simple matter to make further changes to update or correct it, or to produce different maps displaying whatever different combination of layers is desired. 51. As we have said, this work was carried out by Mr Baudains in Guernsey working from Mr Perry's map. As he completed successive stages of the work, hard copies were sent in the post to Mr Moran to proof-read. Mr Moran made comments or corrected the proofs as he thought fit. He knew that Mr Baudains was copying from Mr Perry's Map and so used this as the "manuscript" against which to compare and correct Mr Baudains' "proofs". Where Mr Perry's Map was difficult to interpret, for example where Mr Perry had given the same width to a minor road as to a major road, Mr Moran checked against some other reference work, for example, a Bartholemew's Tourist Map of Jersey (DM15), a 1992 AA Tourist map of Jersey (DM24) or the Falles map (DM3), whichever was to hand. He sent his corrections back to Mr Baudains in the post. In the course of this work, the map was updated and additional information added. About once a month he also went over to Guernsey to see Mr Baudains and thus saw him working on the map. 52. Either at the beginning or the end of this process, there was no evidence which, the sections of Mr Perry's original map were joined together to produce a single map. 53. During this process, an effort was made to speed up the exchange of proofs by transmitting them by email so that Mr Moran could then make any changes needed to the map directly. The Apple Mac was the most suitable platform for this kind of work but Mr Moran's experience was limited to a PC, which he was using in Jersey for his graphic and ordinary word-processing work. An Apple Mac and PC are not particularly compatible and Mr Moran was cautious about the time it would take him to convert his skills. Eventually he took his PC home and the company provided him with an Apple Mac, but it was not a success. The file sizes were so large that it was taking between three to four hours to transmit them by email. Mr Baudains and Mr Moran therefore went back to posting hard copies back and forth and Mr Moran used the Apple Mac just for secretarial work. The Apple Mac had not come with any maps stored on it. 54. All this effort was directed at two things: (i) First, the publication of a single sheet, fold-out map of the Island with a street map of St Helier on the reverse. The work done by Mr Baudains and Mr Perry, although involving the digitisation of Mr Perry's map, was therefore directed to producing a simplified version of it, with enough information to make it suitable for a tourist map. (ii) Second, the publication of a new edition of Perry's Guide to Jersey, that is, an updated version of the booklet first published in about 1968, and last published in a stop-gap version in 1993. This new edition was not published until 1997, after the events which are the subject of this action, and we are not concerned with it. 55.

This process of digitising the Perry Map did not include the digitisation of the town map of St Helier published in previous editions of the Guide. So far as the proposed sheet map of the Island was concerned, it was therefore agreed to print Mr Moran's digitised map on the reverse of the Island map, i.e., the same map as had been published on the back of the Island sheet map as an interim measure in 1993. 56. This work on a new Island sheet map was completed in time for the car hire companies at Easter 1995. This was the map variously described as Perry's Visitor map, Map 1 or DM73. There were various subsequent versions of this, but the information as contained in the Island map and street map of St Helier is essentially the same in each case. The Island map (which we will refer to as Perry's Island map) shows the location of villages and some houses together with the road network, with A, B and C roads marked in red, orange, and yellow respectively, and lanes shown in white and lesser tracks or paths by dotted lines. The official designations of the A, B and C roads are shown by white lettering in black boxes. The actual names (e.g., La Route des Genêts) of the A and B, and of some C roads, are given. The situation of numerous tourist attractions is indicated by conventional symbols, for which there is a key, and the map contains a great deal of other information which would be of interest to the tourist. 57. As we have said, on the reverse of the Island map there is a town map of St Helier, which is essentially the same as Mr Moran's digitised town map published by Perry's in 1993, with some slight change in the information and the way it is presented. There are also listings of information, such as hotels, restaurants and other useful information for the tourist. 58. In the course of his work for Perry's, Mr Moran received a letter dated 14th July 1994 from the IDC. It referred to an earlier letter from Mr Moran to the IDC dated 13th June 1994, which we have not seen, in which Mr Moran had apparently stated that he had used the IDC's maps to bring Perry's Guide up to date. The IDC asked for copies of the proofs so that an invoice could be raised for this use. More significantly, however, it went on to say that in relation to Perry's Guide "our records show that it was derived entirely from our maps and royalties were paid to the [IDC] on a regular basis until March 1981" and that the matter was therefore being reported to the IDC's Chief Executive Officer. Mr Moran said that this was the first time he had heard of any claim to Crown copyright in the Perry maps. Correspondence ensued, culminating in a meeting on 28th February 1996, following which Mr Wells wrote to the IDC saying that when the copyrights were purchased from the Sheriff Perry's had no idea that any royalties might be due to third parties. He reluctantly accepted that a royalty would have to be paid on the 1994 edition of Perry's Guide but that: (i) The St Helier town map in this edition was based on an aerial photograph and not from Mr Perry's artwork, so no royalty would be payable; (ii) The 1994 edition of Perry's Guide was the last to be produced using Mr Perry's artwork. Over the last twelve months, the company had begun to construct new maps on computer, and: "The source of information for these maps has come from many sources, including aerial shots and a lot of footwork. At no time have we requested or used information from your department and we feel very strongly, that, as these maps are our own, the copyrights lie entirely with us" 59. We do not consider these statements to have been truthful. Thus, aerial photographs were not used for the Island maps (as opposed to the St Helier town map), there was little or no new footwork and of

course Mr Perry's Island map was the whole foundation of the new Island map. Mr Moran, who did not of course write the letter and was not responsible for its contents, admitted as much. No doubt the letter was an attempt to distance the new maps from any Ordinance Survey map and persuade the IDC not to pursue a claim for royalties. Perhaps Perry's thought the work done on the new maps fully justified this approach. In the end, however, it does not seem to us that it matters, since we are not concerned in this case with any claim by the IDC in respect of use of Ordinance Survey maps. We have already stated our conclusions about the provenance of Mr Perry's map and its relation to the Ordinance Survey maps. 60. For reasons which do not matter, Mr Moran became increasingly dissatisfied with his role with Perry's and made up his mind by about Christmas 1995 to leave, although he did not make his decision known to the company at the time. In early 1996, probably in January, and while still employed by Perry's, he determined to produce a new map of the Island of his own. What follows is an account of his evidence about how he did this. We will state our conclusions about this crucial part of the evidence once we have reviewed all the other relevant material. 61. Mr Moran says that he made this new map in his own time and using his own materials, working in the evenings and weekends from his flat. He did not tell Perry's what he was doing. He "opened his portfolio", as he put it, and got out the materials which he used when making his previous map. Thus he got out his 1934 Ordinance Survey map (DM41) and used this as his basis. He took it to a copying bureau and reduced it in size. He then fed pieces or sections of this reduced map into a scanner, which he by now possessed, and, using his own PC and the programme Corel Draw, created a map much as Mr Baudains had done. He said he scanned a bit in, digitised it, scanned another bit in, digitised it, and so on. As he scanned in a new section, he added or stitched it to the existing map. He said that he did not use the Ordinance Survey map for the outline of the Island but rather used a promotional poster of the Island which consists of an aerial photograph of the whole island (DM66). The first thing he did was establish the road network, which he took from the Ordinance Survey map (DM41). If there were place names which were not on DM41 he used various other sources, in particular Stevens' "Jersey Place Names", which contains a history of place names in the Island and also a detailed map. Mr Moran says that all this work involved a lot of fieldwork, which he did using a bicycle, motorcycle or car, depending on the circumstances. As well as going to actual locations on the Island, he obtained information from the Post Office, parish halls, telephone directories, etc. For example, he said in relation to public telephones that he obtained a list from Jersey Telecoms and then went round the Island establishing the exact location of each. He produced in evidence such a list, which shows the various entries marked off. None of his field work survives, in contrast to the position in relation to his earlier map-making. He said that once he had entered the information onto his computer, he discarded the paper copy. 62. He also used various other reference works and maps, for example his Queen of the Isles map, a Bartholomew's 1989 Island map (DM15), a 1992 AA Island map (DM24), the Falles maps (DM3, DM7), and whatever else was to hand. However, he took nothing home from the office, apart from copies of his own work, i.e., his revised pages from Perry's Guide. Otherwise, he took nothing, whether any version of Mr Perry's

map, Perry's Island map, or any workings from Perry's offices. Neither did he have any copy of Perry's Guide or Perry's Island map of his own. He said that he was aware of the potential copyright problem and for this reason took care not to refer to Perry's Guide or Perry's Island map. 63. As to a town map of St Helier, he went back to the map which he had originally made from DM41, namely D5, and scanned and then digitised this. 64. Various print-outs of images from his computer carry manuscript dates in Mr Moran's hand for March and April 1996 and we are satisfied that these show the progress made at these dates. By late May 1996 the work on the Island and town maps was virtually complete. He produced in evidence computer disks reproducing his work which shows 26 May 1996 as being the date on which work was last modified. By July or August 1996 he had a complete product. 65. On 20 May 1996 Mr Moran resigned from Perry's, giving notice which expired on 20 June 1996. He then obtained quotations for the printing of his map and by August or September 1996 he had a map which he was trying to sell to hotels and stationers. The basic business proposal was again to obtain commitments from car-hire companies, tour operators, etc., to distribute the map so that he could then sell advertising off the back of this. 66. He also tried to sell his map to some or all of the car hire companies who were contracted to take an Island map from Perry's, the benefit of these contracts having been assigned to Perry's under the 1993 agreement. Perry's got to learn of this and on 15h August 1996 Mr Wells wrote to Mr Moran as follows: "As you were well aware, having negotiated the agreements yourself, the hire car contracts for the fleet hire group that you sold to this company in 1993 give us exclusive rights for five summer seasons, i.e. to the end of the 1997 season. I was extremely disappointed therefore, to find that having left Perry's you have tried to get the Group to break their contract with us and sign with you for the 1997 summer's season." 67. Mr Moran accepted that he was in the wrong about this, and did not pursue this avenue until these companies were out of contract. This episode plays no further part in this action. It looks as though Perry's were aware that Mr Moran had a map to sell because Mr Day, the company secretary of Comprop later swore an affidavit saying that Mr Moran had been negotiating in August 1996 to supply " Adsell Maps" to some of the hire car companies, and that he had been informed by Mr Wells that to create such a work from scratch would take "considerably longer than from June through to August of the same year" (i.e. 1996). In the course of his evidence, Mr Wells also stated that by "late 1996" it was known to Perry's that Mr Moran had again produced a map of his own. He said he was amazed that Mr Moran had been able to produce a map so quickly, given that it had taken Mr Baudains 12 months to digitise the map of Guernsey and 6 months to do the same with Jersey. At the time, of course, he was not aware of Mr Moran's claim to have started work on the map in early 1996. Nevertheless, nothing appears to have been done by Perry's at this stage to follow this up or make any complaint about any map which Mr Moran might have been trying to sell. 68. In January 1997, Mr Scott sold his interests to Comprop, which was looking to expand its interests in the publishing field. Thus by an agreement dated 23rd January 1997, Mr Scott agreed to sell to Comprop the shares in Perry's together with "the copyrights of Perry's Guide Maps" and the benefit of a loan by him to the company. The agreement was completed the same day, when Mr Scott executed a deed assigning "all his

right title and interest in the copyrights relating to Perry's Guide Maps" to the company. Perry's was a party to this deed. 69. Mr Moran's map was available in the form of a wall map in the late summer or autumn of 1996, and in a fold-out version (the Wayfinder map) by Easter 1997. A slightly smaller version of the Wayfinder map was published as the Handy map in the summer of 1997. This was the position when proceedings were launched and these are the three maps referred to in the Order of Justice. 70. Mr Wells, who had remained with Perry's, said that he first saw one of Mr Moran's new maps in 1997, although precisely when is not clear. He thought that it might be a copy of Perry's maps and checked to see whether certain mistakes he knew to be on Perry's maps were reproduced on Mr Moran's. He said that he found between 10 and 20 such instances. For reasons which were not explored in evidence, nothing was done about the matter until 5th September 1997, when Comprop sought and obtained from Deputy Bailiff Hamon an ex parte order against Mr Moran. The first three paragraphs of the Order of Justice were in the following terms: IT IS HEREBY ORDERED THAT: 1. Service of this Order of Justice upon the defendant shall operate as an immediate interim injunction restraining him, whether acting by himself, his servants or agents, or any of them or otherwise howsoever from infringing the plaintiff's copyrights in the literary works entitled the Perry's Maps; 2. The defendant deliver into the hands of the Viscount any and all infringing copies of the plaintiff's copyright works, including but not limited to magnetic, electronic, digital or optically readable copies of the same howsoever stored, in his possession custody or control and/or that the defendant destroy [the same]; 3. The defendant contact any and all persons, being bodies corporate or otherwise, whom he knows to be using the Adsell Maps stating that continued use of the same must cease immediately and that all infringing copies of the plaintiff's copyright works in their possession custody or control must be delivered into the hands of the defendant, and thence into the hands of the Viscount ..." 71. The Order was served by the Viscount Substitute on 8th September 1997. 72. At first sight, the making of such an order, ex parte, so long after Mr Moran had started to market his maps, appears remarkable. The evidence said to justify the making of this order was contained in an affidavit of Mr Day. He (a) sets out the background to the affair, (b) states his scepticism that Mr Moran could have created a map between June and August 1996, (c) lists 19 fingerprints or similarities between Mr Moran's maps and Perry's Island map, (d) lists a further 4 fingerprints or similarities between Mr Moran's maps and a 1997 map published by Perry's after Mr Moran had left the company and (e) refers to the near identity of the St Helier town maps. In these circumstances, he expressed his opinion that Mr Moran had "both copied and utilised the Perry's Maps, or a substantial part thereof, being the schematic road layout, names, numbers and classes thereof", and that "topographical features of the Perry's Maps, such as contour shading and coastlines have been altered and/or modified in order to pass off the Perry's maps as the Defendant's own." He concludes by stating: "Contract negotiation is shortly to commence for the 1998 season and possibly subsequent seasons and it is clear that the Defendant will compete unfairly for business with Perry's using products which infringe the Plaintiff's copyright unless restrained from so doing. Further, it is the Plaintiff's belief that the Defendant has already profited from the sale of infringing works."

The only justification for the urgency implicit in an ex parte application was thus the forthcoming negotiations for the 1998 season, in which Mr Day recognises both Comprop and Mr Moran would be competitors. Amongst other things, Mr Moran would of course be competing for the business of the car-hire companies who would now be out of contract with Perry's. There is nothing in Mr Day's affidavit to suggest that Perry's had not been aware in the previous year that Mr Moran might try and do this (the inference must be quite the opposite) or, for example, that Comprop or Perry's had only just come into the possession of damning new evidence. Thus, for example, there is nothing to indicate that Comprop and/or Perry's had only just seen Mr Moran's map or, if they had, why no steps had been taken to get hold of one of Mr Moran's maps before. Indeed the affidavit is wholly silent on the point. 73. Although we should stress that we have not heard any submissions on this aspect of the case, the neutral bystander might conclude that the application had been made with the intention of inflicting the maximum damage on Mr Moran's business. Mr Moran was a one-man band, a fact which Comprop was presumably either aware of or indifferent to. The effect of such an injunction on his business could easily be predicted. As is the usual practice in this jurisdiction, the order was not limited in time and so would continue indefinitely unless and until it was discharged or varied on Mr Moran's application. We are not for the present concerned with the interlocutory proceedings which followed, but they seem to have taken a sorry course. Mr Moran obtained legal aid. We understand that there were then proceedings for contempt for Mr Moran's failure to carry out paragraph 3 of the order, followed by more proceedings to enforce costs orders made against him as a result. In the course of those proceedings, Mr Moran complained about the way in which the order had been applied for, and the making of the order itself, and in both respects we have considerable sympathy with Mr Moran. Eventually, on 20th April 1998, an application was made to vary or discharge the order, and on 13th June 1998, by consent, the injunctions were lifted. We were told that this was done to facilitate negotiations. 74. One of the more unsatisfactory aspects of paragraph 1 of the order is that Mr Moran was restrained from "infringing the plaintiff's copyrights in the literary works entitled the Perry's Maps." Thus, first, Mr Moran could not be sure what maps of his were caught by the injunction. Of course, he might assume it would be alleged that the maps referred to in the Order of Justice were infringements, but what of other maps? The problem is acute in a case such as this where maps, although similar in many respects to the Plaintiffs', could clearly be independently produced and without infringing any copyright which Plaintiffs might own. A defendant should not be placed under this kind of cloud, particularly when the cloud brings with it threat of contempt proceedings. 75. Second, and following from this, if it ever became necessary to enforce the injunction in contempt proceedings, it might very well be necessary for the court to try the whole issue of infringement in order to decide whether the injunction had been breached. 76. We make no further comment as to paragraphs 2 and 3 of the order, except that they seem unnecessarily draconian and hardly justified by the evidence. 77. Assuming that any interlocutory relief would have been appropriate, we suggest that the appropriate form of order in a case such as this would have been to order that Mr Moran be restrained from

making, distributing, etc., specified works, for example, in this case, the Wayfinder and Handy and Wall maps, or any copy of such maps. Mr Moran would then have known precisely what he could do without fear of contempt proceedings and the Court would have been in no difficulty in enforcing the order. 78. In fact, under the cloud of this injunction, in 1997 Mr Moran created new maps which he hoped would not be caught by the injunction. These maps were not the subject of any interlocutory application and are not referred to in the pleadings. They were only introduced into evidence in the course of Mr Moran's cross examination. We heard very little evidence about their provenance. The case of copying against Mr Moran. 79. As we have said, in this action it is claimed that the following maps of Moran are infringements: the Wayfinder Map, the Wall map and the Handy Map. These are all variations of the same basic map made by Mr Moran in 1996, which we will refer to as Mr Moran's map. The Plaintiffs' primary case, as it emerged in the course of the trial, is that Mr Moran scanned Mr Perry's map using a copy of Perry's Guide and then made a digital copy using his PC. The copy so made did not include all features on Mr Perry's map but it is said that wherever there are features on Mr Moran's map which are also found on Mr Perry's map, then this is the result of copying. Where there are features on Mr Perry's map which are not on Moran's map, then it is said that Mr Moran simply left them out; where there are additional features on Mr Moran's map then these were simply added. The Plaintiffs' alternative submission is that this process was carried out in relation to the Perry's Island map rather than Mr Perry's map. 80. As to the general case of copying, the Plaintiffs rely on a number of "fingerprints", which it is said are suspicious and thus probative of copying, as well as the circumstances of Mr Moran's involvement with Perry's in making the new maps and the timescale for the making of Moran's map. As to this last point, Mr Moran's case, namely that he had started to make his map in early 1996, about five or six months before he left Perry's employment, only emerged during his evidence in chief. On 13th May 1998, for the purposes of an application to discharge or vary the interlocutory injunction, Mr Moran swore an affidavit in which he said this: 16. "... I felt demoralised and frustrated and concluded that my only option was to go back into business on my own. I told the directors of my plans. There was talk of a pay rise and other inducements to keep me on but it was clear to me that I was being marginalised and I made up my mind to leave. 17. "... [the Plaintiff] reckoned it was impossible for me to have produced a map in three months [i.e. between June and September 1996], evidently reaching the conclusion that the only way I could have done so must have been to copy it. Had the Plaintiff asked, I could have easily explained how I had been able to produce a map so quickly

- without it being necessary for me to copy from Perry's map." (Our emphasis added). He then goes on to explain how he was able to do this. In the witness box, Mr Moran accepted that this did not paint an accurate picture of how he had created his maps, since it gives the impression that he had indeed done this in the brief period after he had left Perry's. He said about this that he was advised by his Advocate (not Mr Begg) not to make any reference to working on the maps while still employed by Perry's, as this would only cause trouble. We

regard this as unfortunate. 81. Before we deal with the fingerprints, it will be helpful to compare generally Mr Moran's map and Perry's Island map. They are both roughly the same size although Perry's Island map is slightly larger, its scale being about $2\frac{1}{4}$ inches to the mile as opposed to Mr Moran's map, which is about $1\frac{3}{4}$ inches to the mile. Apart from the fact that both maps obviously show the outline of the Island, the routes of the more important roads, the position and names of towns and villages, etc., the two maps strike the eye as being different. For example, the colours used, the way in which names are presented and the representation of coastal features are not the same. The details of the angles and bends of the roads are not the same. Although a good many items of information are the same, many are different. In some cases Perry's Island map provides information which Mr Moran's map omits and in other cases the position is reversed. Mr Moran, in evidence, provided a long list of examples of information which is contained on his map but which is not found in Perry's Island map, including names of coastal features, names of historical sites, names and locations of geographical features such as woods and areas of water, names of the Vingtaines, location of tourist attractions. More relevant for the purposes of this dispute, perhaps, are examples of cases where information is contained on Perry's Island map but which is not found in Mr Moran's map. As to this, it seems to us from a comparison of the two maps that there is not a great deal of information on Perry's Island map which is not also on Mr Moran's map. The Fingerprints 82. As we have said, the Plaintiffs claim that within Mr Moran's map there are a number of fingerprints which clearly indicate that Mr Moran copied the Plaintiffs' copyright works when making his maps in 1996. We set out below the various instances, also stating, where relevant, what is shown by various other maps that were relied on by Moran in the course of evidence as having been his reference documents when making his map. We also state where particular features are shown by the Queen of the Isles map, although this was not a map relied on by Mr Moran as a source for his map (and is a map in which in any event Perry's claim copyright). We will state our conclusions in relation to each "fingerprint." Where we refer to Perry's Guide as having been copied, this is shorthand for Mr Perry's map having been copied from the revised version published in the 1994 edition of Perry's Guide. Where we make no distinction between Mr Perry's map and Perry's Island map, we simply refer to them as the "Perry maps": (i) A feature on the north-west coast of the Island is known as Le Pinnacle. In Mr Perry's map this is shown correctly spelt in Mr Perry's distinctive script, but with the 'c' and 'l' close together. This section of the map was one of those updated by Mr Moran when he was working on the interim, 1994 edition of Perry's Guide. In the course of this updating, Le Pinnacle was misread by Mr Moran as Le Pinade, and this is how it appears in the 1994 edition of the Guide. This is also how it appears on Perry's Island Map, presumably because Mr Baudains copied it from the 1994 Guide. On Mr Moran's map the feature is also shown as Le Pinade. It is not marked at all on his Queen of the Isles map. His explanation was, as we understood it, that having been extensively engaged on the new map for Perry's, he came away with the same name. We do not accept this explanation. There was no particular reason why he should have remembered this particular name amongst hundreds of others. We therefore find that this mistake arose as a result of copying by Mr Moran from either Perry's 1994 Guide or

Perry's Island map. (ii) In the same part of the Island there is a model aircraft field. Mr Perry said that when he made his original map he deliberately marked the airfield incorrectly, in that he marked it by three runways in the form of an equilateral triangle, with its apex to the north and its base, to the south, running east-west. This is the form in which it appears in all editions of the Guide, and on Perry's Island Map. Thus these maps appear to show the actual physical layout of the runways as opposed to marking the site of the airfield by the conventional symbol. In fact, as shown by DM89, the 1988 Ordinance Survey Map, the field, although roughly in the form shown by the Perry maps, is rotated through 90 degrees. On the Queen of the Isles map the airfield is named but not marked by any graphical representation or other symbol. On Mr Moran's map it is shown in the same way as on the Perry maps. His explanation for this was that he knew there was an airfield there, and indeed visited it, and simply used this symbol as a conventional cartographic symbol for such an airfield. We found this explanation hard to understand and we do not accept that Mr Moran believed Mr Perry's marking to be the conventional cartographic symbol. We therefore find that this matter was copied from either Perry's Guide or Perry's Island map. (iii) Again in the same part of the Island, Mr Perry's map shows a road, the B55, marked as La rue des Landes . Mr Perry said that this was not correct. There is a Route des Landes , but this a little to the south. The correct name of the B55 in this area, as stated on the road sign (and in Stevens), is La Rue du val Bachelier , which is indeed how it is named on Mr Perry's map a little further to the east. He could not remember how the mistake occurred, but admitted that he had seen other maps which made the same mistake. This is also how the road is named on Perry's Island map. The road is named the same way on Mr Moran's map. It was, however, also marked in the same way on Mr Moran's Queen of the Isles Map. In chief, Mr Moran said that when he was making his Queen of the Isles map he called at a house in the road and was given this name for it by the occupier. So far as he was concerned, therefore, it was not a mistake. We do not find this probative of copying. (iv) On Mr Perry's map, the distances from the northwest point of the Island to Guernsey, Alderney and Sark are shown. For example, the distance to Alderney is shown as 30.7 miles. Mr Perry said that he arrived at these distances by scaling them off from a hydrographic survey map in a library in St Helier. The information is not contained on Perry's Island map. At a later date, Mr Perry measured the distance as 31.2 miles using the more accurate means of GPS equipment. Mr Moran's map also shows the distance to Alderney as 30.7 miles. It is not shown on his Queen of the Isles map. Mr Moran's evidence about this was confused. He said that he went to the library, where several maps were available, and although he said at first that he did not make any measurement, so that the distance must have been stated on the map he looked at, he subsequently changed this to say that he must have undertaken the same exercise as Mr Perry, and so come up with the same distance. He was adamant that it had not been taken from Mr Perry's map. We find this a case of blatant copying of Perry's Guide and thus Mr Perry's map. Mr Moran's evidence was incredible. (v) At Ronez Point, on the north coast of the Island, there is a viewpoint. On Mr Perry's map there is a track there in the shape of a loop or lasso. Mr Perry said that his 1980 revision was the first to show this, whereas before it had been in the shape of question mark. We did not understand there to

be a mistake here; that is, a lasso shape is the correct one. Perry's Island map shows a lasso shape, as does Mr Moran's. So, however, does the Queen of the Isles map, the Bartholomew's 1989 map (DM15) and the 1992 AA map (DM24). Mr Moran said that he went to the location and checked the position on the ground, and that he also had knowledge of this feature from other sources, although he could no longer say which. We did not find this probative of any copying. (vi) At L'Etacq, Mr Perry's map shows a road running up to the north-east from the beach at La Saline Slipway towards a junction of roads. It is unclear from the map whether the first section (part of Le Chemin de la Brequette) is classified. At a junction of roads, Mr Perry's map shows a road turning away towards the south as the C116, with Le Chemin de la Brequette continuing on to meet the B35. It is unclear from the official classification map which of the roads in this area is in fact the C116. The Perry's Island map shows the whole of Le Chemin de la Brequette coloured in yellow and thus as a C road, and as being the C116, with none of the other roads in the area as C roads. Thus the section marked on Mr Perry's map as the C116 is not so shown on the Perry's Island map. Mr Moran's map is marked in the same way as Perry's Island map. The Queen of the Isles map is ambiguous, except that it marks the first section of the road from the beach as the C116. The Bartholomew's map is the same, so far as the marking of the C116 goes, as Mr Perry's map. The AA map is the same as Perry's Island map. Mr Moran said about this that he looked at the AA map and saw that the AA had not classified all the roads and thought that if they had not bothered to do so, nor would he. We did not find this probative of any copying. (vii) Near St Brelade's Bay, in the southwest corner of the Island, there is a road known as Mont Sohier, classified as the B66. This is how it is marked on Mr Perry's map. On the Perry's Island map, a mistake has been made and the road is shown by a text box to be the B43 (and also coloured red, signifying an A road). In fact, the B43 is slightly to the north. Both roads are thus marked as the B43. How this mistake arose was not explained in evidence. Mr Moran's map contains a text box with the same mistake. There was no classification shown at all on the Queen of the Isles map. No other map which was produced to us has the same mistake. Mr Moran's explanation for this was that his error probably arose as the result of the method he used to create these text boxes. He said that rather than go through the process of creating new text boxes for each road, his practice, when working on a particular section and after creating a first text box for a particular road, was to drag down a copy of that text box to other roads and then alter the information (i.e., the classification number). What he says he must have done in the present case was to use the true B43 as his source of text boxes in this area but that after dragging down a copy to the Mont Sohier road he must have forgotten to change the road number. In fact, the size of the text box on Mr Moran's map is slightly smaller on the Mont Sohier road than its size on the true B43, although no doubt it is possible that Mr Moran remembered to change the size of the text box but not the road number. We find that this was the result of copying of Perry's Island map. Mr Moran's explanation was bizarre and we do not accept it. (viii) At Clos de Sables, there is a small development of houses built round a network of access roads. The detail of this is shown on Mr Perry's map and also Perry's Island map, although it differs slightly. Mr Moran's map shows the network in virtually the same detail as on Mr Perry's map. It was not suggested that this was not an accurate representation of what

was on the ground. His Queen of the Isles map showed the road network but the detail is different. Mr Moran said that the detail on his 1996 map was the result of his own fieldwork in 1996. We find that this was the result of copying Perry's 1994 Guide. We do not believe that Mr Moran carried out his own fieldwork for this in 1996, given the time-scale involved. (ix)

Near the central north coast of the Island, the official road classification of the Island shows the C101 running north from St John's village towards the coast. At a T junction it meets a road, the two arms of the T running to east and west, roughly parallel to the coast. These two arms form the C100. On Mr Perry's map the road classifications are correctly shown. On Perry's Island map, these roads are incorrectly marked. The first section, running north from St John's Village is correctly shown in yellow (i.e., as a C road) although without any text box showing a road classification. When it arrives at the T junction, however, the map shows this C road as continuing along the western arm of the T, where there is a text box marking the road (incorrectly, as to this section) as the C101. The eastern arm of the T is not signified as a C road at all and there is no reference anywhere to the C100. Thus the impression given by the map is that the C101 runs north from St John's Village and then west. Mr Moran's map gives the same impression: there is only one C road, shown in yellow, running north from St John's Village and then west at the T junction. There is a difference in that Mr Moran's map has a text box marking the first section of the road as the C101 (correctly, as to this section). The AA map marks it in the same, partially incorrect way. The Queen of the Isles map is more accurate. It shows the first section correctly marked as the C101. At the T junction it shows the two arms of the T as being roads of equal importance and western arm is marked as the C100. The eastern arm is unmarked. The Bartholomew map marks the roads correctly. Mr Moran said about this that his map correctly marked the first section of road as the C101 (which it does), but that he simply chose not to mark the two arms of the T as the C100. This was only a tourist map and he could legitimately make choices of this kind. We did not find this probative of copying. In fact, it tends to show that Mr Moran was not copying Perry's Island map in this instance. (x)

Just outside St John's village there is a triangle formed by the intersection of roads. The triangle has its apex pointing to the south with its base, to the north, running roughly east-west. The official road classification shows the A10 running up from the south to the apex, at which point it appears to fork left up the left hand side of the triangle. The right hand fork is marked as the B52. These two roads thus form the lower two sides of the triangle. On Mr Perry's map, the A10 is correctly marked, forking to the left. The sides of the road are also marked in heavy black, which Mr Perry explained shows an A road. The right-hand fork, the B52, is not named as such and one side is also marked in heavy black. Mr Perry said that this was a mistake. On the 1984 edition, both arms are coloured red. Perry's Island map shows the A10 running north to meet the apex. At this point the map simply, but incorrectly, shows a triangle of red roads, signifying, according to the legend, A roads. No road classification numbers are given. The junction is marked in the same way on the Bartholomew map. Mr Moran's map is the same. The Queen of the Isles map shows a triangle of major roads. The AA map, however, correctly shows the junction in accordance with the official classification. Mr Moran said about this that he had shown this junction of roads as all one colour in the

Queen of the Isles map and although the junction had chopped and changed over time as far as he was concerned they were all major roads. He probably looked at the Bartholomew or some other map. We do not find this probative of copying. (xi) Near a point on the north-west corner of the Island known as Etacquerel , there is a small loop of road (La Route des Havres) which is officially designated as the C123. This is correctly marked on Mr Perry's map. On Perry's Island map this is incorrectly marked as a white road (and thus a minor lane) rather than a yellow (i.e., C) road, and without any designation. This is also how it is shown on Mr Moran's map and the AA map. The Queen of the Isles map merely shows it as uncoloured. The Bartholomew map correctly marks the road. Mr Moran said about this that he followed that AA map and chose to show it uncoloured. We find that this was the result of copying Perry's Island map, although it must be said that the inference here is not particularly strong. (xii) A coast road, the A4, runs from St Helier down to the south-east corner of the Island. On Mr Perry's map, this is marked for most of its length as "LA GRANDE ROUTE DE LA CÔTE (St Clements Coast Road)". The final, eastern, section, down to La Rocque , whether for reasons of space or otherwise, is just marked as "LA GRANDE ROUTE DE LA CÔTE". On Perry's Island map, the road is marked in the same way. It was said this is not the correct name for the final south-eastern section: it should be La Grande Route de Sablon , which is the name of the road once it rounds the south-eastern point. However, there was no evidence that this is the case. Stevens only names the road as La Grande Route de Sablon as it rounds the point. On Mr Moran's map, the road is marked throughout as La Grande Route de la Côte. On the Queen of the Isles map, the western section is marked as St Clements Coast Road. The eastern section is not marked. Mr Moran said at first about this that he had referred to an Ordinance Survey map (DM41) for the name, but in fact this map does not show the road name. He then said that he must have got the name from Stevens' work, but again this work does not give this name. He then said that he knew the road to be so named for its entire length up to the parish boundary in that corner. Although Mr Moran's evidence about this was not very satisfactory, we do not find this probative of copying. (xiii) From St Helier, the A7 runs north east until it is crossed by the A6 at Five Oaks. On the other side of the A6, what was the A7 becomes the B28 (Princes Tower Road). This is correctly marked on Mr Perry's map, although it is coloured in red in the 1994 edition. On Perry's Island map, Princes Tower Road is incorrectly coloured red, signifying an A road. Mr Moran said that this was an error made by him when proof-reading Mr Baudains' work. Mr Moran's map has the same error as the Perry's Island map. The Queen of the Isles map marks it as an orange (major) road but correctly as the B28. Bartholomew's map marks it in red as the B28. The AA map marks it in brown as the B28. The Falles map marks it as a major road. Mr Moran said about the error in his own map that when he was creating it he sourced other maps and that Bartholomew's showed it as a main road and thought it was an important road. We did not find this explanation convincing. We find that this was the result of copying Perry's Guide or, more likely, Perry's Island map. (xiv) Travelling north-east from St Helier, the A6 arrives at St Martin. The continuation of this road (La Grande Route de Rozel) is the B38. Mr Perry's map correctly marks it as such, both roads being coloured red on the 1994 edition. On Perry's Island map, however, not only is La Grande Route de Rozel coloured red,

signifying an A road, but it is also marked as the A6. This was apparently a mistake made by Mr Baudains when digitising Mr Perry's map because Mr Moran's evidence was that he had failed to pick up the error when proof-reading. Mr Moran's map contains the same mistake. The Queen of the Isles map marks it correctly as the B38, as does the Bartholomew's map (in red). The AA map marks it correctly in orange as the B38. Mr Moran said that he had little comment to make about this: it was an error introduced when converting Mr Perry's map and had been "carried over" by him when making his own map. He said in chief that he referred to the Bartholomew and AA maps and looked to see how he had previously designated it when producing the map for Perry's. Since this designation did not clash with any of his reference maps (which was not in fact the case), he "carried it over" to his own map. We find this was the result copying Perry's Island map. (xv) In the south-east corner of the Island, in St Clement, a short section of road, the B49 (La Rue du Jambart), connects the A5 and A4. The road number is correctly shown on Mr Perry's map, but is omitted from Perry's Island map. In general, but not always, where on Perry's Island map a road is coloured either red, orange or yellow, indicating an A, B or C road respectively, the map also states the road number. In this case it does not, although there was no evidence of how this came about and whether, for example, it was deliberate or a mistake. Mr Moran's map also omits the number for this road, although again, in general, but not always, his map does give the road number for all roads coloured either red, orange or yellow. The number is stated on the Queen of the Isles, Bartholomew and AA maps. Mr Moran said about this that it was simply one of a number of similar omissions which he had made, some of which are found in Perry's Island map, and some not. He gave examples of six other cases in which the road numbers of either B or C roads were omitted from his map, in the case of three of which the road number had also been omitted from the Perry's Island map, and in three of which it had not. This was therefore simply a case of a map-maker leaving out information from a tourist map either by choice or accident. We do not find this probative of copying. (xvi) The C107 runs parallel to a stretch of the A12 (Le Beaumont), near St Aubin's Bay. On Mr Perry's map the C107 is marked as the Le Vier Beaumont, as it is on Perry's Island map. This is said to be a mistake for Le Vieux Beaumont, the mistake, as we understand the point, being simply an incorrect spelling of the modern French word. Stevens' Jersey Place Names marks it as Old Beaumont Hill, as does the 1934 Ordinance Survey map (DM41). Mr Moran's map calls the road by the same name as the Perry maps, as does his Queen of the Isles map. Mr Moran said that as far as he was concerned, the name used on his map was correct and was the old French spelling. Carré's English-Jersey Language Vocabulary (1972) confirms this is as an alternative spelling. He went to the area himself in 1988 or 1989 when making the Queen of the Isles map and saw the name on a road sign. When he came to make his map in 1996 he simply referred back to the Queen of the Isles map. He also said that he often passed the road. We do not find this probative of copying. (xvii) Near Grouville, in the south-east of the Island, the B37 runs north from a T- junction with the A3. On Mr Perry's map and Perry's Island map, the southern stretch of this road is marked as La Rigondaine . As we understood Mr Perry's evidence, this was a mistake, and the correct name for this section of the road is in fact Rue de Grouville, although he did not further explain this. It seems La

Rigondaine is the name of a local house and this is what may have led to the error. There is in fact a road called La Ringondaine beyond a junction not far to the north. Mr Moran's map also refers to this stretch of road as La Rigondaine, as does the Queen of the Isles map. Mr Moran said about this that it was an error, but it was an error which he made when making the Queen of the Isles map, which was the source he used when making his Island map. As to how this error arose, he said that his usual practice was to visit the location and if there was some physical evidence, such as a road sign, he would note this. If there was nothing of this kind, he would knock on the door of a local house or visit the local parish hall for further information. Or, he said, he may have carried the name down from the section of road to the north which is correctly named La Rigondaine. We were not convinced by this explanation and we find this was the result of copying Perry's Guide or Perry's Island map. (xviii) Another road which connects the A4 and A5 in the south-east corner of the Island is the B48. On Mr Perry's map this is named as LA RUE DE PONTILETAUT (in capitals). On the Perry's Island map, there is not space for this name to fit along one line and so it has been split to read LA RUE DE PONTILE on one line with the word TAUT below it. On Mr Moran's map, the name has been fitted onto one line and reads: La Rue de Pontile Taut. The road was not named on the Queen of the Isles map. Mr Moran said about this that as far as he was concerned this was a typesetting error by Mr Baudains, although he said that when he was proof-reading he could not make out from Mr Perry's map whether Pontiletaut was one word or two, and it is indeed the case that Mr Perry's map is not very clear. Mr Moran said that he carried over the mistake when making his own map although he also said, rather confusingly, that he thought it was in fact two words, and this is why he used this spelling for his own map. We find this was the result of copying Perry's Island map. It is a blatant error. In fact the correct name of the road is Pontlietaut. Fieldwork would have given the correct spelling. (xix) On the east side of St Helier, a road called Les Varines connects the A6 and the A3. It is not an officially classified road. It is correctly marked on Mr Perry's original map and was part of one of the four sheets which Mr Moran redrew for the 1994 edition of Perry's Guide. On Perry's Island map, however, the road is shown coloured brown, and apparently a continuation of the B61. Mr Moran said that this was a mistake introduced by Mr Baudains or by him when making the new map. It is also shown this way on Mr Moran's map. Mr Moran said that he knew that it was a busy road and that there had been discussions about its upgrading. He had shown it as a major route on his map for Falles, although not on the Queen of the Isles map. We do not find this probative of copying. (xx) At the south-east tip of the Island, Mr Perry's map marks La Rocque Harbour and, to one side, Plat Rocque Point and, to the other, La Rocque Point. On Perry's Island map, however, the harbour is marked as Plat Rocque Harbour, with the two Points on either side. This was said by Mr Moran to be an error by Mr Baudains in copying Mr Perry's map, which he did not pick up on proof-reading. Rather confusingly, he also insisted, however, that he knew the area to be Plat Rocque Harbour and that this was a name in local use, and so he left it as it was. On Mr Moran's map, the harbour is shown as Plat Rocque Harbour. The locality, however, is known as La Rocque and there was no other evidence, other than that of Mr Moran, that the harbour is known as Plat Rocque Harbour. We find this was the result of copying Perry's

Island map. We do not accept that the harbour is known locally as Plat Rocque Harbour. (xxi) Along St Aubin's Bay, there is a small section of road that links the A1 and the A2. This is marked on Mr Perry's map as the B59 or La Rue du Galet . On Perry's Island map this is shown coloured red, and thus as an A road, and apparently an extension of the A10. Mr Moran said that this was an error by Mr Baudains which he failed to pick up on proof-reading. Mr Moran's map marks it in the same way, as does the Queen of the Isles map and the Bartholomew's map. The AA map shows it as a minor road. Mr Moran said that he "carried over" Mr Baudains' error when making his own map. Despite this, we do not find this example probative of copying. (xxii) At Mont Cambrai there is a network of minor roads. Mr Perry's map shows roads in the shape of an inverted fork, with a track running to the west. Perry's Island map shows the detail slightly differently. Mr Moran's map is very similar to Mr Perry's map. As we understood him, Mr Moran said that this was the result of his own fieldwork. We find this was the result of copying Perry's 1994 Guide. We do not accept that Mr Moran did his own fieldwork in this case. 83. In conclusion we find that of the 22 alleged fingerprints, the similarities are proved to be the result of copying in 12 cases. In three of these, it was Mr Perry's map that was the source, in five it was Perry's Island map and in four it was either Mr Perry's map or Perry's Island map. In the remaining ten cases, we do not find the similarities prove copying (although copying may of course have occurred in some of these cases). Where we have held that the source was either Mr Perry's map or Perry's Island map, this is because the same mistake or distinctive feature is found in both. For copyright purposes, however, the underlying work which will have been copied is Mr Perry's map, since the feature only appeared on Perry's Island map as a result of it having been taken from Mr Perry's map by Mr Baudains. We will explain the significance of this later.

Findings as to copying 84. Generally as to Mr Moran and his evidence, in many respects we have a good deal of sympathy for Mr Moran. Thus, he created a highly attractive map which was undoubtedly the product of a substantial amount of work on his part. In compiling it, we are satisfied that he used a number of sources apart from the Perry maps as well as his local knowledge, acquired when making his earlier maps or from having lived in the Island, and generally we were impressed with his knowledge of the Island. For example, we accept his evidence that he knew where all the parish halls, chapels and major hotels were without having to refer to any other work or undertake field work. 85. In some respects, however, he was an unsatisfactory witness. In many instances, his answers were very unclear. He tended to prevaricate and it was difficult to get a straight answer. In a case of this kind it is of course difficult to remember, six years after the event, how every feature of such a map was derived and we have made due allowance for that. It was, however, often very difficult to tie him down to any one particular account of how he had derived a particular feature of his map. We would have expected him to have worked in a methodical way and be able to remember how this was done in relation to each "layer" of information. We also found his insistence that he had made no reference to Perry's maps at all difficult to accept. After all, Perry's Guide was one of the acknowledged authoritative sources of information and in 1996 it was again available. The fact that Mr Moran may have referred to the Perry's maps but was unwilling to acknowledge that he had done so, for fear of the adverse conclusions which

might be drawn, does not of course mean that any such reference amounted to an infringement. See, for example, *Johnstone Safety Ltd v. Peter Cook (Int.) PLC*

[1990] F. S. R. 161, at 175, where Ralph Gibson L. J. makes a similar point. Nevertheless, Mr Moran's absolute denial of making any reference is a factor which we take into account in assessing his evidence. We also think it unlikely that in the time available, in particular the time available for carrying out his own fieldwork, he would have been able to gather all the necessary information without reference to some such work as Perry's maps. We have already made some reference to this in dealing with the "fingerprints". By way of further example, it would not be possible, we believe, for Mr Moran to have remembered all the road names which are found on his map. If they did not come from one of the Perry's maps, where did they come from? Although Mr Moran claimed to have used Stevens in some cases, he did not claim to have used it for this general purpose. We also find the absence of any evidence of field work very surprising. Although Mr Moran said that once he had entered the field work onto his computer he discarded it, we would have expected him to retain his notes in case something needed checking later. After all, Mr Moran had not discarded all his field work when making his earlier maps, even though the information had been entered on the map he was working on. If Mr Moran was conscious of the possible copyright claims, as he said he was in 1996, it makes it all the more likely that field work would have been preserved in order to answer any claims. An alternative explanation, which we prefer, is that there was no such fieldwork. We have already recounted Mr Moran's evidence about how he established the position of the telephone boxes in the Island. The list he obtained from Jersey Telecoms, which he produced, gives only the general area for each box and we find it implausible that Mr Moran would have been able to fix the position of each one in the short time available to him. 86. Our conclusion, based on these general considerations and on the "fingerprint" evidence, is that Mr Moran did copy, both from Mr Perry's map (using the version in the 1994 edition of Perry's Guide) and Perry's Island map. Both the 1994 edition of Perry's Guide and Perry's Island map were available to the public at that time and we find that Mr Moran had copies of each. We do not accept, however, the case as advanced by Mr Young that Mr Moran made his map by scanning Mr Perry's map and then adding further information. If he had done that we believe there would have been a much closer correspondence in the details such as the outline of the Island, etc. We are satisfied that Mr Moran created the outline of the Island and the skeleton of the road network in the way in which he said he did. Nor, for the same reason, do we accept Mr Young's fall-back position that it was Perry's Island map that was copied in this way nor the more general case that everything in common between the Perry maps and Mr Moran's map only appears on Mr Moran's map as a result of copying by Mr Moran. If copying on that scale had taken place, then we would have expected many more features (and omissions) to have been copied across than are in fact found in common between the maps. 87. Nevertheless, as we have said, we are satisfied that copying of both Mr Perry's map and Perry's Island map has taken place. The fingerprints, being examples of mistakes or distinctive features, must be a sample of a

much larger population of copied features: they must be the tip of a larger iceberg. Thus, features which have been copied but about which there was nothing wrong or unusual would not present themselves as "fingerprints" and there are many more ordinary or correctly identified features on the Perry maps than odd or incorrect features. This places us in a difficulty when it comes to dealing with the issue of "substantial part", since deciding that issue depends in part on how much we find was copied, and from what. As we have made clear, we do not accept either the "black" of Mr Young's case or the "white" of Mr Begg's. Doing the best we can, we are satisfied that the copying of material from Mr Perry's map, and of additional material that was new to Perry's Island map, was in each case much more than an insignificant or trivial amount. Putting it colloquially, it was "a lot". The material copied included road and place names, names and locations of places of interest, the route of minor roads, the classification details of roads, the location of things such as telephone boxes, and other information likely to be of interest to a tourist. This is not to say that in each of these categories, Mr Moran copied everything in the class (e.g., not all road names were copied), but only some of the features. The law 88. The relevant Act for present purposes is the Copyright Act 1911 . Under section 37(2) of that Act, it was to come into force in Jersey at such dates as the States might fix. This date was 8th March 1913. Although the 1911 Act was repealed in the United Kingdom by the Copyright Act 1956 , the effect of paragraph 41 of the Seventh Schedule to the 1956 Act was to leave the 1911 Act in force so far as the law of Jersey was concerned. In *Oliver v. ABN- Ambro Bank N. V.*

[1995] JLR 270 , this Court commented that the law of copyright of England had left Jersey far behind in the wide ranging amendments that had been made, a fact which the court found surprising in an island which justifiably prized itself as an international financial centre. Nevertheless, the 1911 Act is a robust animal, as is shown by the fact that the Court in *Oliver* held that the 1911 Act applied to computer programs. 89. Under 1911 Act, s.1(1), copyright subsists in original literary, dramatic, musical and artistic works, provided the qualification provisions in s.1(1) are satisfied. There has been no suggestion in this case that they were not. "Original" for this purpose simply requires the work to have been the product of independent skill and labour by the author. As has often been pointed out, the threshold of originality is not a high one. 90. Under the 1911 Act, a "literary" work is defined by s.35(1) as including "maps, charts, plans, tables and compilations." An artistic work is defined by s.35(1) as including works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs. It may seem something of an anomaly that the 1911 Act classifies maps, charts and plans as literary works rather than artistic works. The 1911 Act can be contrasted with the 1988 United Kingdom Copyright Act which, as originally enacted, defined a literary work as any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes a table or compilation and a computer program (s.3(1)), and an artistic work as including a "graphic" work, which was itself defined as including (amongst other things) any painting, drawing, diagram, map, chart or plan, or any engraving

(ss.4(1), (2)). 91. The historical reason for this classification in the 1911 Act can be traced to the previously existing law. Under the Copyright Act 1842 , copyright protection was extended to published "Books", a Book being defined as meaning and including " every Volume, Part or Division of Volume, Pamphlet, Sheet of Letterpress, Sheet of Music, Map, Chart or Plan separately published ." The Engravings Copyright Acts of 1734 and 1766 , and the International Copyright Act 1852 , also gave separate protection, amongst other things, to any map, chart or plan which a person might invent, design, engrave or etch, and to prints made by lithography or similar mechanical processes by which copies could be multiplied. In contrast, protection under the Fine Arts Copyright Act 1862 was confined to "the fine arts", namely original paintings, sculptures and photographs. The effect of *Stannard v. Lee*

(1871) L. R. 6 Ch. 346 (C. A.) and *Stannard v. Harrison*

(1871) 24 L. T. N. S. 570 (described by the 5th

(1915) edition of Copinger's Law of Copyright as "two somewhat puzzling decisions") appears to have been that under the pre-1911 Act law a map might be protected either under the 1842 Act or under the Engraving Acts, etc., although with different consequences. The 1911 Act brought maps under one heading of protection. 92. Although the 5th and subsequent editions of Copinger described the classification of maps by the 1911 Act as literary works as "perhaps" somewhat illogical, an underlying justification for it can be found. It has been said that the essence of an artistic work is that which is visually significant (see *Interlego Industries A. G. v. Tyco Industries Inc .*

[1989] AC 217 , at 266, per Lord Oliver, adopting the statement of Whitford J. in *Rose Plastics GmbH v. William Beckett & Co (Plastics) Ltd*

[1989] F. S. R. 114). Thus what is protected by an artistic work is the original expression of the author/artist in a visual form, not any information as such which the work may also include in a literary form, in particular, that which can be read. See, for example, *Catnic Components Ltd. v. Hill & Smith Ltd.* 1982] R. P. C. 183, at 223, approved by Lord Oliver in *Interlego* and the analysis by Jacob J. in *Anacon Corp. Ltd v. Environmental Research Technology Ltd*

[1994] F. S. R. 659, at 662. The work of a map-maker, however, is not necessarily confined to producing something which is merely visually significant or which is expressed only in a visual form. A map, as in the present case, may also contain and be designed to convey a mass of information such as the names of roads and other place names which can be read from the map. What, for example, is the position where a defendant takes a substantial amount of information from a map but presents it in a visually different way, not making any use of the map-maker's work of visual expression, or perhaps not even as a map at all? It is to deal with this kind of question that the English Courts have been driven, in the context of some kinds of diagrammatic works at least, to say that to the extent that an artistic work contains information which can be read from it, it should also be regarded as

a compilation and thus a literary work. Thus in *Anacon* a circuit diagram was held by Jacob J. to be both an artistic work and a literary work. This approach, with certain caveats, was approved by Laddie J. in *Electronic Techniques (Anglia) Ltd v. Critchely Components Ltd*

[1997] F. S. R. 401 and *Pumfrey J. in Sandman Panasonic U. K. Ltd*

[1998] FSR 651 . In general, and disregarding the complications introduced into United Kingdom law in relation to databases as a result of the implementation of the E. C. Database Directive (96/9/EC), literary copyright will subsist in a compilation of information in written form provided that the author expended substantial independent skill and labour in gathering, selecting or arranging that information. That copyright will be infringed if a defendant appropriates, by means of copying, a substantial part of that author's work of compilation. If necessary, therefore, a map could be regarded under the United Kingdom statute as both an artistic work and a compilation, and a defendant who only copied a substantial part of the work of compilation found in a map would nevertheless infringe the compilation or literary copyright which subsisted in the map. 93. Under the 1911 Act, there is no need to resort to such contortions. As we have said, a literary work is defined as including, amongst other things, a map, chart, plan, table and compilation. There is no further definition of these works and there is no requirement, for example, that such a work must be "written". Although the definition of a literary work under the 1911 Act obviously encompasses works which are written, so also does it obviously encompass works which are drawn. Depending on the precise nature of the work, the scope of protection conferred on a literary work by the 1911 Act can therefore extend to original expression in the form of words, or original expression in the form of drawing or artistry, or both. A map can combine both such elements. This much had been recognised under the pre-existing law. In *Stannard v. Lee* , James L. J. said, at p.349, speaking of the 1842 Act: "Formerly maps had been considered artistic works, now they were to be brought into their proper place as literary works. And rightly so, in my opinion, for maps are intended to give information in the same way as a book does. A chart, for instance, gives similar information to sailing rules; maps give instruction as to the statistics and history of the country portrayed; they point out the amount of population, the places where battles were fought, the dates when provinces were annexed, as in maps of India, and give other geographical and historical details. It was quite reasonable, therefore, to take them out of the law of artistic works, and to give them greater protection by bringing them under the law of copyright of literary works." 94. In the course of the amendments to their pleadings, the Plaintiffs have vacillated between calling their maps literary works, artistic works, "and/or" both, the last being their final position. The vacillation was unnecessary. It is sufficient and accurate under the 1911 Act to classify them as literary works. 95. The ownership provisions of the 1911 Act are as follows: (i) The first owner of the copyright in an original literary work is the author, except where the work was made in the course of the author's employment under a contract of service, in which case the first owner, subject to any agreement to the contrary, is the first owner. See s.5(1) and proviso (b). (ii)

Copyright is transmissible by assignment, but no such assignment is valid unless it is in writing and signed by or on behalf of the copyright owner. See s.5(2). (iii) The 1911 Act contains limited "commissioning" provisions, i.e., provisions whereby the copyright in a work whose making was commissioned for a consideration vests in the commissioner. They apply only to engravings, photographs and portraits, and not to literary works. 96. Under English law, leaving aside any special provisions of the Copyright Acts relating to commissioned works, if a contract for the making of a work contains a term, whether express or implied, to the effect that the copyright will belong to the commissioner, then the normal result of this will be, if nothing more, that the copyright will belong in equity to the commissioner. If the contract is in writing and signed by the author, it may well be possible to construe the contract as an assignment of the legal title, so that the legal title will be transferred to the commissioner. In each case, the terms of the contract have to be analysed in the light of the surrounding circumstances to determine the intention of the parties. No real argument was addressed to us to the effect that under the law of Jersey an equitable title to copyright cannot arise in this way and we assume that the law of Jersey here is the same as English law. 97. As will be seen, a point also arises in this case about transfer of an equitable title to copyright. The position in English law here is that by virtue of section 53(1)(c) of the Law of Property Act 1925, which was derived from the Statute of Frauds, a disposition of an equitable interest subsisting at the time of the disposition must be in writing and signed by the person disposing of it, or by his agent lawfully authorised in writing. Equitable assignments, in cases where this statutory provision does not apply, require little by way of any formality. See *Snell's Principles of Equity*, (13th ed'n), para. 5-12. Again, we were not addressed as to the position under the law of Jersey and we assume that the law in this jurisdiction is to the same effect as the law of England, or at least that an instrument which would have been effective to transfer the legal title, had the transferor owned it, will be effective to transfer an equitable title, if this is all the transferee owns. As will be seen, this is as far as we need go. 98. As to infringement, section 1(2) of the 1911 Act defines copyright as the sole right to produce or reproduce a work or any substantial part thereof in any material form whatsoever, and to authorise such acts. Copyright is therefore infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to which is conferred on the owner. See section 2. The first question under this heading will be to decide whether any copying has taken place. If so, the next question will be whether there has been copying of a substantial part of the plaintiff's work. See s.1(2) of the 1911 Act. Here, the correct approach, particularly in a case such as this which involves artistic as well as written elements, is not to ask whether the defendant's work resembles the plaintiff's but, having identified the elements which have been copied, to ask whether those elements form a substantial part of the plaintiff's work. See *Designers Guild Ltd v. Russell Williams (Textiles) Ltd*.

[2000] 1 WLR 2416 (H. L.). This question must be answered on a qualitative rather than a quantitative basis, keeping in mind the underlying purpose of the Copyright Acts, which is to protect and reward the relevant skill and labour of the author. The skill and labour which made the plaintiff's work an original work in the first place must therefore be identified. Having done this it can then be assessed whether there has there been a taking of a substantial part of the whole work. As the question was formulated by Pumfrey J. in *Cantor Fitzgerald v. Tradition (U. K.) Ltd*

[2000] R. P. C. 95: has there been an appropriation of "a part of the work upon which a substantial part of the author's skill and labour were expended"? 99. In the field of maps, as with other works of reference, the question often arises as to the use which may legitimately be made of such works. Undoubtedly, the owner of the copyright in a published work of reference usually expects and no doubt hopes that others will refer to it and use it. That is usually why it was made and published. It is sometimes said that in the case of works of reference a greater amount of copying is permissible than with other works such as novels. In *Ravenscroft*

v. Herbert

[1980] R. P. C. 193, Brightman J. was concerned with an allegation of copying from a historical work. He said, at 205: "I am inclined to accept that a historical work is not to be judged by precisely the same standards as a work of fiction. The purpose of a novel is usually to interest the reader and to contribute to the enjoyment of his leisure. A historical work may have that purpose, but the author of a serious and original historical work may properly be assumed by his readers to have another purpose as well, namely to add to the knowledge possessed by the reader and perhaps in the process to increase the sum of human experience and understanding. The author of a historical work must, I think, have attributed to him an intention that the information thereby imparted may be used by the reader, because knowledge would become sterile if it could not be applied. Therefore, it seems to me to be reasonable to suppose that the law of copyright will allow a wider use to be made of a historical work than a novel so that knowledge can be built upon knowledge." 100. Whatever the application of that principle may be to historical works, we find some difficulty with its application in relation to works such as maps. While an author of a work of compilation may intend users to refer to his work and make use of it in a variety of ways, we do not see why he should generally be imputed with an intention to allow users to go beyond what is permissible under the general law of copyright. This is of course particularly the case where the defendant is engaged in a competing activity. Restriction to copying of what is permissible under the general law, i.e., reproduction of a non-substantial part, will not mean that the work will become sterile. In fact, quite the opposite. It will remain a valuable work of reference. We do not therefore consider that the general test for infringement, propounded above, should be any different in the case of a work of reference such as a map than in the case of any other kind of work. Our conclusions 101. We can now state our conclusions on the various issues which arise in

this case. The position is complicated by the fact that the copyright works relied on by the Plaintiffs form two separate streams which have never arrived at a confluence. Mr Perry's map 102. Our conclusions about this work are as follows: (i) Given our findings about the making of this map, we have no hesitation in holding that this was an original literary work. The work of creation is found partly in the massive collection of information which the map contains, which was the work of Mr Perry, and partly in the way in which the information is visually presented, this again having been the work of Mr Perry. We are satisfied that whatever may have been taken by Mr Perry from any Ordinance Survey map, about which we can draw no detailed conclusions, the great bulk of the map was the original work of Mr Perry. (ii) Mr Perry was not an employee of Guernsey Lithoprint Ltd and the terms on which Mr Perry was engaged to do the work were not spelt out in any great detail at the time. There is no written record of the engagement and there is not even any evidence of any written receipt for the £500 which Mr Perry was undoubtedly paid. We are in no doubt, however, that the intention on both sides to the contract was that Guernsey Lithoprint should own the copyright. Mr Perry himself referred to his work as having been commissioned and his own evidence about the arrangement was that he understood Guernsey Lithoprint would own the copyright. The map was made specifically for Guernsey Lithoprint's business and the company acted thereafter as if it owned the copyright. Mr Perry has never made and does not make any claim to it. (iii) Since there was nothing in writing signed by Mr Perry, however, it follows that Guernsey Lithoprint did not become the legal owner of the copyright. Given the intention of the parties, we are nevertheless satisfied that the company became the owner of the copyright in equity on the creation of the work. The legal title rested with Mr Perry, where it remains to this day. (iv) We have already stated our conclusion that there was a written, signed instrument effecting the sale of Guernsey Lithoprint's assets, including copyright, to Printing and Stationery Ltd. Had the legal title to the copyright in Mr Perry's map been vested in Guernsey Lithoprint, this would have amounted to an effective assignment of the legal title. Guernsey Lithoprint only owned an equitable title, of course, but we hold that this title was transferred to Printing and Stationery Ltd by this means. (v) We have recounted how the copyright in Mr Perry's maps which belonged to Printing and Stationery Ltd was ordered to be sold by the Royal Court of Guernsey through the office of the Sheriff. We have also referred to the letter of 22nd October 1992 from the Sheriff to Mr Scott acknowledging receipt from Mr Scott of £25,614.00 for the purchase of these copyrights. Although this did not take the form of an express assignment of copyright, the intention was clearly to transfer the copyright and a receipt of this kind is capable of amounting to an assignment, as is shown by the cases of *London Printing and Publishing Alliance Ltd v. Cox*

[1891] 3 Ch 291 and *Savory (E. W.) Ltd v. The World of Golf Ltd*

[1914] 2 Ch 566 . The position in the latter case was similar to the present case. There, the owner of copyright signed a receipt as follows: "Received of Messrs. E. W. S. Ltd, the sum of £2 6s. 6d. for five original card designs, inclusive of all copyrights...." In the context of that case, this was held to be a sufficient assignment. Subject to the next point, we therefore hold that, given the surrounding circumstances, the Sheriff's letter would have been sufficient to effect an assignment of the legal title in the copyright in Mr Perry's map and thus, for the same reasons as before, was effective to transfer the equitable title. (vi) Mr Begg, however, objects that no evidence as to the law of Guernsey has been adduced, either as to the nature of process of execution involved here or, more particularly, as to whether the Sheriff has sufficient authority to sell or transfer the assets of a debtor in these circumstances. He is right about the absence of evidence of the law of Guernsey, although the point is highly technical. Having considered the objection, we are not prepared to hold that an Order of the Royal Court of Guernsey, bearing the seal of that Court, was not sufficient to vest due authority in the Sheriff, and we are satisfied that it did vest due authority in him. We therefore hold that the equitable title passed to Mr Scott. (vii) Mr Begg did not suggest that the assignment dated 23rd January 1997, by which Mr Scott sold his copyrights to Comprop, was not effective to transfer whatever interest Mr Scott had in the copyright in Mr Perry's map to Comprop. The equitable title to the copyright in Mr Perry's map therefore now belongs to Comprop. (viii) We have already held that Mr Moran copied from Mr Perry's map. (ix) As to whether he copied a substantial part of this work, it follows from our earlier findings that in our judgment he did. As we have said, we cannot be sure as to the extent of the copying but we are satisfied that Mr Moran made use of the skill and labour of Mr Perry to a substantial extent. We are also satisfied that what was taken did not include any significant amount of material which may have been taken by Mr Perry from Ordinance Survey maps. The Perry's Island map 103. As to this map: (i) We have described the work which went into the preparation of Perry's Island map. It involved the selection from Mr Perry's map of information suitable for a more simple tourist map, and the presentation of it in a different and more easily digestible form. It also involved the updating of the information and addition of further information likely to be of interest to a tourist. The differences between Mr Perry's map and Perry's Island map are immediately apparent on visual inspection. We have no doubt that copyright subsists in Perry's Island map, distinct from that which subsists in Mr Perry's map, as a result of the skill and labour which went into its production. (ii) This skill and labour was that of Mr Baudains and Mr Moran. At the time, both were employees of Perry's. Perry's therefore owns the copyright. (iii) As we have said, we are satisfied that Mr Moran copied from Perry's Island map, as well as from Mr Perry's map. Again, although we cannot be sure of the extent, we are satisfied that Mr Moran made substantial borrowings from the additional map-making work which had gone into the preparation of the Perry's Island map. (iv) A further complication arises, however, which we have not previously needed to refer to. Perry's was only joined as Second Plaintiff to this action on the second day of the trial, that is, on 20 November 2001. Objection was made to the application by Mr Begg, relying on the fact that any claim in respect of infringing acts committed by Mr Moran in 1996 or 1997 was statute barred.

Section 12 of the 1911 Act provides: "An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after infringement." Mr Young said that there would nevertheless still be live claims against Moran and so we allowed the amendment, but only on the basis that the amendment took effect from the date of the amendment (see *Banks v. CBS Songs Ltd* [1992] F. S. R. 278), and thus preserving the limitation defence in respect of any acts taking place before 20 November 1998. In case this approach was incorrect, we made it clear that in that event we would only have allowed the amendment on terms that no relief in respect of copyrights owned by Perry's was claimed for acts taking place before this date. (v) In the event, no acts of infringement after 20 November 1998 were established. (vi) In the circumstances, it follows that claims in respect of Mr Moran's acts of infringement of the copyright in Perry's Island map committed in 1996 and 1997 are statute barred, and thus fail. The St Helier town map 104. At issue here is the town map created by Mr Moran (D5). We have recounted how Mr Moran, starting with the 1934 Ordinance Survey map (DM41), produced his own town map (map D5) in 1992. As to this: (i) We hold that Mr Moran's map, D5, was an original work. Although based on the Ordinance Survey map, he used skill and judgment in selecting which features to keep for his own map, and used his own skill and labour in redrawing the map and inserting further information to produce an attractive tourist street map of the town. (ii) Since he created it when in business on his own, he was the first owner of the copyright. (iii) The real issue is whether this copyright was assigned to Perry's in 1993. We have already set out the terms of the agreement between the parties of 18th March 1993 whereby Mr Moran sold, assigned and transferred to Perry's the right to publish the Visitor map [i.e. DM39], together with the provision that he would, in certain conditions, sell, convey, assign and transfer to Perry's all his interest and copyright in this publication. In the event, the parties agreed to complete that sale in November 1993 and Mr Moran countersigned a letter from Perry's dated 26th November 1993 confirming his agreement to this course. He subsequently received the agreed price of £4,000 from Perry's. (iv) We do not understand there to be a dispute that copyright of some sort was transferred to Perry's by this transaction, and in any event we find that the letter which Mr Moran countersigned took effect as an assignment of copyright. The real issue is, however, precisely what was the subject matter of the assignment. Mr Begg argues that all that was assigned was the copyright in the digitised version of Mr Moran's town map since this was what was actually used on the published Visitor map. (v) Cases where an assignor of copyright has created a series or works, the later ones deriving from earlier versions, can create difficult problems. The earlier versions may have been published as separate versions or may simply have been preparatory works, as with an author's manuscripts. If the assignment simply refers to "the copyright", or the copyright in the final version, what rights are transferred? The simple answer is that the subject matter of an assignment depends on the intention of the parties, as gathered from the words which they have used construed against the background of the transaction. A rather similar problem arose in *Metzler & Co. (1920) Ltd v. J. Curwen & Sons Ltd* [1928-35] Mac. C. C. 127. There, the composer Coleridge Taylor had written music for a production of *Othello*, which music included both orchestral

music and music for a song entitled "Fall on me like a silent dew". He then wrote a suite, "the Othello Suite", which was based almost entirely on the music from the stage work. The second movement of the suite corresponded very closely to the music of the song. He assigned the copyright in "the Othello Suite" to the plaintiff. After his death his widow and successor assigned to the defendant the copyright in the music for the song "Fall on me like a silent dew", and the defendant then published the work. The defendant argued that there were at least two distinct copyrights: copyright in the music for the song and copyright in the Othello Suite and that, as a matter of construction in the particular circumstances, Coleridge Taylor had not intended to assign to the plaintiff any rights in respect of the song but only such rights in the Suite as were consistent with Coleridge Taylor retaining rights in the song. The argument, which had obvious difficulties, was rejected by Clauson J. He held that the question was one of construction of the assignment and that it had conveyed: "... the copyright in the 'Othello Suite' and every part of it, including as part of it the melody [of the song] ..." He therefore held that Coleridge Taylor had put it out of his power to deal with any substantial part of the Othello Suite, in particular the piece of music which consisted of the second movement of the suite, and the melody of the song fell within this. Coleridge Taylor had not assigned just the rights to the particular arrangement of music for the suite. (vi) The decision in Metzler of course turned on the construction of the assignment in that case. In the present case, the digitised version of the town map is not significantly different from D5, either visually or in terms of content. If all that was transferred to Perry's was the benefit of the work of digitisation of D5, this did not amount to very much in copyright terms. Further, if Mr Begg's submission is correct, Mr Moran would have been free to sell the copyright in D5 to a rival publisher the next day. If this had happened, it is not clear to us where Mr Begg's submission leads. Since the digitised version is clearly a reproduction of D5, would the owner of the copyright in D5 have been able to sue Perry's for infringement? In this event, although Perry's might have been able to argue that the November 1993 assignment carried with it a licence to use the underlying works such as D5, what if the rival publisher was a purchaser for value without notice of the transaction with Perry's, and who thus took free of the licence? This type of consideration points to a commercially realistic conclusion that the subject matter of the sale here included the copyright in D5 as well as the copyright in the digitised version, to the extent that this may have been a separate copyright work (a point on which no argument was addressed to us). We are therefore happy to be able to hold that this was indeed the intention of the parties looked at objectively, bearing in mind the fairly simple form of the words which they used when set against the background of the commercial context of the agreement. An alternative and equally acceptable route, adopting that taken by Clauson J. did in Metzler, is to say that what was assigned to Perry's by Mr Moran was the copyright in the Visitor town map of St Helier, and every part of it, and Mr Moran had therefore put it out of his power to deal with any substantial part of it, which D5 clearly is. He had not assigned just the rights to the digitised version. (vii) It was not disputed that the town map created by Mr Moran in 1996 was based upon D5. In his own mind he was perfectly entitled to use it. Nor was there any real dispute that Mr

Moran's map reproduced a substantial part of D5, and we so find. (viii) Again, however, the copyright in D5 belongs to Perry's and so for the same reasons that claims in respect of infringements of Perry's Island map in 1996 and 1997 are statute barred, so are claims in respects of infringements of D5 in this period. No other infringements were established. Conclusions 105. We therefore find that: (i) The copyright in Mr Perry's map was infringed by Mr Moran by his making of his Wall, Wayfinder and Handy Maps in 1996 and 1997; (ii) The copyrights in the Perry's Island map and the St Helier town map (D5) were similarly infringed in this period, but the claims are now statute barred. 106. We make no findings in respect of the maps which Mr Moran made after these proceedings were started. They formed no part of the pleaded case and the evidence about them was incomplete. 107. We have found that Comprop is the equitable owner of the copyright in Mr Perry's map, and the legal title remains vested in Mr Perry. Under normal principles, although Comprop's equitable title was sufficient to enable it to start these proceedings, it is not entitled to final judgment until it joins Mr Perry or gets in the legal title. See *The Performing Rights Society Ltd v. London Theatre of Varieties Ltd* . [1924] A. C. 1. 108. We will hear the Advocates as to the appropriate relief in the circumstances. *Authorities Johnstone Safety limited-v-Peter Cook (Int) PLC*

- (1990) FSR 161 @175. . Copyright Acts of 1842 & 1911. Engravings Copyrights Acts of 1735 & 1766. International Copyright Act 1852. Fine Arts Copyright Act 1862. *Olivier-v-ABN Ambro Bank NV*
- (1995) JLR 270 . *Stannard-v-Lee* (1871) LR 6 Ch. 346 (CA). *Stannard-v-Harrison* (1871) 24 LTNS 570. *Interlego Industries AG-v-Tyco Industries Inc.*
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