31 pages.

ROYAL COURT
(Samedi Division)

31A.

18th February, 1991

Before: The Bailiff, and
Jurats Coutanche and Le Ruez

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| Between: | Robert Ian Steven | Appellant |
| And: | Constable of St. Saviour | Respondent |

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Firearms (Jersey) Law, 1956, Article 4(8).
Appeal against refusal of Constable to renew appellant's Firearm Certificate.

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Advocate R.A. Falle for the Appellant.
Advocate C.E. Whelan for the Respondent.

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JUDGMENT

BAILIFF: This is an appeal by the Appellant, Mr. Robert Ian Steven, from a refusal of the Constable of St. Saviour to grant him a renewal of a Firearms Certificate which he had first taken out on the 7th January, 1986, and which he applied to renew on the 27th July, 1989. It is necessary to go into the application and its history in a little more detail than that.

In 1986, the Appellant in this case applied for a Certificate for a number of weapons and the list for which he applied is the same as the weapons which concern this appeal. Those weapons are and were: first a .22 Savage (Steven) Rifle and Sound Moderator, Model 87HT28; second, a .22 Webley Air Rifle No. 10611; third, a .177 Webley Air Rifle No. 38062; fourth, a .44 Remington Black Powder Revolver not serially numbered; fifth, a .36 Remington Black Powder Revolver No. 31688; sixth and lastly, one unknown calibre percussion Rifle, make unknown and not serially numbered.

The application in January, 1986, was granted. It is pertinent to observe that certainly the Webleys had been - according to the evidence we heard from Mr. Steven - in his possession for some 15 years and had not been applied for as regards a licence.

In the licence which was issued to him appear a number of conditions. There are a number of printed conditions and some added in manuscript. One of the printed conditions is the following:

> "The firearms and ammunition to which this certificate relates shall at all times when not in actual use be kept in a secure place with a view to preventing access to them by unauthorised persons:".

The additional requirements are set out at the bottom of the standard requirements as follows:

> "(2) The firearms (.36 Remington Black Powder Registered Serial Number 31688 and .44 Remington Black Powder Revolver - no Serial Number) to which this certificate relates shall be used solely during the course of the holder's activities as a member of an approved Pistol Rifle Club.
> (3) The firearm (Heavy Bore Percussion Rifle no Serial Number) to which this Certificate relates shall be for possession only and will not be discharged.
> (4) The firearm and ammunition (.177 Webley Air Rifle Serial No. 38062; .22 Webley Air Rifle Serial No. 10611; and .22 Stevens Savage Rifle Model 87H Serial Number T28) shall be used solely

within the bounds of "Val Feuillu", Rue de la Hambie, St Saviour, subject to no danger or annoyance being caused thereby".

That was the Certificate which was issued to Mr. Steven for these weapons.

Shortly before that Certificate had been issued, Mr. Steven unfortunately had committed an offence under Article 16 of the Road Traffic (Jersey) Law, 1956. He was convicted on the 20th March, 1985, for driving a vehicle whilst unfit through drink or drugs.

The Constable at that time, not the present Constable, was aware of that conviction when he granted the licence.

The licence normally has a life of three years, and it was therefore due for renewal in January, 1989. Unhappily, yet again, Mr. Steven committed a further offence in respect of Article 16 of the Road Traffic (Jersey) Law, 1956, and was convicted of that offence on the 22nd November, 1988, although the offence had taken place in July of that year.

When it became clear to the Constable that Mr. Steven's licence was due for renewal in January, 1989, he or his Secretary sent a letter in December to Mr. Steven reminding him that the licence had to be renewed. No reply or action resulted from that letter and a second letter was sent later in the year in March and the Constable followed those two letters up by a personal telephone call sometime between April and July, but he thinks nearer July.

By not renewing his licence on time, Mr. Steven was in fact in breach of another Article, Article 3(1) of the Firearms (Jersey) Law, 1956, which is the Law that we have to consider in respect of this appeal, but the Constable in his evidence told us that he decided to wait and see and it was not a matter which he intended to prosecute at the time. Therefore it may be said that so far as Mr. Steven's failure to apply in time and therefore his infraction of another part of that Law is concerned, the Constable waived the possibility of a prosecution

at that time. In any case, whether he did actually waive it or not, is not relevant to the present appeal.

Very soon after, the Constable had telephoned Mr. Steven in July, if we accept the Constable's evidence, Mr. Steven at last submitted an application for the reneval of his licence in respect of the weapons I have already mentioned. That application is dated the 27th July, 1989, and it contains a number of remarks which are relevant to this appeal.

So far as the reasons for acquiring the firearms and the ammunition are concerned, the entry under that section is "pest control".

So far as the arrangements for keeping the weapons in safe custody, the entry is: "At home. Place of safe custody has been agreed with Jersey Police Crime Prevention Officer".

So far as the amount of ammunition is concerned, under the question: "Amount possessed at date of this application", the entry is: "Fifty rounds".

I deal first with the question of the agreement referred to by Mr. Steven with the Jersey Police Crime Prevention Officer.

The date as I have said of the issue of the licence in 1986 to Mr. Steven was the 7th January and on the 10th January, the Crime Prevention Officer, Sergeant Ben Fox, wrote a letter to the applicant. We were told by the Appellant in this case, that that letter was written as a result of his asking Sergeant Fox to advise him and it was written following a visit to the premises when the Appellant and Sergeant Fox discussed where the weapons could be securely stored.

We have visited the premises this morning and have been shown the glass-fronted cabinet in which, up to that time (1986) Mr. Steven had stored all the weapons with the exception of the two revolvers which were kept in a specially made mahogany box, again which we were shown this morning.

Sergeant Fox made a number of recommendations for storing the guns, and suggested that they should be stored under some movable enclosed steps "within" he says in his letter, "the children's playroom leading to the storage area".

When he gave evidence before us, he produced a sketch plan which he had drawn which indicated that behind the steps was a space under a floor in which the guns could be inserted; that is not correct. We were shown this morning, when the steps were moved away, that they were against a wall. Therefore the only storage area available for the weapons would be within the confines of the steps themselves.

He made a number of other recommendations which are not germane to this appeal, but he said in the penultimate paragraph: "The recommendations contained in this report have been made with due regard to the risks involved and are considered to be the minimum standard of security required". He also invited the Appellant, if he wanted clarification, or if the Sergeant could be of any further assistance, to contact him at Police Headquarters.

Unfortunately the appellant did not. He attempted to see if the guns could be accommodated under the steps, and with the exception of the two Revolvers which are muzzle loaders, and require, according to Mr. Steven, a good deal of preparing before they can be fired, he found that the .22's, the two Webley Air Rifles and the unknown calibre Percussion Rifle which he told us was in fact almost an heirloom, having been reputed at one stage to have belonged to General Wingate, could not fit within the staircase without cutting them down, although it is true that it might just have been possible as we were shown this morning for them to be put diagonally inside the stairs, but as Mr. Steven told us, and it was not refuted, that if he had done so, it was such a tight fit that when moving the stairs to get to the guns, he might have damaged them.

He decided therefore, entirely without taking advice, that as the stairs were unsuitable, he should find somewhere else which in his opinion was sufficiently secure. We were shown his house, which is a large one, and in that house on the first floor is his bedroom, it does

not appear to be the main bedroom of the house, but simply his room, in which he not only sleeps, but conducts a number of experiments with moths, which is one of his hobbies. He placed the .22 Savage Rifle, the two Webley Air Rifles and Wingate's Rifle (if I may call it that) under his bed. We have seen the bed; it is quite low; it is in the area of the house to which a burglar would not necessarily immediately go. He also placed the box containing the two muzzle loading Revolvers in the bottom of his wardrobe.

Those places were found to be by the Police, following the application for the renewal of his licence, not secure and unsatisfactory. That is hardly surprising because Sergeant Fox in giving his evidence to us, said that he looked for a number of matters when deciding on what is a safe place. He referred to his 'base line' and he looked to what would be 1) reasonable; 2) realistic; 3) cost effective; but in relation to his base line he looked for concealment, separation of parts and physical security. However, P.C. Edwards found that none of these things were adequately covered when he inspected the house following the Appellant's application for renewal of the licence.

He then prepared a report for his Senior Officer, a Mr. Le Sueur, who was not called to this Court to give evidence, and in that report to which I shall return in a moment he made a number of observations.

Mr. Le Sueur wrote a report which was forwarded to the Chief Officer, who, in turn, wrote a letter to the Constable, who at that time had already had P.C. Edward's report, together with that of Mr. Le Sueur.

It is fair to say, I think, that the Chief Officer's letter added nothing to Mr. Le Sueur's report. Both Mr. Le Sueur's report and the Chief Officer's letter recommended that the licence should not be renewed for a number of reasons to which I shall return later.

Following the refusal of the Appellant's application, the Constable notified the Appellant accordingly on the 13th October, 1989, and not surprisingly the Appellant took legal advice and went to Advocate Falle. Thereupon on the 27th October, 1989, Mr. Falle wrote a

long letter to the Constable in effect appealing against the decision. There were two earlier letters which are not important. The important part of the letter of the 27th October is contained on page 2 in the penultimate paragraph which I shall now read:

> "With regard to the Applicant's conviction under Article 16 of the Road Traffic Law, there is nowhere in the Firearms (Jersey) Law, 1956, which makes such a conviction in itself a disqualifying element. It may be evidence at the time of the offence itself, that the Applicant was of intemperate habits. The conviction, however, in itself is not evidence of continuing intemperate habits more than a year later. Your certificate is not retrospective but prospective and would subject to revocation under the law, be applicable to the three years next following the grant. In this connection therefore you should know that my client has foresworn the consumption of alcohol and has not consumed any since his offence in July 1988. That fact can easily be established by affidavit of the Applicant himself or the testimony of his family and friends and in itself is clear evidence that what may once have been an intemperate habit, is no longer a habit. My client's reform was made known to the Magistrate and I have no doubt influenced the sentence. It should in my opinion, be decisive in your deliberation".

Notwithstanding that letter the Constable, who, when he first received the application for a renewal was not aware of the second infraction against Article 16 of the Road Traffic Law, but had since, of course, become aware of it when the Police report reached him, maintained his refusal. He did so in a letter to Advocate Falle of the 3rd November, 1989. That letter is quite short and to the point and it reads as follows:

> "Further to your letter of the 27th October, 1989, I have to inform you that, having given the matter further consideration, and after consultation with the Crown Officers, I am not prepared to alter my previous decision".

I stop there, because at one stage during this appeal there was a suggestion that, although the Constable denied to the Attorney General that he had paid any attention to what he called 'tittle-tattle' about the Police having been called to the premises of the Appellant; in some way that piece of information had coloured his decision. I am glad to say that that suggestion was withdrawn by the Appellant. The letter continues:

> "May I also remind you that, as from the 6th January, 1989, your client has been in possession of firearms without being the holder of a valid Certificate. I would advise you, therefore, that the firearms in his possession should be handed in to me for safe keeping in the Parish Hall Strongroom".

There is a note that the weapons were collected by the Honorary Police (Centenier Jacklin) on the 10th November, 1989. "Now in strong-room for safe keeping".

Nowhere in that letter, it should be remarked, is a reference made to the possibility of the Appellant's being allowed after a reasonable lapse of time to apply again. That suggestion first appears in the Answer of the Constable to the Appellant's case. At paragraph 6 of the Constable's Answer appears the following:

> "As to paragraphs (9) and (16) of the Appellant's Case,...." ((9) says that: "the circumstances of the Appellant are unlikely to change and there will accordingly not be any new cause arising which might rationally support a new application if the Appellant had not appealed the Constable's decision", and it goes on to state that the Constable's decision was effectively a final judgment upon the Appellant's good name; paragraph (16) asked the Court to reconsider the application). ".... the Constable says that an application by the Appellant in 12-16 months' time may well have succeeded with the support of good references as to temperance and responsibility". (I don't quite know why it was put in the past, I think it must mean: "may well succeed", it is not clear). "As matters stood at the date of his decision the Constable was faced with evidence of two convictions based on the

Appellant's excessive use of alcohol and evidence of two contraventions of the Firearms (Jersey) Law, 1956, as set out herein, which have not yet been pursued".

The other contravention that I have mentioned is not that of failing to apply in time, but of being in breach of the general condition as to security which I have already mentioned and which was contained as Condition (1) in the Certificate which the Appellant held at that time.

Visiting the site this morning, Mr. Whelan for the Constable, has pointed out a further possible infraction, namely that on Mr. Steven's own admission he had retained the barrels of the two revolvers, although he had surrendered the revolvers themselves and the Law covers parts of weapons as well as the weapons themselves.

The Constable based his refusal to grant the application to renew for three reasons, and they were as follows:

"(i) that the Appellant had been convicted on two occasions for offences contrary to Article 16 of the Road Traffic (Jersey) Law, 1956;

(ii) that the Appellant had applied late to renew his Firearm Certificate, in that the Certificate granted on 7th January, 1986, expired on the 7th January, 1989, and he did not apply for renewal thereof until July, 1989, and this despite several reminders by the Respondent;

(iii) that the Appellant failed to implement the security measures advised in a letter addressed to him on the 10th January, 1986, from Detective Sergeant Fox, the Crime Prevention Officer, despite specific agreement in that regard".

Those are the official reasons, but in fact the Constable had regard to the wording of the Law to which I shall now turn. However, before doing so let me say that as regards the three matters mentioned,

they in fact were correct, the Appellant had been convicted, he had applied late and he had failed to implement the security measures.

The conditions to be met in respect of applications is set out in Article 4(2) of the Firearms Law, which reads:

> "(2) The Constable shall grant a certificate if satisfied that the applicant has a good reason for purchasing, acquiring, or having in his possession the firearm or ammunition in respect of which the application is made, and can be permitted to have in his possession that firearm or ammunition without danger to the public safety or to the peace:".

Mr. Whelan has conceded that the Appellant has satisfied the first part of that paragraph and is not a danger to the public safety or to the peace and therefore he could be permitted to have in his possession the firearms. And so he is forced back, if I may use that expression, onto the proviso which now follows:

> "Provided that a certificate shall not be granted to a person whom the Constable has reason to believe to be prohibited by this Law from possessing a firearm to which this Part of this Law applies, or to be of intemperate habits or unsound mind, or to be for any reason unfitted to be entrusted with such a firearm".

The first matter to which I have to apply my mind is the meaning of the words 'has reason to believe'. In my opinion, this is a statute which, first, interferes with the freedom of the individual to have firearms, albeit we accept that it is dealing with lethal weapons and therefore the statute indeed must be taken seriously; nevertheless it does infringe what up to then had been a common law right to have weapons in your house.

Secondly, it provides for penalties for infringement of the Statute. We think that although it cannot be said that the words 'has reason to believe' should mean has reason to believe beyond reasonable doubt, it is putting it too low to say that those words mean only on a balance of probabilities. Mr. Whelan was right when he said there had

to be substantial reasons. In other words it has to be something more in our opinion than merely a balance of probabilities. That being so it is incumbent upon the Constable, when faced with assertions by an Appellant to satisfy himself as to the truth or otherwise of those assertions.

The other parts of this proviso, so far as being of unsound mind is concerned, do not apply, but the other two do. Mr. Steven is said by the Constable to be of intemperate habits and to be unfitted to be entrusted with a firearm because he hasn't complied with the security arrangements and because in a number of respects according to the report from Police Constable Edwards, his experience and appreciation of the dangers of firearms were not very great.

In hearing an appeal of this sort, the Court's powers are set out in Article 4 (8) of the Law which I now read:

> "Any person aggrieved by a refusal of a Constable to grant him a certificate under this Article or to vary or renew a firearm certificate, or by the revocation of a firearm certificate under sub-paragraph (a) of paragraph (7) of this Article, may, within twenty-eight days after the day on which he has received notice of the decision of the Constable, appeal to the Inferior Number of the Royal Court, the decision of which shall be final and without appeal, but without prejudice to the right of the Inferior Number of the Royal Court to refer the matter to the Superior Number of the Royal Court".

Neither counsel asked us at the beginning of this appeal to consider whether we should exercise that latter power and we have not done so.

The appeal, Mr. Falle suggests, is at large, that is to say the Court should consider the application for such it is, he says, de novo. We cannot agree that this is the proper approach.

The question as to whether the Royal Court should adopt that approach where the statute is silent was considered at length by this

Court in the case of Mr. and Mrs. Mesch against the Housing Committee, the judgment in which was given on the 4th October, 1990. I need not deal with the facts, but in that case a number of propositions were laid down by the Court. Because the wording in the Article of the Housing (Jersey) Law is very similar to the appeal provisions in this Law, we think it proper to apply the same legal principles to an appeal under the Firearms (Jersey) Law, 1956. Article 12 of the Housing (Jersey) Law, 1949, which governs appeals is as follows:

> "(1) Any person aggrieved by the refusal of the Committee to grant consent to any transaction to which this Part of this Law applies or by any conditions attached to any such consent or by the revocation of any such consent may appeal to the Court against the decision of the Committee within one month after the date on which notice of such decision was sent to him.
>
> (2) On any such appeal, the Court may either dismiss the appeal or may give to the Committee such directions in the matter as it considers proper, and the Committee shall comply with any such direction".

The wording it seems to us of the appeal provisions in paragraph (8) of Article 4 of the Firearms (Jersey) Law, 1956, is in equally wide terms and we think therefore, that the words "appeal to the Inferior Number of the Royal Court" would entitle us in adjudicating upon the appeal either, of course, to reject it, or to grant it in full, but also allow us to take any other course within these two limits.

In the Mesch judgment there are laid down, as I have said, a number of legal principles concerning appeals of this nature. The nub of those principles is to be found at page 18 of the judgment where the Court said this:

> "As we have said above we would not like the Royal Court to be deprived of the right to hear fresh evidence on an appeal from a decision of an administrative body where the right of appeal, as in the instant case, appears to be unfettered by the words

conferring a right of appeal. Accordingly, we find, as a matter of law, that the Royal Court has the power to reverse a discretionary decision of an administrative body where the appellate provisions are as wide as those in the Housing (Jersey) Law 1949 which would allow it to hear fresh evidence or decide on any disputed fact....". (We consider that that is the position in an appeal under the Firearms (Jersey) Law, 1956). Then the judgment continues: ".... That power, however, is not unfettered but must be exercised, as Dawson J. said in the Peko Wallsend case .." (and I now quote) "where there can be some identified error or manifest injustice in the exercise of its (the administering body) discretion". Our decision might have meant that but for the subsequent dilution of the restrictive approach of the Royal Court in earlier cases by subsequent decisions we might have felt obliged to rule that earlier decisions were wrong. We would have been reluctant to do this particularly in the light of the careful analysis of the cases in Habin v. Gambling Authority (1971) JJ 1637 to which the Court of Appeal in Phantesie referred. If a decision is such that no Committee properly directed could reasonably have made it and is contrary to justice and common sense, it must follow that that decision is wrong and should be struck down".

Now in arriving at a decision as to whether those qualifications should apply in this case, there are three questions which we have asked ourselves and which this Court in the past has asked itself when considering appeals against administrative decisions: whether the appellate provisions are at large, (or unqualified is perhaps a better way of expressing it) as in the Housing Law and also the Firearms Law, or are qualified by such words as "under the circumstances of the case".

These questions are: first, was the decision one which the Constable in this case had the power to make? Well, the answer to that must be, unquestionably, yes. Secondly, were the proceedings in general fair and satisfactory? The answer to that for reasons I shall give in a moment, is no. Thirdly, is the decision which was made one to

which the Constable could reasonably have come? Because of our findings in 2, we think again the answer to that question must be no.

The Constable had before him the report which I mentioned earlier of P.C. Edwards. The Constable also had the application of the Appellant. That application was not accurate in a number of respects. I have already mentioned the question of the ammunition and the question of security. The reply to the question raised about security in the form was equivocal to put it at its lowest, but could be said, I think, without stretching the words too far, to be evasive and misleading. Secondly, so far as the ammunition is concerned, when P.C. Edwards visited the Appellant's house to enquire about the circumstances of the application and of course to see where the weapons were, he was told that the Appellant had no ammunition; whereas as I have already said in the application form he refers to having 50 rounds, and his explanation was eventually when he gave evidence that he put that figure in because it was his son's rifle and he wasn't sure whether there was ammunition in the house which is a big house as I have already said. There might have been some 50 rounds somewhere without his knowledge and therefore he put them in to be on the safe side.

It is not an accurate application form, if within a few days, he tells P.C. Edwards that he hasn't got any.

In P.C. Edwards' own form which he submitted to his Senior Officer and upon which his Senior Officer based his report for the Chief Officer and upon which in turn the Chief Officer based his letter to the Constable, there are a number of matters to which Mr. Falle has rightly drawn our attention. The form was prepared on the 15th September, 1989, and it is headed "Home Visit Proforma". The Investigating Officer is as I have said, P.C. M.A. Edwards. There are a number of boxes in which an answer by an 'X' can be put to five questions. The first question is: "What previous experience does the applicant possess?" You could either answer "none", "some", "considerable" or "vast" and P.C. Edwards put "some". The second question was: "How would you describe the applicant's appreciation of safety rules/factors?" - "poor", "fair", "good" or "excellent", and the

choice was "fair". The other three questions related to the use of the firearm in that locality and I do not think I need deal with them here because it is admitted that the answers to those questions are acceptable to the Appellant. But as regards the answer to the first question, that he only had some previous experience, Mr. Steven gave clear evidence to us that he had long experience in dealing with firearms both as a cadet, then later with shotguns. The difference between shotguns and firearms under the Law is merely one - as I understand it - of rifling and/or length. Therefore it may be said that experience with a shotgun can be of great assistance in dealing with other weapons under the Firearms Law. Therefore we think that that answer was somewhat misleading and whilst the Appellant would not contend that he should say he had vast experience, considerable would have been more accurate.

When one comes to the second question about the appreciation of safety rules and factors, again we were told that in the shoots which Mr. Steven has attended in England, there is very strict discipline and he understands that discipline and we are satisfied that had P.C. Edwards asked further questions, he would indeed have upgraded his assessment from fair to good. Therefore it is not unreasonable to say that when this form was before Mr. Edwards' superior the impression he would have had is that Mr. Steven had some experience and only had a fair appreciation of safety rules/factors. On the other hand it is fair to say also that included in safety rules could be the question of security on which Mr. Steven appeared to have his own personal views. However, P.C. Edwards doesn't go as far as suggesting that Mr. Stevens should not be granted a firearms certificate, he merely says that he shouldn't be allowed to shoot on his property. Further, that he should not be granted a Firearms Certificate until his weapons have been put in a secure and safe place. However, that recommendation was not accepted by his immediate Superior Officer who sent up a report to the Chief Officer in which there is a further schedule of information about Mr. Steven and there are three paragraphs which I wish to mention. The first deals with the question of and I quote: "intemperate habits or unsound mind". There are then comments in respect of the driving offences which I have already mentioned. The second is: "Excitable, quarrelsome or quick tempered"; the answer to that is "not apparent".

The third matter is "Experience in handling firearms", "Not known". That isn't correct, the experience was known to the extent of Mr. Edwards' assessment of that experience, but as we have already said his assessment could have been misleading to Mr. Le Sueur.

There was also in addition on that page a reference to the question of security. That was in another heading "Storage facilities - See comment overleaf", and I have already touched on those.

It may be said, therefore, that Mr. Le Sueur - and he wasn't called unfortunately by Mr. Whelan; it would have been helpful to us if he could have been called and had been cross-examined - had before him some information which at its lowest could be said to be inaccurate, or at any rate not telling the whole position about Mr. Steven, his experience and his realisation that firearms are dangerous weapons.

Faced with that it is perhaps not surprising that considering the delay, the infractions of the Road Traffic Law, and Mr. Steven's attitude to security in the sense of his choosing himself where to place the weapons without checking that that would be satisfactory, over a period of three years, led Mr. Le Sueur to recommend that renewal of the licence should not be granted. It is further not surprising that that recommendation was endorsed by the Chief Officer whose letter added very little to Mr. Le Sueur's own conclusions. But it was those conclusions based as I have said on P.C. Edwards' failure to question Mr. Steven sufficiently and to draw the proper conclusions which influenced without a doubt the Constable in his decision.

Mr. Parkinson's letter, that is to say the last paragraph, reads as follows:

> "In my view, Mr. Steven has shown himself to be of intemperate habits and to have an irresponsible attitude towards firearms. These factors in my opinion make him unsuitable to possess firearms".

That last paragraph tipped the Constable, so he said, over the edge and he accordingly refused the application.

The matter does not stop there because the moment he had been put on notice by Mr. Falle, in his letter of the 27th October, 1989, that the Appellant's habits had changed, it was we think incumbent upon the Constable to take up the offer of Mr. Falle and from affidavits - and we think preferably medical affidavits as well - to look into the expression of abandonment of intemperate habits; because there is no doubt in our minds that at the time of the second infraction Mr. Steven was of intemperate habits. He himself used a very colourful expression; he said he was drinking heavily and he was in the "booze trade". There is no doubt that at that time he was a man of intemperate habits. That was in July, 1988, and therefore one would want to know what the position was later. Had he survived sufficiently well for his friends and his doctor to be satisfied that he really meant what he said? In this connection it is important also to have regard to Mr. Steven's evidence and indeed what was said in the course of evidence about Mr. Steven's drinking problem. I think it is fair to say that he did have a problem.

What in fact happened was that after Mr. Steven had been charged in July, 1988, with his second drink/driving offence, it came home to him that he indeed had a problem, but he was a man of strong will, he told us, and the Constable did admit in his evidence that in his opinion people with a strong will can get over a craving for drink. It was not so much, we think, a craving but a business necessity which caused Mr. Steven to have his problem at that time. But he tackled it very firmly; he went to a hospital which specialises in persons who drink heavily and he was examined and stayed for a number of weeks. He quite openly told us that one of those helping him felt he was, in fact, an alcoholic, but that person himself was an ex-alcoholic. But the psychiatrist and the psychologist who examined him felt he was not and felt that he could stop drinking if he so wished. He then said that he had stopped drinking; he hasn't drunk since and he is therefore not a man of intemperate habits and was not such at the time he made the application and at the time the Constable adjudicated upon it in November, 1989.

As Mr. Falle rightly said in his letter to the Constable, the issue of the certificate is not retrospective but prospective, but as against that the Constable is quite right when he told us that he is entitled to look at the past history; of course he must be entitled to do that.

Mr. Whelan said that even if we were to consider allowing the appeal, which he said would amount to giving a licence to the Appellant (and we accept that it would), there are a number of other matters which we should consider one of which I have mentioned already. First, the possession of the unregistered two Webley Rifles for 15 years. Secondly - I have already mentioned this - parts of firearms are still in his possession. Thirdly - and again I have mentioned it - he was actively misleading regarding his arrangements for security for the firearms; I have used the word 'evasive'. Fourthly, there were two children in the premises, aged 9 and 13 and he said they were inquisitive. Fifthly, the question of the ammunition and Mr. Steven's inconsistency in his application form and what he told P.C. Edwards.

However, weighing all these matters up we have come to the conclusion that as regards the reasons advanced by the Constable we should refer this case back to him.

So far as the late renewal is concerned, the Constable in effect has waived his right to prosecute, or at any rate he put it into cold storage for the time being, and he did say that if it were only in respect of that matter alone he would not have refused to grant the application.

So far as the Appellant's failure to implement the security measures, we have no doubt and we accept what Mr. Whelan has said that he was very slack. That is a matter which the Constable could quite properly take into account, but it is fair to say, again, that Sergeant Fox's own report was inaccurate inasmuch as it indicated and suggested that the weapons could be kept under the floor and not just in the staircase. But as against that of course, as I have already said, Mr. Steven did nothing for some three and a half years to find another acceptable safe place.

There is a minor matter inasmuch as P.C. Edwards described the .22 as centre fired when it is not, but Mr. Steven was equally adamant that you cannot have a centre fired .22 at all and that is not the case. But that is merely a matter of firearms knowledge not necessarily of practice.

Where we think the Constable can be faulted, although we are entirely satisfied that he applied his mind quite honestly to these matters, was after being alerted by Mr. Falle that the Appellant had, so to speak, turned over a new leaf and was now a teetotaller and did not drink, he maintained his refusal, he refused point-blank - his evidence was quite clear on this point - he rejected Mr. Falle's assertion and he was wrong, we think, to do that. It is clear to us from the evidence also that the Constable placed a great deal of reliance on the two convictions under Article 16. That, to him, indicated that a man who could get into a motorcar and drive whilst under the influence of drink might well not be trusted to have firearms because he was intemperate and that intemperance would cover both motor vehicles and weapons both of which are equally dangerous in a different sort of way.

The Constable cannot be faulted for taking that view, but we think that he can be criticised for rejecting out of hand Mr. Falle's assertion that his client was no longer of intemperate habits. Therefore we are going to send this matter back to the Constable for him to consider any reports, medical or otherwise, to be submitted by the Appellant. We stress that it is for the Appellant to submit the reports and not for the Constable to search around for them.

Secondly, if after having considered those reports - taking into account the other matters upon which he based his refusal, but without stressing the question of delay which we think is relatively minor in the decision to which he came, but taking into account the question of security which is an important matter and in which the Appellant has shown himself grievously lacking in some respect - he is prepared to grant the licence, then it would be subject to two conditions. We think, having seen the premises, and having read the recommendations of

P.C. Edwards in this respect that the .22 should not be used on the property. Secondly, the licence would be of no effect until a proper place of security acceptable to the States Police has been installed and the weapons placed securely in it.

We think that is all we need say on this appeal. It is therefore being allowed only in part and I wish to be addressed on costs.

There will be an order for the Appellant to have half his costs.

Authorities cited:

Firearms (Jersey) Law, 1956: The Preamble, Articles 1: definition of "firearm", 2(1), 3, 4(2), 4(8).

Firearms Law (Excepted Weapons) (No. 1) (Jersey) Order, 1956 (R & O 3741).

Mesch -v- Housing Committee (4th October, 1990) Jersey Unreported.