

Darius James Pearce; Trading as Nigel Pearce & Sons, Jewellers v Treasurer of the States

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	02 July 2014
Neutral Citation:	[2014] JRC 139B
Reported In:	[2014] JRC 139B
Court:	Royal Court
Date:	02 July 2014

vLex Document Id: VLEX-793417405

Link: <https://justis.vlex.com/vid/darius-james-pearce-trading-793417405>

Text

[2014] JRC 139B

ROYAL COURT

(Samedi)

Before:

W. J. Bailhache, **Q.C.**, **Deputy**Bailiff, **and**Jurats Clapham**and**Blampied.

Between
Darius James Pearce
Trading as Nigel Pearce & Sons, Jewellers
Appellant
and
Treasurer of the States
Respondent

Advocate C. Hall for the Appellant.

Advocate G. G. P. White for the Respondent.

Authorities

Petty Debts Court (Miscellaneous Provisions)(Jersey) Law 2000.

Treasurer of the States -v- Pearce [\[2013\] JRC 206](#) .

Goods and Services Tax (Jersey) Law 2007.

Income Tax (Jersey) Law 1961

Bené Limited v Hanson and Shelton (trading as VAR Hanson and Partners), Smith, Public Services Committee and Public of the Island of Jersey [\[1995\] JLR 323](#) .

Procureur General v Pipon, Seigneur de Noirmont, reported at Ordres du Conseil Vol. 4 1771–1812.

Saunders v Vautier (1841) 4 Beav.

Roads Administration (Jersey) Law 1960.

Appeal against the decision of the Master — entitlement of States of Jersey to charge GST on rental.

Bailiff

THE DEPUTY

INTRODUCTION

- 1 The respondent receives the rental income from leases relating to premises at the Central Market (“the Market”). The appellant occupies a shop in the Market pursuant to an agreement of lease dated 7th April, 2005. The original parties to that lease were the Environment and Public Services Committee of the States of Jersey for and on behalf of the public of the Island of Jersey, of the one part, and Nigel Pearce Jewellers of the other part. The lease was assigned to the appellant with the consent of the Treasury and Resources Department on 20th May, 2009, and the appellant has paid rent to the respondent thereafter.
- 2 In December 2012, tenants of the Market were informed about the ending of transitional relief on leases and that thereafter Goods and Services Tax (“GST”) would be collected on

rent payable. Invoices issued to the defendant in respect of the rental periods following 25th December, 2012, included a 5% charge in respect of GST. The defendant paid the rental element of the rent but not the GST element as he disputed that GST was due. The proceedings issued by the respondent in the Petty Debts Court were transferred to the Royal Court under Article 2(1) of the Petty Debts Court (Miscellaneous Provisions)(Jersey) Law 2000, and particulars of claim were filed in June 2013 with an answer filed by the appellant on 12th June, 2013. Thereafter the respondent issued a summons to strike out the defendant's answer and to apply for summary judgment. His application was heard before the Master on 22nd October, and in a carefully reasoned decision of that date reported at *Treasurer of the States -v- Pearce* [2013] JRC 206, the Master declared himself satisfied that the answer did not amount to a defence of the claim, and therefore should be struck out and judgment entered in the sum of £268.20, being the amount claimed by the respondent. The appellant has appealed the Master's decision.

- 3 In her helpful skeleton argument, Advocate Hall confirms that only one of the issues which the appellant raised before the Master remains to be considered by the Royal Court on appeal. The appellant has accepted that ordinarily a lease would be subject to GST as a taxable supply. The appellant has also accepted that the States of Jersey is to be regarded as a “taxable person” who must charge GST where appropriate. However the appellant, relying on the fact that the lease is granted by an organ of the States of Jersey for and on behalf of the public of the Island of Jersey, asks the Royal Court to consider whether such a lease falls within the specific exemptions set out in Schedule 5 to the Goods and Services Tax (Jersey) Law 2007 (“the Law”) thereby rendering the lease not liable to GST. At the heart of the case is the question of how and why the public of Jersey holds property, and whether the public of Jersey is a separate entity from the States of Jersey.
- 4 Article 48 of the Law provides that Schedule 5 shall have effect as exempt supplies. Article 5 of Schedule 5 provides as follows:–

“(1) For the purposes of this Law, the supply of any service or goods by a charity shall be exempt.

(2) For the purposes of this paragraph, “charity” means a corporation, association, or trust, the income from the property of which is exempt from income tax by virtue of Article 115(a), (aa) or (ab) of the Income Tax (Jersey) Law 1961.”

- 5 Article 115 of the Income Tax (Jersey) Law 1961 in its material parts provides as follows:–

“115 Miscellaneous Exemptions

Exemption from income tax shall be granted in respect of –

(a_ Any income derived from any of the following:

(1) The property of a corporation, association or trust

established in Jersey for any of the following –

(A) The advancement of education,

(B) The relief of poverty,

(C) The furtherance of religion,

(D) A purpose beneficial to a whole community,

(E) The service of any church or chapel or any building used solely for the purpose of divine worship,

(2) ...

insofar as such income is applied to those purposes;

(aa) Any income derived from the property of a corporation, association or a trust established in the United Kingdom for a charitable object, where exemption from United Kingdom income tax is allowed in respect of such income under Section 447 of the Income Tax Act 1952 of the United Kingdom;

(ab) Any income derived from the property of corporation, association or trust established in the Island of Guernsey for a charitable object, where exemption from Guernsey income tax is allowed in respect of such income under the laws relating to income tax of that Island.”

- 6 The appellant's case is that the public of Jersey is a corporation, established in Jersey for a purpose beneficial to the whole community. An entity which is described as the public of Jersey can only have been established for the benefit of the general public of the Island, and therefore for the benefit of the whole community, and it is clearly a benefit for the community that it should be able to hold property.
- 7 The appellant relied on the decision of Le Marquand, Judicial Greffier, on a discovery application in *Bené Limited v Hanson and Shelton (trading as VAR Hanson and Partners), Smith, Public Services Committee and Public of the Island of Jersey* [\[1995\] JLR 323](#). In that case the Judicial Greffier said this:–

“The second issue which arises is as to the nature of “the public of the Island of Jersey”. I am able to take judicial notice of the fact that when the States of Jersey transacts in relation to real property (including a contract lease as in this case) it customarily acts in the name of the public of the Island of Jersey and not in the name of the States of Jersey. Subsequently the States of

Jersey determine which Committee will administer the relevant piece of real property and in this particular case the administering committee appears to be the Public Services Committee, although much of the premises are occupied by the Viscount's Department which for States administrative purposes is treated as if it were under the Finance and Economics Committee although it is actually in law a department of the judiciary. What, then, is the public of the Island of Jersey? It is clearly a corporate body of a kind which holds real property on behalf of the general public but under the administration of the elected representatives of the general public, namely, the States of Jersey. However, its origins are shrouded in mystery although I suspect that what happened historically was that as a distinction began to be drawn between the Crown on the one hand and property held on behalf of the general public of the Island on the other, it was decided at some stage rather than the property being actually held by the States of Jersey, it should be held by this corporate entity to be known as the public of the Island of Jersey.

The third issue is as to the relationship between the public of the Island of Jersey and individual States committees. The public of the Island of Jersey clearly has no mind or will independent of that of the States of Jersey and for that reason could in many ways be viewed as merely the nominee of the States of Jersey. I find it very difficult to distinguish between these two bodies for the purposes of determining possession, custody or power. Anything which belongs to the public must be within the control of the States and anything which the States control must be available to the public.”

- 8 When Master Thompson considered this application, he referred to the passage set out above and expressed substantial agreement with it. However he did indicate that he was less clear as to whether the public of the Island of Jersey is a corporate body or other legal entity, or whether it is a legal convention or custom which reflects how property is held for the States of Jersey as distinct from the Crown. He went on to say this at paragraph 43 of his judgment:–

“In my judgment, even if the public is a “corporate body” of a kind or a legal entity the public is not a corporation, association, or trust established for a purpose beneficial to the whole community. At best it holds property for the States. I do not consider that property held in the name of the public is held on a trust. It is either a legal convention or a corporate body of a kind as I have set out above. The reference in the proposition establishing [Jersey Property Holdings] to the States of Jersey being entrusted with stewardship of property held in the name of the public is not enough to establish an existence of any “public markets trust” referred to at paragraph 1 of the defendant's answer. The proposition says no more than States of Jersey is responsible for looking after property in the name of the public. No other authority or document was produced to me showing the creation or establishment of any other trust for the benefit of the community of Jersey as a whole or that holding property in the name of the public creates such a trust. The trust also cannot apply directly to immovable property situated in Jersey (see Article 11(2)(3) Trusts (Jersey) Law

1984). Yet I was not referred to any exception recognising the public as holding immovable property on trust. The public is also not an association incorporated under the Loi (1862) sur les teneures en fidecommis et l'incorporation d'associations. Rather its origins are "shrouded in mystery" and the only rationale offered for its existence is the distinction between property held by the Crown and property held by the Executive of the Government of the Island of Jersey, in other words the States. Alternatively, if holding property in the name of the public is a legal convention pursuant to which properties held for the States of Jersey then such a convention does not bring the public of the Island within the definition found at Article 115(a) of the Income Tax Law."

- 9 The appellant contends that the Master was in error in finding that the public of Jersey did not hold the property for the benefit of the whole community but **"at best held it for the States"**. He contends that the States merely administers the property held by the public of Jersey which, as the Greffier found in *Bené* holds the property **"on behalf of the general public of the Island"**.
- 10 The Master correctly reminded himself that on an application to strike out and on a summary judgment application, there was a significant overlap. In relation to a strike out application on the present grounds, the Court had to be satisfied that the answer filed did not disclose a reasonable ground of defence. In relation to an application for summary judgment, it is clear that if a defendant could raise an arguable defence, then that is an issue for trial and summary judgment should not be entered.
- 11 The appeal from the Master's decision to the Royal Court is at large. The Court hears the application *de novo* — but in any event, the appeal in the present case raises a straightforward issue of law, and it is not a question of revisiting an exercise of discretion by the Master.
- 12 The respondent submitted that the appellant's contention would produce an absurdity, and the Court should adopt a purposive approach to the construction of the Law. On such an approach, the appellant had no defence because the public of the Island does not fall within Schedule 5 paragraph 5 of the Law. The respondent contended that the Master's conclusions generally, but especially those at paragraph 43 of his judgment were correct.
- 13 Furthermore the respondent supports the Master in his conclusions at paragraph 44 of his judgment in relation to the effect of Article 115(c) of the Income Tax Law. Article 115(c) provides as follows:—

"Exemption from income tax shall be granted in respect of —

...

(c) Any income derived by the States from their own property."

- 14 The Master considered that in the light of this provision, the States of Jersey is exempt from income tax not because properties are held in the name of the public of the Island of Jersey on a charitable basis but because there is a specific exemption in Article 115(c).
- 15 Advocate White contended for the respondent that there was no legislative intent that the public of the Island should be treated as a charity. He submitted that to accept such a contention would lead to an absurd result. Furthermore, all property administered by the States of Jersey was, he said, held by the public of the Island and Article 115(c) of the Income Tax Law would be wholly unnecessary if income from properties held in the name of the public of the Island was already covered by the exemption in Article 115(a)(i)(D) of the Income Tax Law.
- 16 Advocate White went on to submit that the word “**charity**” would not naturally include the public of the Island “**when in fact the public of the Island exhibits none of the characteristics of the charity under the published criteria whereby the Comptroller of Taxes would usually assess whether an applicant body is entitled to charitable status**”.
- 17 Finally, Advocate White suggested that the appellant's contention produced an absurdity because it would lead to a conclusion that some land in Jersey is held in the name of the States of Jersey and other land in the name of the public of the Island when in fact all property was held in the name of the public of the Island. It would be a nonsense to conclude that the legislature intended one category to be exempt from goods and services tax when the other was not, and that the exemption from income tax would be on a different basis between the one and the other. Indeed, theoretically, it would be possible for the States of Jersey to organise a transfer from the States of Jersey to the public, thereby changing the tax status of the property. He submitted that such reasoning all pointed towards supporting the Master's judgment. We would be minded to accept the broad thrust of those submissions, were it not for the fact that we think the starting premise that is taken from the *Bené* case is wrong.

Discussion

- 18 The Court has been obliged to conduct some enquiry into its own records, which is material not produced by either party. This is not ideal but in our judgment was necessary in this case.
- 19 We start with the case of *Procureur General v Pipon, Seigneur de Noirmont*, reported at *Ordres du Conseil* Vol. 4 1771–1812 page 475. In this case the defendant, condemned to give up possession of land known as Le Boulevard at St Aubin on which he had caused a building to be constructed, appealed against the judgment to the Privy Council. On 4th May, 1803, the Order in Council shows as follows:—

“His Majesty having taken the said report into his royal consideration, was pleased, with the advice of his Privy Council, to approve of what is therein proposed, and to order, as it is hereby ordered, that instead of the judgment pronounced by the Royal Court of the Island of Jersey on 18th September 1801, the following judgment be entered, viz “that the use of the said spot called the Bulwark, belongs to the public, and that the building erected thereupon by the Appellant be removed” whereof the Bailiff, and Jurats of the Royal Court of the Island of Jersey, for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.”

- 20 The report from the Committee of the Privy Council for the affairs of Jersey and Guernsey describes the appellant, the Seigneur of Noirmont, in defending himself against the action, as having produced various proofs and evidences to establish his right of property to the said Bulwark and to show that both he, and his predecessors the Lords of Noirmont, had always been in quiet and uninterrupted possession of that land, and at different times exercised various acts of ownership thereon without any opposition whatsoever. It is clear that the Attorney General adduced some evidence himself. The first point of interest is that the Order in Council does not explicitly give direction as to ownership, but does give a direction as to the use of the area in question; but the major point is that the Crown accepted the concept, no doubt already well established by then, that land could be the subject of public use which amounted to ownership either because the building erected by the appellant was ordered to be removed or because the Attorney General by the evidence produced had otherwise established that point. As is often the case with older Orders in Council, the detail is not entirely apparent.
- 21 There is no doubt about the power of the King at that time to make Orders in Council as to the ownership of land. That was of long standing. The report in 1861 of the Commissions appointed to enquire into the civil, municipal and ecclesiastical laws of the Island of Jersey described the tenures of land in the following way at page viii:—

“The basis of the law of real property in Jersey is the general feudal law, as qualified by local circumstances, but much less altered by legislation than in England...The sovereign is the feudal lord paramount of the entire soil of Jersey, comprising an area of about 40,000 acres, at the highest estimate, and divided into numerous manors.

There are no tenures by special custom of particular manors. The customs of these several manors are nearly uniform; so that what is evidence of the customary law in one manor is in most cases evidence of the custom in others. There are no copyholds in the Island.

There are now in the hands of the Crown several manors, most of which belonged of old to abbeyes and priories in Normandy and Brittany, and were held by them in Frankalmoign. These latter were confiscated by Henry V in the beginning of his reign, and they have since remained in the hands of the

Crown, with the exception of some granted to mesne lords.

... on some of the manors there are common lands, upon which the tenants of the manors have certain rights, the freehold being in the lord.

With the exception of the common lands, and of such portions as the lords retain in their own hands, the lands of the several manors (for the most part extremely rich and productive) are parcelled out, generally in small portions, amongst a very numerous body of freeholders, tenants in fee, who usually cultivate their own properties and may be characterised as a thrifty, intelligent, and, for their station in life, well-educated body of persons.”

- 22 Amongst the records of the Royal Court are the contracts which have been passed before Court recorded in the public registry. Access to the earlier contracts is not easy, but the PRIDE indexing system allows one to identify contracts which have been passed since 1798 and call up scanned copies, the original books being kept securely. We have taken a few entries from the earliest records identified by the PRIDE system. On 28th September, 1799, a contract was passed between attorneys of Francois Le Maistre on the one part and Jurat Jacques Hemery, the Very Reverend Francois Le Breton, Dean, Jean Dumaresq, Connetable of St Peter, Thomas Pipon, Attorney General, and Jean Thomas Durrell, Solicitor General, authorised by Act of the States of 10th August, 1799 on the other part. The attorneys for Mr Le Maistre sold to Mssrs Hemery, Le Breton, Dumaresq, Pipon and Durrell *“pour et au nom du public de cette ile”* a house, yard, offices and gardens belonging to the vendor. It must have been a reasonably substantial property because the price involved the discharge of two quarters and three cabots of wheat rent and payment of the sum of £40,000. When it came to a description of the provisions for giving possession, proprietary possession passed on St Michael's Day 1799, but the public was charged to suffer the heirs of Roger Heriott Esquire to enjoy the property in accordance with a certain lease, receiving the rental from the heirs accordingly.
- 23 There does not appear to have been a consistent conveyancing practice at that time. By a contract dated 20th September, 1800, the public transacted with His Majesty. The contract was passed on behalf of the public by Thomas Pipon, Attorney General, and Josué Pipon, Solicitor General, and Jean de Veulle, the Greffier of the Royal Court (the office of the Greffier of the States was not created till more than a century later). On this occasion, the Attorney General, Solicitor General and Greffier sold a house and *outbuildings “for and in the name of the States of this Island”* even though the marginal entry describes *“the public”* as having been the transacting party. When the contract later describes the *provenance* — the title — it is described in translation in this way *“which house, offices, land and appurtenances presently sold are part of a purchase made by the States for and in the name of the public from Francois Le Maistre, by his Attorneys, by contract of 28th September 1799”* — the contract just mentioned above. The Attorney General, Solicitor General and Greffier were authorised to pass contract by Act of the States of 10th May, 1800.

- 24 On 30th December, 1801, Jean Dumaresq, Attorney General, Josué Pipon, Solicitor General, and Jean du Veulle, Judicial Greffier, having been duly authorised by Act of the States of 10th May, 1800, to pass the contract before the Court, sold "*pour et au nom du public de cette ile*" to Mr Clement Guillaume, the ancient grain market for a price of £8,266, 13 sous and 4 deniers. The marginal index shows the transaction between "*Le Public & M Clement Guillaume*".
- 25 On 11th December, 1802, Thomas Le Breton, Attorney General, Josué Pipon, Solicitor General, and Jean de Veulle, Judicial Greffier, having been duly authorised by Act of the States of 3rd November, 1801, sold to a Mr George Picot "*pour et au nom des Etats de cette ile*" an amount of seven quarters and four cabots of annual wheat rente.
- 26 The first conclusion to be drawn from these various extracts is that the obvious distinction there is today between lands owned by the Crown and lands owned by the people of Jersey is one that has existed for a long time. The Order in Council of 4th May, 1803, shows that His Majesty accepted then the concept that land, or the use of land, could belong to the public of the Island. It is of interest to note that "*the public*" is not defined. The nature of ownership does not change when one Jersey resident dies and another one is born. In other words no member of the public has any form of personal ownership interest in the land which is owned on behalf of the public, nor in the asserted corporation named "*the public*" such that makes that interest capable of alienation. There is no individual interest in the land or in "*the public*" which can be disposed of by will sale or gift or be the subject of licitation.
- 27 It is equally true that it is not the case that any member of the public can act on behalf of the public in relation to land which is owned by the public. At the end of the 18th century, it required an Act of the States to authorise the Crown Officers to pass a contract on behalf of the States or on behalf of the public. It seems to us that the different approaches taken to conveyancing expressions at about that time show that "*the States*" and "*the public*" were interchangeable. These transactions of course were not even thirty years after formal recognition of the authority of the States as appears by the Order in Council of 1771 approving a code of laws for the Island and confirming that laws adopted by the States in future would, if given royal assent, have the force of law. Today, the Attorney General and Greffier of the States pass contract "*for and on behalf of the public of the Island*" only because they are so authorised by the States by virtue of Standing Order 168(5).
- 28 It is important to distinguish between the rights of the administering authorities and the rights of the owner. Today, the States have resolved that Jersey Property Holdings is the administering authority for publically owned land. Different bodies have been appointed by the States at different times for this purpose. We note from the contract of 11th December, 1802, that the sale of *rente* (which was and is of course, real property) was organised by the committee for the hospital, presumably to raise money for hospital purposes. The requirement for authorisation for the sale of the real estate shows that the rights of

ownership in the real estate in question, whether it be *rente* or land with or without buildings, vests in the States. In our view, the expression “*pour et au nom du public de cette ile*” or “*for and on behalf of the public of this Island*” is merely descriptive of the obligations which attach to the States by virtue of their ownership of real property — lest any particular grouping of States members should think from time to time over the centuries that they have some personal interest in the land as States members, the opposite is the case. They are members of the States and the States own the land for the benefit of the public.

- 29 It is not right to describe that arrangement as a form of trust in the modern sense. “*The public*” is not an identifiable class of beneficiaries in the sense that all of them might get together and bring the trust to an end on the adoption of the principles in *Saunders v Vautier* (1841) 4 Beav. 115, which enables the *cestui que* trust to achieve just that objective. On the contrary, “*the public*”, in this context, is a concept and not a class of beneficiaries. The States own the land for public benefit because the States represent the democratically elected government of this Island, which exists for the benefit of all. At the time that the conveyancing expression was developed, it is possible that the concept of the States having a corporate status in law, at least for these purposes had not been routinely identified as such; but that is what the States has, as do the parishes. That is no longer the case and there are numerous examples, such as Article 3 of the Roads Administration (Jersey) Law 1960 which sets out the circumstances in which “***it shall be lawful for the States to acquire such land by compulsory purchase on behalf of the public***”.
- 30 It follows that “*the public*” is not a charity for the purposes of Article 5 of Schedule 5 of the Law. It is not a corporation, association or a trust. It is not even the owner of the property in question, and it has no income. Accordingly, the supply of the service — the lease in question in this case — is not a supply by a charity. It is a supply by the States, the owner of the land, which, in their capacity as owner, authorise particular members or officers to transact in the land on their behalf.
- 31 For the reasons which we have given, we respectfully disagree with the approach taken by Le Marquand, Judicial Greffier, in *Bené Limited v Hanson and Shelton*, and others (supra) when he concluded that the public of Jersey was the owner of real property, although it was under administration from elected representatives, namely the States of Jersey. We therefore respectfully agree with the Master when his instincts led him to the view that the public was not a “*corporate body or legal entity*”.
- 32 We recognise the strength of the submission that if a matter is arguable, then it is one fit for trial and not one for summary judgement or strike out. Nonetheless, in this case there appears to us to be a short cut to what would otherwise be time consuming and potentially expensive litigation. So often can it be said that the better known is a particular expression in law, the more difficult it is to find any authority for it. In this case, the use of the expression “*the public*” is one that has grown up over the centuries and it appears to us to be a conventional description for property which is owned by the States on behalf of the Island community. Accordingly we take the view that it is right to uphold the decision of the Master, albeit on slightly different grounds, so as to bring what would otherwise be time consuming

and expensive litigation to a speedy end, because the outcome is obvious. We do not consider the applicant's contentions that "*the public*" is a corporation separate from the States for the purposes of property ownership is seriously arguable.

33 We also add that it seems to us that the second ground for the Master's decision was in our view correct. He held that the income from property acquired "*for and on behalf of the public*" was not exempt from income tax by virtue of Article 115(a), (aa) or (ab) of the Income Tax Law. We agree with that. If our primary conclusion is right the States clearly do not apply income tax to their own income. That would be absurd, because their own income would be taxed for the purposes of paying money to themselves. However, even if it were not conceptually absurd, Article 115(c) of the Income Tax Law expressly indicates that the States are not liable for tax on their own income. There is no doubt that the income from properties held for and in the name of the public accrues to the States, and such income is not taxed, not because "*the public*" is a form of charity, but because the States of Jersey income is free of tax.

34 For all these reasons the decision of the Master is upheld and the appeal is dismissed.