

Jersey & Guernsey Law Review – February 2014

LETTER TO THE EDITOR

Dear Sir,

1 The February issue of the *Jersey and Guernsey Law Review* reported among the Case Summaries the decision of Thompson, Master in *Treasurer of the States v Pearce*,¹ which considered the nature of the Public, that is, the entity which appears in French conveyances as *Le Public* and in English as the Public, as opposed to the general public, that is, the individuals who collectively make up the population.

2 In his judgment the Master cited the following passages from *Bene Ltd v Hanson*,² in which Le Marquand, Greffier said (at 324)—

“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 transacts 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 Committee³ will administer the relevant piece of real property.”

The Greffier continued (at 325)—

“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

¹ [2013] JRC 206.

² 1995 JLR 323.

³ At the date of this judgment, the composition of the States was regulated by the States of Jersey Law 1966, under which committees of States members discharged the functions analogous to those discharged at the present day by Ministers.

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 that rather than 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 be in many ways be viewed as 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.”

Having cited these passages, the Master continued—

“I have referred to the above because I agree with Judicial Greffier Le Marquand that the origin of contracting in the name of the Public of the Island of Jersey is shrouded in mystery. I also agree that the likely rationale for this was to draw a distinction between the Crown on the one hand and Jersey’s Island Government on behalf of the general public of the Island. I further agree that the Public of the Island of Jersey has no mind or will independent of that of the States of Jersey. Just as Judicial Greffier Le Marquand found it difficult to distinguish between the Public and the States of Jersey for the purposes of determining whether documents were within the possession, custody or power of the public, I find it very difficult to distinguish between the Public of the Island of Jersey and the States of Jersey when dealing with immovable property. What is less clear to me is 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. However, the distinction does not matter for the purposes of the submission made to me.”

3 The *Bene Ltd* analysis seems to suggest that at some unspecified date the States took an unrecorded decision to create a sort of property holding company (“the nominee of the States of Jersey”) and call it the Public, while the *Pearce* analysis remains undecided whether the Public is a “corporate body or other legal entity” or alternatively a mode of holding

property for the States. Neither the speculative suggestion in *Bene* nor the doubt expressed in *Pearce* seems necessary in the light of the acceptance in *Parish of St. Helier v Manning*⁴ of the concept of the *commune*, that is, the community which has a corporate identity independent of its inhabitants, and which acts through its elected representatives.

4 In *Parish of St. Helier v Manning*, Sir Frank Ereaut, Bailiff cited with approval the following passage from Pothier, *Traité des Personnes et des Choses*⁵—

“Les corps et communautés établis suivant les lois du royaume, sont considérés dans l'Etat, comme tenant lieu de personnes; car ces corps peuvent, à l'instar des personnes, aliéner, acquérir, posséder des biens, plaider, contracter, s'obliger, obliger les autres envers eux.

Ces corps sont des êtres intellectuels, différents et distincts de toutes les personnes qui les composent. C'est pourquoi les choses qui appartiennent à un corps n'appartiennent aucunement pour aucune part à chacun des particuliers dont le corps est composé; et en cela, la chose appartenante à un corps, est très différente d'une chose qui serait commune entre plusieurs particuliers, pour la part que chacun a en la communauté qui est entre eux. Par la même raison, ce qui est dû à un corps, n'est dû aucunement à aucun des particuliers, dont le corps est composé. Le créancier de ce corps ne peut donc point exiger de chacun des particuliers de ce corps ce qui lui est dû par le corps. Il ne peut faire condamner au paiement que le corps; il ne peut faire commandement qu'au corps, en la personne de son syndic ou procureur; et il ne peut saisir que les effets qui appartiennent au corps.

Cela a lieu, lorsqu'il n'y a que le corps qui contracte seul la dette. Par exemple, lorsqu'une ville, par le ministère de ses maires et échevins, fait un emprunt; lorsqu'un hôpital, par le ministère de ses administrateurs, contracte quelque engagement.”

5 The conclusion to which this authority led Sir Frank was that—

⁴ 1982 JJ 183.

⁵ 1827 edn, at 84–85.

“We are in no doubt that a Parish is to be treated as a Corporation, having a legal entity separate from that of its parishioners. It has perpetual succession, and it can transact in property through its officers. Its individual members have no legal interest in the property itself.”⁶

6 It is difficult to see why the Public should not likewise be regarded as a corporation of this kind, and in the past the States seem so to have regarded it. In an Act of the States of the 24 July 1602, setting up the Public Registry, to which my attention was drawn by former Registrar of Deeds, PJ Bisson, there appears a reference to *ceste Respub: de Jersey*. The paragraph in which this appears begins with the words *Pouraultant que aucune Comunaulté ny Respub: ne se peult maintenir*”.

7 The fact that in 1602 the States regarded the Island as a *communauté* or *république*, as it is clear from the context that they did, lends support to the view which I have expressed above that Le Public is, in Pothier’s words, a *communauté . . . tenant lieu de personne* to which the States stand as *syndic ou procureur*. Far from the States transacting in name of the Public, as the *Bene* and *Pearce* judgments suggest, the Public transacts through its representatives, the States.

Yours faithfully,

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⁶ *Parish of St Helier v Manning*, at 193.