LETTER TO THE EDITOR

Dear Sir,

1 I have been given sight of Advocate Falle's letter casting doubt over the validity of the 2015 contract between the Crown and the Public of the Island, and take this opportunity of responding to it. I was, until recently, Head of Conveyancing in the Law Officers' Department. This is not an official response, but represents my personal views as an experienced conveyancer.

2 I would begin by reiterating the words contained in the 2015 contract which transferred "all such title rights and interests of the Crown in right of the Bailiwick of Jersey in the hereditaments set out hereunder".

3 It follows from this clear wording that the Crown only transferred that which it had the right to transfer. If any of the Seigneurs of the maritime fiefs can produce a document which proves his or her proprietary title to the foreshore between the low and high water marks, then these areas were not transferred in the 2015 contract.

4 The disparaging remarks contained in the letter concerning the standard of conveyancing are unjustified. The conveyancers drafted the contract in accordance with instructions, and the content was based on the advice and guidance set out in the records of successive Crown Officers. The form of the contract reflected the unique and unusual nature of the property transferred. It would have been impracticable to establish boundaries and jointures all around the Island.

5 As to the validity of the contract, I would comment as follows—

(1) If two contiguous properties are owned by the same proprietor they form one single *corpus fundi*. It then follows that, as the seabed and the foreshore are contiguous and were both owned by the Crown, they formed only one *corpus fundi*. This would remain true even if some of those strips of foreshore co-extensive with the maritime fiefs belonged to a third party.

(2) Article 21 of the *Loi (1880) sur la propriété foncière* deals with contracts of two or more *corpora fundi* and their hypothecation and is irrelevant to the 2015 contract.

(3) The words "*sous peine de nullité*" and "*separément*" were deleted from the final sentence of art 21 by the *Loi (2000) (Amendment No 4) sur la propriété foncière.*

4 The assertions that the 2015 contract is in breach of art 21 are therefore unfounded.

5 The "*Extentes*" are inventories of the assets of value, mostly comprising *rentes*, which produced a financial return for the Crown. It does not necessarily follow that the Crown has no title if a particular parcel of land is not listed.

6 The letter goes on to quote selective extracts from archaic laws to support the writer's arguments. The extract from the *Loi (1882) sur les parcs à huitres*, when read in the context of the whole law, deals with concessions to establish oyster parks on the foreshore and refers to the owners of and the extent of those concessions. It has nothing to do with the proprietary ownership of the foreshore.

7 The reference in the letter to the unambiguous statutory recognition of legal boundaries between the Crown and private fiefs extending over the foreshore in the *Loi (1894) sur la coupe et la pêche des vraics* is mistaken. The wording quoted, which was deleted in 1926, gives reference points on the foreshore which relate to the boundaries between the fiefs on land. It provides no evidence as to the proprietary ownership of the foreshore.

8 It is interesting to note that the form of words taken from art 18 of the *Loi (1882) sur les parcs à huitres* quoted in the letter, and which refer to rights over the foreshore and not proprietary rights in the foreshore, are similar to those used in two contract leases: first, the lease dated 24 March 1894 by the Crown to the Jersey Swimming Club of a section of the foreshore at Havre des Pas for the construction of a swimming pool and, secondly, the lease dated 9 July 1921 by the Crown to the Croft Granite, Brick and Concrete Company Ltd of the foreshore between the high and low water marks at Ronez. The reference to rights, as in the 1882 law, could not have meant proprietary rights as these clearly belonged to the Crown as lessor. It is also worth noting that until the Seignorial Rights (Abolition) (Jersey) Law 1966, the property described in a contract would always be referenced as being situate in a certain fief. In neither of the above mentioned contract leases is the fief mentioned, clearly indicating that the foreshore thereby leased did not form part of a fief.

9 It is unfortunate that this contentious matter, which has been the subject of polarising views for many years, was not aired more fully and resolved by the Royal Court in the case brought by Les Pas Holdings Ltd against the Crown and the States. The parties chose to settle. The situation is not helped by the highly selective use of extracts from archaic laws and the conflation of rights over the foreshore with proprietary rights in the foreshore. The letters section of your

publication is not in my respectful view the place to try to resolve this matter.

Yours faithfully,

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