



CYMA Petroleum (CI) Limited v The States of Guernsey
Court of Appeal
4th February, 2015

JUDGMENT
05/2015

Appeal against the judgment of the Royal Court dated 15 September 2014 dismissing an appeal against a judgment of the Court of Alderney dated 6 June 2014.

Approved Text
04.02.2015

IN THE COURT OF APPEAL OF GUERNSEY

CIVIL DIVISION
Civil Appeal No. 482

4 February 2015

Before:

Sir Richard Collas
Sir David Calvert-Smith
David Anderson QC

Between:

CYMA PETROLEUM (CI) LIMITED (“the Appellant”)

v

THE STATES OF GUERNSEY (“the Respondent”)

Advocate for the Appellant: **A M Merrien**
Advocate for the Respondent: **J Hill**

COLLAS, JA

1. This is an appeal against the judgment of the Royal Court (Lieutenant Bailiff Hazel Marshall sitting without Jurats) dated 15 September 2014 dismissing an appeal against a judgment of the Court of Alderney dated 6 June 2014.
2. From 1995 until 2005 the Appellant operated an aviation refuelling business at Alderney airport. The central issue in the appeal to the Royal Court was whether, as a matter of law and fact, the Alderney Court had been correct in refusing a declaration that the States of Guernsey had granted to the Appellant for a period of 21 years a lease or licence or other right to occupy an area of land at Alderney airport including, from 2001, an area on which stood a temporary building or portacabin acquired by the Appellant and used by it as offices in connexion with the refuelling business. The Appellant also sought to appeal certain factual findings concerning damage caused to, and items removed from, the portacabin following the cessation of its refuelling operations. Further, the Appellant challenged the Court of Alderney’s refusal of an account of rents received in respect of the portacabin after it ceased

to be used by the Appellant. On those issues, the Lieutenant-Bailiff upheld the Court of Alderney's decisions and her judgment is being challenged in this appeal. She also set aside an order that the States of Alderney may remove the portacabin if it were not removed by the Appellant within a period of 28 days; the States of Alderney was not a party to the proceedings and there is no challenge to that part of her order.

3. The States of Guernsey is involved because it is the operator of the Alderney airport although the land at the airport is in the ownership of the States of Alderney. (The operation of the airport is one of the so-called transferred services in Alderney for which Guernsey undertook responsibility as part of the arrangements for the re-establishment and ongoing operation of certain infrastructure and public services in Alderney after the end of the Second World War.)
4. Further particulars of the facts relating to the matter are set out in commendable detail in the judgment of Marshall LB and there is no need to repeat them in full in this judgment.

Right of Appeal from the Court of Alderney to the Royal Court

5. The right of appeal against a decision of the Court of Alderney in civil matters lies to the Ordinary Division of the Royal Court by virtue of Section 2 of The Court of Alderney (Appeals) Law, 1969, which provides as follows:

“2. (1) Subject to the provisions of subsection (2) of this section, there shall be a right of appeal to the Ordinary Court from any decision of the Court made on or after the appointed day in relation to any civil matter.

(2) An appeal shall not lie to the Ordinary Court under this Part of this Law –

- (a) from any decision which it is provided, under any enactment, is to be final;*
- (b) without the leave of the Court, from any order made with the consent of the parties or as to costs;*
- (c) without the leave of the Court or of the Ordinary Court, where the value of the matter in dispute does not exceed the sum of twenty-five pounds unless there was in contest a question of law.”*

6. Marshall LB said in paragraph 43 of her judgment that the test to be applied on an appeal from the Court of Alderney to the Royal Court was common ground between the parties:

“To interfere with the decision of the court below, the appellate court must be satisfied either that the lower court erred in law (i.e. legal principle), or that there was no sufficient evidence to support a material finding of fact. This is because the question whether or not there is sufficient evidence to support a finding of fact is, itself, a question of law. The application of this latter principle is often described as there being “no evidence” to support a finding of fact. However, to treat that literally is misleading, because the test is not that of “no” evidence but of “no sufficient evidence”.”

7. She then proceeded to define the test by reference to an appeal from the Court of Alderney to the Royal Court in 1985:

“44. As to what is sufficient evidence, the parties are again agreed that the test is described in Hawkins v Greenwood 2 GLJ.57, as being

“the court would not interfere with the findings of fact made by the court below unless it was satisfied that there was no evidence before the court upon which it could reasonably have arrived at those findings

of fact, or that it was for any other reasons the findings of fact of the court below were perverse” (emphasis added).

The point which I fully accept and adopt, is that the issue for the appellate court is whether the findings of fact made by the court below are conclusions to which that tribunal could reasonably have come on the basis of the evidence before it, whether or not the appellate court itself agrees with those conclusions or would have made the same findings.”

8. The test in Hawkins was laid down in the Royal Court by the then Bailiff, Sir Charles Frossard who clearly had in mind the approach adopted by the Court of Appeal to the findings of fact of the Guernsey Jurats in an appeal from a first instance decision of the Royal Court. That test was set by the Court of Appeal in Guille v Mackay (14 June 1967), in the leading judgment delivered by Le Quesne, JA at page 5 of the printed report:

“Now it seems to me that when this court is dealing with an appeal from a trial conducted by the Bailiff and Jurats in this way, it is proper for the court to approach the Jurats’ findings on a question of fact in the same way as the Court of Appeal in England would approach the findings of a Jury in an appeal in a civil case which had been tried by a Judge and a Jury, that is to say, it seems to me that our approach should be that we will not interfere with the findings of fact made by the Jurats unless we are satisfied that there was no evidence before them upon which they could reasonably have arrived at those findings. I should perhaps add, in order to cover any exceptional case which may arise, that it will also be proper for this court to interfere if we are satisfied that for any other reasons the findings of the Jurats were perverse.”

9. Hawkins was cited with approval and followed by Day L B in Courtney and others v Alderney Building Company (1992) Ltd reported as a Note at 2003-04 GLR N [17] (the full judgment is Number 15 of 2004). Having reviewed the authorities cited above and including Martel v Wilkinson (Court of Appeal 4.4.1991, Appeal number 140), Mersey Docks and Harbour Board v Proctor (1923) AC 253 and Coghlan v Cumberland (1898) Ch 704, he said (at paragraph 11 of the full judgment):

“11. All those authorities consistently identify the test to be applied in civil matters, by the Court of Appeal to factual findings of Jurats in the Ordinary Court as that of perversity. There can be no justification for applying a different test to appeals from the Court of Alderney to the Ordinary Court; indeed the relevant statutory provisions are in effect the same. Therefore I respectfully concur with the statement of Sir Charles Frossard in Hawkins, that the test of perversity is that to be applied by the Ordinary Court on appeals from factual findings of the Court of Alderney.

12. Perversity is a question of law and not of fact (see for example Beloff JA in Walters v States Housing Authority 24GLJ.76 at p.46 E to F). That being so, the Ordinary Court is correctly composed of a judge alone in such appeals, notwithstanding that on some previous occasions, at least, Jurats have sat with the judge.

13. For completeness, I would add that until 1993, it had been the invariable practice of the Royal Court, sitting as a Full Court on appeals against conviction in the Magistrate’s Court, for the Jurats to be part of the appellate process. That practice came to an end with the cases of Diment and Whales, when the perversity test came to be clearly identified. As Harman LB subsequently stated (in Blondel (No. 2) at p. 2H):-

“For the Appellant to succeed on an issue of fact it is necessary to show that the verdict of the Magistrate was one at which he could not properly have arrived.”

14. *I accept, however, the force of Mr. Richardson’s submission that it may be easier for an appellate court to analyse the evidence in the lower court of a documentary nature, and thus identify perversity, than it is when the evidence is wholly oral and credibility is in issue.”*

10. At the start of his judgment, Day LB had said that he wanted to address the issue of the composition of the Royal Court, not because of any dispute between counsel but in order to be satisfied that the Court was acting lawfully. He added: *“Moreover, I understand a determination on this matter might be of assistance to practitioners in the Bailiwick generally.”* Although Marshall LB had not been referred to Day LB’s judgment in Courtney, she was clearly following the same approach and was, in our view, wholly correct to do so.
11. At the commencement of the hearing before us, Advocate Merrien raised the same issue. He did so, not because of any dispute between the parties, but to enable us to be satisfied that Marshall LB had acted correctly and indeed lawfully by sitting alone. It would appear that the Court of Appeal has not been asked to address the issue expressly since the decision in Courtney. We are grateful to have the opportunity to confirm, for the benefit of practitioners and the judiciary, that it is correct for the Royal Court to sit without Jurats when considering an appeal from the Court of Alderney (and also from the Court of the Seneschal or of the Magistrate’s Court) in civil matters on the ground of an error of law or of an error in a finding of fact. (We were not asked to address what would be the position if the appeal was by way of rehearing and thus can express no definitive view but it must be the case that in a rehearing involving issues of fact, the Royal Court would have to be constituted with Jurats unless the presiding Bailiff were to order that he would sit alone under section 13 of The Royal Court (Reform) (Guernsey) Law, 2008.
12. Advocate Merrien sought to draw a distinction between, on the one hand, an appeal on the ground that there was **no** evidence to support the finding of fact made by the lower court and, on the other hand, an appeal on the ground that there was **some but not sufficient** evidence to support the finding of fact. In our view, no such distinction can properly be drawn in the context of this case.
13. There is a single test to be applied by the appellate court, it is as cited by Marshall LB from the judgment in Hawkins, quoting from the Court of Appeal in Guille and later reaffirmed by this Court (in respect of appeals from findings of fact of the Royal Court) in cases such as Martel and others v Wilkinson (11 GLJ 13), Smith v Slawther (1998), 25 GLJ 59 and Stone v Hickman [2007-08] GLR Note 23 namely that the appellate court would only interfere with the decision of the Jurats if it was satisfied that there was no evidence before the Jurats on which they could reasonably have arrived at the findings under appeal, or that for some other reason those findings were perverse.
14. Further helpful guidance as to the approach to be adopted by an appellate court to the findings of fact of a lower court was recently delivered by the Judicial Committee of the Privy Council in Beacon Insurance Co Ltd v Maharaj Bookstore Ltd [2014] 4 All ER 418 (on appeal from the Court of Appeal of Trinidad and Tobago). In that case, the test was expressed by Lord Hodge to be whether *“the judge at first instance had gone ‘plainly wrong’”* (at page 423g), a phrase which he said *“does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts”*. In the context of this case we see no difference between the *“plainly wrong”* test and the test we have cited above but if it is sought to argue that there is a difference, the test to be followed in this Bailiwick should be as we have formulated it. The reason for drawing attention to Beacon is to assist in describing the method of analysis that is to be adopted by the appellate court when it *“is required to identify a mistake in the [lower court’s] evaluation of the evidence that is sufficiently material to undermine [its] conclusions”* (per Lord Hodge at page 423j).

Right of Appeal from the Royal Court to the Court of Appeal

15. The Court of Alderney (Appeals) Law, 1969 does not provide for any further right of appeal from the Royal Court to the Court of Appeal. Such further right of appeal is conferred by Part II of The Court of Appeal (Guernsey) Law, 1961 which created the general right of appeal against decisions of the Royal Court in civil matters.

The Grounds of Appeal

16. In the present matter, the grounds of appeal were set out in the Notice of Appeal dated 16 October 2014:

“1. In relation to the Order of the Court of Appeal the grounds are those which were set forth in the Appellant’s notice of appeal against the order of the Court of Alderney dated 21st June 2013.

2. In relation to the Order of the Royal Court, the Appellant contends that the decision of the Royal Court was wrong in law for the reasons set out in the notice of appeal against the order of the Court of Alderney.”

17. Despite the requirement of Rule 8(h) of the 1964 Rules that an Appellant shall file “a statement setting out the contentions to be urged and the authorities to be cited by the appellant in support of his appeal”, the Appellant failed to do so and merely relied on the Skeleton Argument prepared for the hearing in the Royal Court, without filing any submissions in respect of the Lieutenant Bailiff’s judgment. When asked by the Deputy Registrar, pursuant to a direction from this Court, to file a brief resumé of the passages in the Lieutenant Bailiff’s judgment with which the Appellant took issue, a Skeleton Argument was filed on its behalf which, after two introductory paragraphs stated:

“3. The Appellant contends that the Royal Court has erred in law. In effect the Royal Court upheld the findings of the Court of Alderney in relation to whether there was a lease, licence or right to occupy and in relation to matters concerning the portacabin. In this respect the Royal Court found there was sufficient evidence in each respect and that the Court of Alderney had been entitled to reach its decision. The Appellant contends that for the reasons previously advanced the decision of the Court of Alderney was flawed and accordingly the decision of the Royal Court was flawed.

4. For the greater part the appeal concerned whether there was no sufficient evidence upon which a reasonable tribunal could have come to the conclusion it did. The judge of the Royal Court found there was such evidence. The Appellant contends that this is wrong for the same reasons as were advanced in the appeal to the Royal Court. Thus the Appellant contests the findings upheld by the Royal Court, in particular at paragraphs 76, 84, 100, 106 and 112, and the findings in support of these paragraphs. The grounds and reasons mirror those in the submissions filed before the Royal Court.”

18. We will therefore focus on the itemised paragraphs of the Royal Court judgment identified by the Appellant.

19. In paragraphs 76 and 84, Marshall LB rejected the Appellant’s claim that it had been granted some right of occupation of an area of land at Alderney airport for a 21year term; paragraph 100 related to the appeal in respect of the claim for compensation for damage caused to the Appellant’s property stored in the portacabin at the airport; and paragraphs 106 and 112 set out the reasons for rejecting the grounds of appeal in respect of the claim for damage to the portacabin itself.

20. In his oral submissions, Advocate Merrien placed a heavy emphasis on the Lieutenant Bailiff's interpretation of the Court of Alderney's decision. The Court of Alderney had said there was "No evidence": "...that any lease had been signed..."; "...of damage to the portacabin, nor were any estimates to the cost of any repairs"; or "...to substantiate the values placed upon the contents of the Portacabin". The Appellant's criticism was that in each case there had been some evidence adduced by the Appellant, either in the oral evidence of Mr Michaelides including the written statement he had produced in advance of the hearing and which he adopted and confirmed in his oral evidence or in the documents produced to the Court. Advocate Merrien said the natural meaning of the words "there was no evidence" indicated that the Alderney Court had ignored, and failed to take into account such evidence that had been adduced.
21. In reply, Advocate Hill submitted that it was important to take account of the fact that the Court of Alderney is a lay court, in the sense that none of the Jurats are legally qualified. Marshall LB summarised his submission at paragraph 46:

"46. *He submits that it is therefore important to look at the substance of the court's decision and its ultimate conclusions, rather than focus too exactly on the reasons which are expressed, and which may be infelicitous, especially to the eyes of a trained lawyer. One should consider whether the ultimate finding is "wrong" in the sense of not being a finding which could reasonably be justified on the basis of all the evidence which was before the court and the submissions made, rather than examining, over-critically, whether the reasons expressed for any such finding were fully sufficient to justify it. Therefore, he submitted, it is not sufficient for the Appellant to complain that the court below had apparently failed to take into account some matter in reaching its findings as expressed, without also showing that the court below could not have come to the particular conclusion on the basis of other available evidence.*"

22. She then explained how she approached the judgment:

"47. *I accept the point that I am dealing with a decision of a lay tribunal, and that I should accordingly be careful to interpret it fairly, with that point in mind. However, I am not satisfied that the principle can be stated quite as forcefully as Advocate Hill would have it. The danger in that (as Advocate Merrien submits) is that it risks leading the appellate court into the error of substituting its own judgment for that of the lower court.*

48. *With regard to any complaint that the lower court failed to take any matter of evidence into account, the first question must, in my judgment, be whether, in all the circumstances that seems to have been the case. However, I accept that Advocate Hill is correct in that such a finding alone is not sufficient for success in the appeal, and the appellant must then go further and show that the decision of the lower court was thereby affected, and was flawed as a result. What course the appellate court will then take must depend on the particular circumstances, and also, in a case such as this in particular, its recognition that decisions of fact are matters for the lower court. If, therefore, the appellate court is able to conclude confidently that the matter allegedly not taken into account either would not have affected the lower court's actual decision, or was bound to have affected it in a particular way, it can give effect to that conclusion. If it is unable to say whether and if so how, consideration of the matter not taken into account would have affected the findings of fact in the case, then the position is more*

difficult, and the court might have to remit the case back to the court below for further consideration.”

23. Later, at paragraph 72 of the judgment, the Lieutenant-Bailiff gave a further explanation of her approach when considering an alternative basis of the Appellant’s claim to some right of occupation of the land from 1995; that is to say as an alternative to her finding that the lower court had been correct in concluding that there was no formal written lease or written agreement granting a right of occupation for 21 years. She said:

“72. *This depends on what the outcome would or might be if the Court had considered the evidence and made express decisions on those alternative bases. If I am able to reach a confident conclusion as to what their decision must necessarily have been, then, whether that would be favourable or adverse to the Appellant, I can make a determination of the point now, accordingly. If I can only conclude that upon such consideration the Court might have reached a different conclusion, favourable to the Appellant, then it would almost certainly be appropriate for me to remit the case back to the Court of Alderney to make, or make clear, its determination on those further points. One frequently finds it said, in appeal decisions, that if the appeal court is in as good a position as the court below to exercise a discretion or make a judgment which is required but has not been made, then it can do so at the appeal level. That, however, is where both courts comprise legally qualified judges. Bearing in mind the nature of the Court of Alderney, and the principle that decisions on matters of fact are for the Court below and not for this court, I should, I judge, be scrupulous not to usurp the function of the Court below and risk substituting my own judgment of fact for that Court’s in the exercise to which I now turn.”*

24. We agree that the Lieutenant-Bailiff was correct to approach the judgment in that way. It is important to recognise that the Court of Alderney is a lay court. The Jurats were sitting with the Greffier who is an Advocate of the Royal Court but she did not retire with them and, Advocate Hill informed us, their normal practice is that she does not do so. It would appear that the judgment was written by the Jurats themselves, without any assistance from the Greffier. Litigants are entitled as of right to a reasoned judgment so that they may understand how the decision has been reached and in particular whether there is any flaw or error in the decision making process that should be challenged on appeal. Further, it is important that an appellate court may also understand the judgment so that it can decide whether or not to reverse or interfere with the decision.
25. In this Court, we are not concerned directly with the judgment of the Court of Alderney; our immediate task is to review the Lieutenant-Bailiff’s decision. Only if we were satisfied that she has fallen into error would we then have to look at the consequences of that error by examining the first instance judgment in more detail to decide whether any error had a material bearing on her decision.
26. Marshall LB’s lengthy judgment is a model of clarity in which she set out with care each of the issues she was addressing, together with the parties’ respective submissions and also explained in detail her approach to each issue. There is no difficulty in following her reasoning and consequently any error of law or any flaw in her approach would be capable of being detected. As she said, she had to take care not to usurp the function of the lower court as the finder of fact having heard and read all the evidence. We are satisfied that she did not do so and that she did not substitute her own judgments of fact for those of the Jurats.
27. In his oral submissions to us, Advocate Merrien was asked to identify any such errors and flaws. His principal criticism was in respect of the Lieutenant-Bailiff’s interpretation of what the Court of Alderney intended when it said there was “*no evidence*” of a matter or issue. In

several places, she said that she understood them to have meant that there was “*no evidence which could, in fact, suffice to found a finding of fact...*” (paragraph 76) or “*there is no possibility that the court could reasonably come to the conclusion that ...*” (paragraph 84) or “*absence of other convincing evidence..*” (paragraph 94) or “*it is impossible to say that there was no evidence to support its finding, or that it was one to which it could not reasonably have come*” (paragraph 100).

28. In our view, the approach adopted by the Lieutenant-Bailiff was reasonable and justified. She reviewed with care the lower court’s findings based upon the evidence to which they had referred, including both documentary evidence and oral evidence. She looked to see what evidence, if any, the court might have overlooked which, if it had been overlooked, could have led to a different conclusion. We agree that the judgment of the lower court has to be viewed as a whole and in the context of the hearing as a whole. The Alderney Court had before it the parties’ pleadings, a large amount of documentary evidence and witness statements and the Jurats had heard the oral evidence of the parties over two days as well as the summing up of counsel at the conclusion of the case. As Marshall LB correctly acknowledged in paragraph 50 of her judgment, it was a case that involved some difficult legal and evidential issues but the central issues were clear and they were addressed by the Court of Alderney.
29. Advocate Merrien was asked to give specific examples of where the Appellant criticised the reasoning of Marshall LB in relation to her dismissal (at paragraphs 76 and 84) of the ground of appeal that the Court of Alderney had been wrong to find there was no agreement of a right of occupation for 21 years. It might have been expected that the Appellant would have pleaded particulars of when the alleged agreement was reached but it had not done so with the result that it is difficult to establish from the pleadings and the written evidence precisely when the agreement was alleged to have been concluded. Indeed the Appellant’s case appears to have shifted somewhat during the course of the proceedings.
30. In his oral submissions, Advocate Merrien identified a letter of 16 June 1995 as being the evidence that, prior to that date, there existed an agreement that had been concluded orally. However, that letter is silent as to the duration of any agreement, other than that there would be a rent free period of two years. In relation to the term of the lease or other right of occupation, he relied upon Mr Michaelides’ oral evidence that agreement had been reached for a 21 year term; a period that Mr Michaelides said was to be “*implied*”. Neither in the pleadings nor in the witness statement exchanged prior to the hearing had it been alleged that the term was to be implied. The only evidence as to why it might be implied was that a similar period had been agreed with Shell to provide aviation fuel elsewhere and that it might be considered customary in the industry. In our opinion, that is not a criticism that can be justifiably laid against the Lieutenant-Bailiff’s reasoning in paragraph 78 where she was concentrating on the written evidence and documents.
31. He also criticised her conclusion in respect of rent. The 16th June letter said that after the two year rent free period, rent of 60 pence per sq. ft. would be charged for the land occupied by the Appellant. Evidence was given that rent was indeed paid but only from 2001 and only in respect of the land on which stood the portacabin housing the Appellant’s administration offices. No rent was ever paid in respect of any land occupied by, for example, the refuelling bowsers. Advocate Merrien’s explanation to us was that the failure to charge the rent mentioned in the 16th June letter resulted from an oral variation of the agreement as a consequence of the States of Guernsey later seeking to negotiate a new site for the Appellant’s operations within the airport or on adjoining land, in respect of which no conclusion was reached.
32. There had also been discussion in the lower court as to whether the monies had been paid by way of a concession fee, but by the end of the hearing there seemed to be no dispute that no concession fee was charged; the only payment was a rent for the site of the portacabin. In our opinion, the Appellant’s contentions in respect of the rent fall a long way short of identifying any fault in Marshall LB’s reasoning.

33. In paragraph 80, the Lieutenant-Bailiff addressed the issue as to whether there was ever an agreement as to the precise location of the area of land that the States might have agreed the Appellant could occupy; she concluded there was not. Advocate Merrien submitted that the occupation of the portacabin was evidence of an arrangement agreed between the parties. That is so, but it is not suggested that the Appellant's operations on the airport and its presence on the premises were unauthorised or illegal. Clearly they were not. The refuelling operation was conducted with the approval of the States of Guernsey as the airport operator (until the refuelling ceased). However such arrangement is not sufficient to establish an agreement for 21 years in the terms alleged by the Appellant. Again, the Lieutenant-Bailiff's decision is beyond criticism.
34. In relation to paragraph 81, Advocate Merrien contended before us that if the Alderney Court was not satisfied that there was an agreement for 21 years, it could substitute some other period. However, he accepted that such a submission had not been advanced previously and that he had not asked the lower court to make a declaration in those terms.
35. Regarding the quantum of damages in respect of the contents of the portacabin, Advocate Merrien submitted that it was wrong for the Lieutenant-Bailiff to have interpreted the court's finding of "*no evidence*" as "*an absence of other convincing evidence*". The evidence of the sum claimed by Mr Michaelides was in a Schedule attached to the *cause*, in Mr Michaelides written statement, and in his evidence in chief. He was cross examined on the values at some length wherein he admitted that one figure of £700 should read £70 and was further questioned as to whether he was claiming the replacement cost of the items as new, their original cost or their value at the date of damage. On such a straightforward factual issue, the Court of Alderney formed its own view, as Marshall LB said, and it was entitled to decide whether to accept Mr Michaelides' evidence or not. We agree with the Lieutenant-Bailiff.
36. In relation to the damage to the portacabin itself, the Lieutenant-Bailiff again examined the lower court's decision with care, having regard to all the evidence. Advocate Merrien's criticism is that she substituted "*no sufficient evidence*" for "*no evidence*" but as we have said, we are of the view that it was reasonable for her to have done so in interpreting the judgment of the lay court.
37. As regards the order sought in respect of a schedule of rents received by the States after the cessation of the Appellant's operations at the airport, the Lieutenant-Bailiff stated that by the time of the hearing in the Royal Court, the States of Guernsey had examined its records and found that no such rents had been received by it and therefore the point had become academic and otiose. Advocate Merrien did not pursue the issue before us and therefore we do not need to address it.
38. We are satisfied that Advocate Merrien has strenuously argued every point he could have raised but we have concluded that his criticisms of the Lieutenant-Bailiff's judgment are unfounded. We have dealt with all the issues that were raised before us in some detail. Some other matters were raised before Lieutenant-Bailiff Marshall which in our view carried less weight and, had they been argued in this appeal, we are satisfied that they would not have caused us to change our decision.
39. For the reasons we have given, we dismiss the appeal.

CALVERT-SMITH JA

I agree.

ANDERSON JA

I agree.