

1981/11  
29th June, 1981

Her Majesty's Attorney General

-v-

La Solitude Farm Limited

The defendant company in this action is a company which has owned for a considerable amount of time, La Solitude Farm in the parish of St. Martin. There it grew a large quantity of potatoes. After a time, and finding the prices offered by the merchants under the system which then operated for the disposal of potatoes in Jersey insufficient, it began, some years ago, to sell potatoes wholesale from those premises. To that business, some five or six years ago, it added fruit and vegetables. / <sup>Some</sup> it bought locally, some it imported from the United Kingdom. That was the position when there was a disastrous fire sometime before 1977. As a result of the fire, an application was submitted after some preliminary correspondence and interviews, to the Island Development Committee for the erection of an agricultural building. Prior, as I have said, to the application itself, there had been an exchange of correspondence and in particular a letter from Mr. Wright, the managing director, or to all intents and purposes the defendant in this action, representing the company, to the Island Development Committee of the 18th November, 1976, in which, following a telephone conversation, he requested an interview with the then President of the Committee. In paragraph 3 of that letter, he said that the main purpose of the proposed shed "is for the wholesale side of our potato business, namely storing, pre-packing and preparation and allows us for any possible expansion which can be foreseen."

The first point I want to make is that if at that time, as would appear according to the evidence, the company had already, or La Solitude had, as such, already started importing fruit and vegetables and selling then from the premises, we are surprised that that matter was not made clear to the Committee in the letter of the 18th November, and the Committee could be forgiven for thinking that whatever was going to happen to the premises, the potato business was going to continue. and it is possible of course, to construe that paragraph as covering storing, pre-packing and preparation to the extent needed in the operation of a wholesale business; but that would be limited to potatoes. It might be said, of course, if one took a broad view, that the words could include the fresh fruits of the soil. Be that as it may, it certainly would not include bananas and so far as Jersey is concerned, I think it would be only the fresh fruits of the soil of Jersey, even if that letter plus the later interview on which Mr. Gould, very rightly, did not ask

ask us to place any importance (an applicant would be very unwise to seek to bind the Committee on an interview with a President which is only partly recorded and at which only he and the President were present) were taken together.

So we come back to the point that, at some stage in the company's business, it formed a company for the purpose of selling potatoes in addition to La Solitude's produce which was called "Farm Pak Potatoes" and that company was formed for that purpose.

Now the consent of the Island Development Committee was given for the erection of an agricultural building in accordance with the application. It was indeed, as Mr. Gould has pointed out, described not as an agricultural store, but a building. The proposed use of that building, or land as it was then before the building, was for potato packing, washing and grading. No mention is made there of a wholesale business, even for potatoes, or for the fruits of the soil, still less for any imported vegetables and fruit.

On the other hand, Mr. Gould has submitted that, even if those matters were not included, an agricultural building is something which could include the sale of vegetables from it. However, we think we must take the wording as it stands. In our view the words "agricultural building" means a building to be used for agricultural purposes, that is, connected with the use of the soil on the farm or even possibly, as I have said, by a liberal extension of produce in the Island, but no further.

Such right as La Solitude Farm Limited acquired for the use of the new building, stemmed, as the Solicitor General has urged, and we accept his argument which relied on English authorities and in particular that of the case of Hilliard -v- Secretary of State for the Environment and Surrey County Council (1978) J.P.L. 41, from the actual consent itself, it is quite true that Mr. Gould has pointed out to us a commentator's criticism of Hilliard's case, but we do not find it impossible to reconcile that criticism with the present case because we have taken the history of the farm as a whole. Looking at the note it says, "You therefore could argue that where you have the erection of a building within a larger planning unit" - and we stop there for a moment because there is no larger planning unit, all we have is the erection of a planning unit within a farm - " either the planning unit changes so that you have two planning units the building <sup>and</sup> / the rest of the farm or the building retains the planning history of the rest of the farm." Well, even if it did retain the planning history of the rest of the farm, and we are certainly not going to say that it did, looking at the planning history of the farm, that planning history certainly does not extend except

to a very limited use to the sale of frozen items and certain things like oil and butter and other matters which were noticed by Mr. Carter on the 23rd April. It certainly did not include those matters because they form such a minor part and a small part of the general use of that building. Now we can quite understand that Mr. Wright wants, like every other farmer, to make the best use of his land, we quite understand, indeed we must take judicial knowledge of the fact that there are difficulties in the farming life of the community, unhappily, at the moment. We are not unmindful of the sympathetic view which the Island Development Committee through its chief executive officer has shown in the course of his evidence this morning, that the Island Development Committee does allow things to happen which on a broad basis might be said to be connected with agriculture, for example, he did say that as regards the use of the two containers of frozen foods, if it was no larger than that, the Committee might not have taken action. But of course, even on the evidence of Mr. Wright, by the time Mr. Leighton had found the premises in use on the 22nd May, there were some three to four containers on it, not just one or two. We repeat that if the company wished to include the wholesale sale of imported food and items, then it should have said very clearly in its application what it intended to do. But it is perfectly true, accepting Mr. Wright's evidence, that as far as the frozen side of it is concerned, the frozen food side, that is, and the other items, it was only after they had consent that the company's mind was attracted to that side of the business because of the failure, unhappily, of the fresh food sales. Nevertheless we are satisfied that, at the time the new building became used for the wholesale business of selling frozen food, even though in bulk the potatoes still formed a substantial part profit-wise, frozen foods also accounted for a substantial amount of the business in money terms.

Therefore we are satisfied that taking the whole history of the farm even if we didn't follow, as I have said, the footnote in Hilliard's case, we would be entitled to decide that there has been an offence committed and therefore we so find, but in doing so, Mr. Solicitor, we do find ourselves in this difficulty. We do understand the difficulties of farmers. We do understand that everyone is trying to make the best use of his land possible and it occurs to us that while the defendant company ought to have known better in the sense that, legally, it was committing an offence, it may have been led to think from the correspondence and its discussions that to some extent, not to the full extent as the evidence has shown, the wholesale business was merely an intensification of what it was doing and we really say this to assist you with your conclusions.