

ROYAL COURT
(Samedi Division)

1st May, 1991 57.

Before: The Bailiff, and
Jurats Vibert and Hamon

Between: John Philip Sauvage Plaintiff

And: Agriculture & Fisheries Committee Defendant
of the States of Jersey

Advocate M.S.D. Yates for the Plaintiff.
Advocate Miss S.C. Nicolle for the Defendant.

JUDGMENT

BAILIFF: The plaintiff in this action was a pig farmer. Up to September, 1980, he farmed at "Dairy Farm", St. Mary, and for a time worked it as a general farm holding, which included pigs.

In 1960 he began to keep pigs only and to feed them on swill which he collected from various hotels. He required a licence for this operation and later when there were two places at which he was feeding pigs, "La Source", St. Ouen, and Sorel, St. John, he required two licences and obtained the necessary

licence or licences as the case required from the Agriculture and Fisheries Committee, the defendants.

Each licence contained a number of conditions. The relevant ones being these:

"5. that all waste foods are boiled on the premises referred to in sub-paragraph 4 above within 36 hours of their being required. (Note - 'boiled' means exposed for a period of at least one hour by any process to a temperature of not less than 212 degrees Fahrenheit).

This licence may be revoked:-

- (a) if the facilities for boiling waste foods installed on the premises referred to in sub-paragraph 4 above are not maintained in adequate condition; or
- (b) if there is a breach of any condition of this licence or of any provision of the Order; or
- (c) by reason of any other relevant circumstances".

His licences were renewed each year, the last occasions being in May and June, 1985.

Upon leaving "Dairy Farm" the plaintiff carried out his pig farming activities at "La Source", St. Ouen, with the permission of a Mr. Le Brocq and at the field at Sorel, St. John, which we have already mentioned, and which he had inherited from his father.

He made three unsuccessful attempts to obtain permission to build a piggery at St. John, which, he said, would cover no more than one-fifth of the four and a half vergées which comprised the field.

He also applied unsuccessfully for a bungalow and related farm buildings.

In 1983 he was allowed to put up a cattle shelter.

He boiled swill at "La Source" and took it up to feed his pigs at Sorel. Sometimes he also obtained swill (boiled) from Mr. J. Bower, another experienced pig farmer.

One of the problems of keeping pigs, the plaintiff told us, was that in summer pig farmers had excessive swill and rather than reduce the amount collected from the hotels and thus risk not keeping those hotels as customers during the winter when swill was scarce, they had to find a suitable place to dispose of their surplus. A dump was used for this purpose at St. Ouen's Bay under the control of the Resources Recovery Board as it then was called and later at La Saline.

In 1983 a charge was introduced for this service but this was later lifted. When the charge was imminent and the plaintiff and other pig breeders were warned about it, Mr. Sauvage sought and obtained a consent from the Public Health Committee, through their Chief Environmental Health Officer, on the 27th July, 1983, to dig a large trench in the Sorel field, in order to dump the excess swill there, provided he covered it sufficiently with soil and disinfected it.

At some stage the plaintiff told us that he disposed of his excess swill to another pig dealer.

In January, 1984, he was fined £100 by the Magistrate for cruelty to some of his pigs for housing them inadequately. The conviction was quashed on appeal to this Court.

The Public Health consent to which I have referred of 1983 was confirmed on the 6th August, 1985.

Condition 5 of the plaintiff's licence which we have read makes it clear that all swill had to be boiled and by inference that unboiled swill could not be buried. Thus Mr. Bastion, the Committee's Technical Services Manager at the time said that the Public Health Committee could not have been aware of the requirements of paragraph 5 of the licences issued to the plaintiff by the defendant Committee; and so there was, it seems to us, an unsatisfactory administrative position where one States Committee was issuing a set of orders and another Committee allowing a different set of requirements for the same purpose.

However, this apparent conflict and confusion does not affect the plaintiff's claim except to make him suspect, we think with some justification, that the failure to co-operate between the various Committees, particularly the Public Health Committee and the defendant Committee, resulted unfairly in the revocation of his licence.

That there was a problem of surplus unboiled swill is apparent from a Minute of the Resources Recovery Board of 25th July, 1985, when arrangements were made to receive swill direct from hotels. But this Court does not have to decide whose duty it was, (if it was a duty) administratively speaking, to see that such swill was disposed of. It has to direct itself solely

to the question of whether the defendant Committee acted properly and reasonably in revoking the plaintiff's licence.

As we have said the facility for dumping swill at La Saline eventually came to an end in February, 1985. Thereafter the plaintiff disposed of his surplus at St. John by burying it in his field. He said that in all he had dug four trenches for this purpose.

In 1985 the Resources Recovery Board were prepared to accept separated, unmixed, swill from hoteliers but not from pig breeders.

The plaintiff's several applications to build in his field at Sorel produced a number of objections from the neighbours. Those objections were supported by the then Constable of St. John.

On the 12th September, 1985, the defendant was convicted by the Magistrate of an offence under Article 5 of the Diseases of Animals (Waste Foods) (Jersey) Order, 1958, for allowing animals or poultry to have access to unboiled waste foods and was fined £75. His appeal against that conviction was dismissed on the 21st February, 1986.

For two days after his conviction the plaintiff was allowed to dispose of his surplus at La Saline which was reopened for this purpose. Thereafter he reverted to burying it until by letter of 1st October, 1985, he was notified that the defendant had revoked his licences with effect from the 31st October, 1985.

At the time of the prosecution a further application for the erection of a piggery at Sorel was pending. At the same

time as the Committee decided to remove the plaintiff's licence, it revoked that of Mr. John Bower, as we have said, a business associate of the plaintiff. The hotels from which the plaintiff collected swill were notified by letter of the 1st October, 1985.

Thereafter, the plaintiff had a meeting with the then President of the defendant Committee. That meeting is referred to in a later Minute of the Committee of the 10th October, 1985, a relevant part of which reads:

"With regard to the revocation of Mr. Sauvage's licence the President informed the Committee that when he had discussed the matter with Mr. Sauvage, he had stated that he and his family relied on the pig farming operation for their livelihood and that in addition to keeping twenty or so pigs in a field, he kept 100 pigs at Mont Vibert piggeries...." (I interpose here to say that we were told that Mont Vibert piggeries is the same place as "La Source"). "The Committee requested the Department to investigate the possibility of the issue of a licence to Mr. Sauvage for the collection of sufficient swill for Mont Vibert piggeries only, as this was a genuine operation".

As may be seen from that Minute the outcome was not successful for the plaintiff and on 21st October, 1985, Mr. T.M. Browne, on behalf of the Committee, wrote to the plaintiff as follows:

"Dear Mr. Sauvage,

Further to discussions which you and Mr. Bower had with Senator Horsfall, Peter Bastion and myself we have since explored every possible avenue to see whether some solution might be found to enable you to continue to collect waste foods after 31st October. Alas, we were unsuccessful in our efforts.

I am sure you will appreciate that the Committee will take little pleasure in having to maintain the revocation given the implications it has for your livelihood, but the Committee is charged to protect the health of the Island's substantial livestock industry and, in the circumstances,

it was perhaps inevitable that the matter would be concluded in this way.

I would add, however, that in a situation where you occupied a suitable piggery, equipped with efficient boiling facilities, the Committee would be more than willing to reconsider the situation, so I think the initiative now rests with you".

The plaintiff felt aggrieved at the Committee's decision and its subsequent refusal to review it and wrote to the then President on 30th October of that year. His letter is as follows:

"I recall that at the discussions held recently at the States Farm, Senator Horsfall stated quite clearly that he would meet Senator Le Gallais to try and sort out some solution to the problem of surplus swill and then meet Mr. Bower and myself again. Why has such a meeting fallen through? It was well known by Agriculture, Public Health and the Resources Recovery Board in March, 1985, that a serious problem was imminent with an excess amount of waste food.

I fully appreciate that the officers of Agriculture and Public Health tried to obtain a facility for the pig farmers, and I stress not just Mr. Bower and myself, but I find it despicable that knowing full well how I was disposing of my surplus swill no action was taken until the hotels closed down at the end of October, then revoking my licence.

I see this as revenge for the truth that was divulged in the Police Court hearing".

That letter was answered by the President after some delay, but not an exceptional amount, on 14th November, 1985, as follows:

"Dear Mr. Sauvage,

Thank you for your letter dated 30th October regarding disposal of surplus food from hotels and restaurants.

In your letter you refer to a meeting between myself and Deputy Le Gallais that you believe didn't take place. The

situation is that a full meeting was held at the Department of Agriculture and Fisheries between representatives of the Department of Agriculture, the Public Health Committee, the Resources Recovery Board and the Tourism Committee and the problems facing all concerned were discussed at considerable length. Unfortunately, little progress was made as the RRB maintained their position of only accepting waste if it had been drained of all liquid. Subsequent to that meeting I have discussed the matter with Deputy Le Gallais who is adamant that they will not relax their rules. He believes that draining the surplus liquid should not present problems either to hotels or to farmers, any of whom may wish to dispose of surplus food at Bellozanne.

My latest information is that a further meeting is to take place this week between the RRB and the Jersey Hotel and Guest House Association.

The second point you make refers to the timing of the actions we took regarding the licences held by Mr. Bower and yourself. I can assure you that the date of revocation was dictated by the time it took to obtain advice from the Crown Officers and then by my personal wish that you should have as much time as possible to make alternative arrangements. The date could only have been brought forward at your expense.

With reference to your final paragraph I can only assure you that I am not the sort of person who would "take revenge" as you put it, and that our actions are solely governed by our duty to safeguard animal health in the Island.

With regard to the future it will be our policy to only issue waste food licences to farmers who have recognised permanent piggeries equipped with the appropriate boiling equipment. The licences will be restricted to the use of the holder for the feeding of his own pigs and shall not be used for the collection of food surplus to his proper requirements. As Mr. Browne informed you in his letter, if at any time you are able to fulfil these requirements the Committee would consider with sympathy any application you may make".

Eventually, after attempting to bring an action drafted by himself by means of an Order of Justice the plaintiff brings this present action claiming damages from the defendant. The grounds of his claim were set out in paragraph 8 of the Order of Justice which reads as follows:

"The defendant acted improperly and in bad faith in revoking the said licence.

PARTICULARS

- (i) The defendant deliberately delayed the revocation until 31st October, 1985, notwithstanding the conviction of 12th September, 1985, which had it been a serious enough breach of licences (which is denied) would have warranted an immediate revocation.
- (ii) The conviction of 12th September, 1985, was not so serious a breach of the licences as to warrant revocation of the licences.
- (iii) The defendant desired to terminate the plaintiff's pig farming business to counter opposition to it in the locality of St. John.
- (iv) The defendant knew that the collection of unboiled waste foods by the plaintiff was a service of the Island of Jersey and notwithstanding the defendant's ability to afford the plaintiff with facilities to enable him to carry out the collection and disposal of the said unboiled waste foods, the defendant deliberately delayed in revoking the said licences until such time as alternative facilities had been arranged".

In his evidence the plaintiff said that he did not think the offence on which he had been convicted in September, 1985, was sufficiently serious to merit the revocation of his licences and that the Committee revoked them with effect from the end of October, 1985, when several hotels would have closed so that the pressure of disposing of surplus swill by the pig farmers of the Island would have abated. He had been made, he said, a scapegoat for the difficulties of the defendant and other States' Committees. The defendant owed a duty to provide proper

facilities for disposing of his and other pig breeders' surplus swill. He admitted that he could have kept boiled swill if he had had the containers and storeroom but said that he would not have followed that practice although it had been approved of by the States Veterinary Officer.

The minutes of the meeting at which the plaintiff's licence was revoked are as follows:

"The Committee was informed that Mr. J. Sauvage, of Mont Vibert Piggeries, St. Ouen, had been found guilty of breaching the provisions of the Diseases of Animals (Waste Foods) (Jersey) Order, 1958, as amended, and had been duly fined in the Court. Mr. Sauvage had been a source of concern to the Department over a number of years because his pig farming operation had been badly managed and thus constituted an animal health hazard. Accordingly, the Committee decided to revoke the licence of Mr. Sauvage to collect waste foods with effect from 31st October, 1985, in order to allow him time to adjust to his changed circumstances.

The Committee was also informed that Mr. John Bower, of Les Buttes, St. Mary, was a substantial collector of waste foods even though he was effectively no longer a producer. In practice, he collected swill and delivered it to a number of pig producers. The Committee took the view that the licensing procedure was not intended to accommodate this type of activity and accordingly decided to revoke Mr. Bower's licence with effect from 31st October, 1985.

The Finance and Administration Manager was directed to take the necessary action in this matter".

Two letters written before that date, one by Mr. Bastion and the other by Mr. Browne, suggest that taken with a draft Act of Committee dated 16th September, the officers at least had decided amongst themselves that they would advise the Committee that the licences or licence should be revoked.

We do not consider the letters and draft minutes to be more than what they say they are. Senator Horsfall, indeed, as we

have said, then President of the Committee, said that he had not seen the letter of 15th September, and the impression we got from the members of the Committee who gave evidence was that if they had in fact not revoked the licence, then the letters and indeed the draft Act would have been of no effect.

At its meeting of the 25th September, the Committee relied on the advice of its officials, that is to say the then States Veterinary Officer, Mr. Bastion and Mr. Browne. There were a number of documents produced to the Committee to enable them to arrive at a decision.

Its position was put, we think, most succinctly by Mr. Norman Le Brocq, then a Deputy and a member of the Committee. He said that the Committee had a duty in the public interest to revoke the licence, but at the same time it was aware that to do so would be to effect adversely the private interests of the plaintiff.

Mr. Dubras, likewise a former Deputy and member of the Committee said that the Committee's responsibility was to the community as a whole and that point was very much on its mind.

On 15th April, 1985, Mr. Bastion visited the field at Sorel and prepared a report on what he found. He sent that report to the Chief Executive Officer of the Committee. I read the first three paragraphs:

"On Friday, 12th April, at about midday I received a call from David Benn" (who was a neighbour) "that the smell coming from the piggery was most disturbing and that the field in question and his own field adjacent were being plagued by rats living in the nearby hedge.

I called at Norwood, St. John, at 1700 hours on the same day and inspected the site. Never in my 25 years' experience of pigs have I seen such disgusting conditions". (I interpolate here that the evidence of Mr. Bastion was

that he indeed had had a great deal of experience in pig husbandry during his professional life). "In one enclosed shed were 5 or 6 pigs living in dung and very little bedding, their ages/sizes ranged from some 8-12 weeks old, to pork size to a mature sow. The rest of the pigs were in an enclosure of some 20 yards by 80 yards. The enclosure was a morass of mud and dung some 18 inches deep. I did not count the number of pigs but estimate that there were 8-10 bacon weight pigs. The males were entire and were attempting to serve a gilt at that time. The housing was a parked 'horse box' with no bedding but perfectly dry". (That allegation is disputed by the plaintiff). "The front of the box was barricaded off and although I could not see it I was assured there was a female and litter there.

On closer inspection of the site I found inside the enclosure unboiled waste (celery and onions) but no sign of meat products".

There was some discussion as to whether it was possible to be misled in that the celery and onions, if they were cooked in the way it was suggested, would not have been recognisable as such. That is not a matter on which we can indeed spend much time.

There was some evidence given by Mr. Sauvage and no evidence to refute it, that his pigs in general were kept well in the sense that they seemed to thrive in whatever conditions they were placed and he seemed to have no difficulty in disposing of them to his markets.

However, following Mr. Bastion's visit, on the next day he wrote as follows to a Centenier of St. John (who is referred to in the report itself because the Centenier had agreed to place a watch on the premises):

"Dear Centenier Rondel,

I am writing to thank you and your officers for your co-operation on Saturday.

It was of course unfortunate that nothing developed on that day but at least the developments that have happened since then will have made it all worthwhile.

Thank you once again".

That letter gives the impression that Mr. Bastion was determined to "get" the plaintiff and even if this is not so, the choice of words was, to say the least, unfortunate, and could give a wrong impression.

On the other hand Mr. Bastion made it clear to us that unboiled swill, if not buried sufficiently deep and if picked up by birds and dropped in cattle pastures, could be a source of infection, including the spread of foot and mouth disease in cattle and vesicular disease in pigs. Although he was mistaken about Mr. Sauvage's consent given to him by the Public Health Committee to bury unboiled swill, he had good reason to be disturbed at what he found at the field.

He appeared to us later to give qualified consent to the plaintiff's application for a proper piggery at Sorel, but had reservations about the methods of pig farming which the plaintiff employed. His support to us does not indicate a determination to put the plaintiff out of business.

I now turn to the Law. The plaintiff has accepted that the defendant Committee did not act with malice. That is to say out of personal spite or a determination and wish to injure the plaintiff. But he has maintained allegations of bad faith.

The plaintiff says that that allegation has a wider meaning than mere malice. We are unable to accept this submission. Bad faith has a subjective meaning and connotes an improper motive which is we think encompassed by the two explanations of malice we have mentioned and which are found on p.673 of the 5th

edition of Wade on Administrative Law. The plaintiff says that the power was not validly exercised, therefore, he says, it was ultra vires and the Committee knew this. Professor Wade in the same work says this about the grounds upon which an action may be based for administrative malfeasance.

"The present position..." (and he is writing in 1980) "seems to be that administrative action which is ultra vires but not actionable merely as a breach of duty will found an action for damages in any of the following situations:

(1) if it involves the commission of a recognised tort such as trespass, false imprisonment or negligence; (which obviously is not applicable here).

(2) if it is actuated by malice, e.g. personal spite or a desire to injure for improper reasons;

(3) if the authority knows that it does not possess the power which it purports to exercise.

The decisions suggest that there is unlikely to be liability in the absence of all these elements, for example where a licensing authority cancels a licence in good faith but invalidly, perhaps in breach of natural justice or under a mistake of Law".

Since the publication of that work there have been two decisions of the Court which are in point and have been of assistance to us. The first is the Privy Counsel case of Dunlop -v- Woollahra Municipal Counsel (1981) 1 AB 1202; and the relevant part of the headnote of which reads:

"Misfeasance was a necessary element in the tort of abuse of public office, and, in the absence of malice, the passing by a public authority of a resolution which was devoid of legal effect when the authority had no prior knowledge of the invalidity was not conduct capable of amounting to misfeasance".

At p.1210 Diplock L, a most distinguished judge says this:

"Abuse of Public Office

In pleading in para 15A of the statement of claim that the council abused their public office and public duty Dr. Dunlop was relying on the well-established tort of misfeasance by a public officer in the discharge of his public duties". (And here I shall say that of course a public officer is not necessarily a paid public officer, a public officer is equally an elected member of a body such as a States Committee). "Yeldham J rightly accepted that the council as a statutory corporation exercising local governmental functions were a public officer for the purposes of this tort. He cited a number of authorities on the nature of this tort, to which their Lordships do not find it necessary to refer, for they agree with his conclusion that, in the absence of malice, passing without knowledge of its invalidity a resolution which is devoid of any legal effect is not conduct that of itself is capable of amounting to such 'misfeasance' as is a necessary element in this tort".

The second case is that of Bourgoin SA & others -v- Ministry of Agriculture Fisheries and Food (1985) 3 All ER 585, which qualifies the Dunlop case in that it held that malice was not an essential ingredient of the tort of misfeasance in public office, which the plaintiff alleges here, but added in that case the following remarks:

"Malice, although a possible ingredient of the tort of misfeasance in public office was not an essential ingredient since the tort was committed where a public officer either knew both that he had no power to do that which he had done and that his act would injure the plaintiff or, alternatively that he acted with malice towards the plaintiff, i.e. with the specific purpose of inflicting harm on him. Accordingly, if the requisite knowledge of the invalidity of the action was established, malice did not have to be proved".

Therefore the plaintiff in this case would have to establish the knowledge that the Committee was acting invalidly if indeed it was.

Since Miss Nicolle has conceded and the evidence shows this to us very clearly, that the Committee knew that its action

would injure the plaintiff in his livelihood, that question no longer need concern us.

The Committee made its revocation order as it did its grant of licences under the Diseases of Animals (Waste Foods) (Jersey) Order, 1958, as amended by the Diseases of Animals (Waste Foods) (Amendment) (Jersey) Order, 1971, (R & O 5513) and I do not think it is necessary for me to cite it in full. Power to make that Order is granted in general terms by Article 2 of the Diseases of Animals (Jersey) Law, 1956, and the relevant part of Article 2 is as follows:

"Provision may be made by order for the purpose of in any manner preventing the spreading of disease, and in particular but without prejudice to the generality of the foregoing...." (And then follows a number of specific instances).

In our opinion the Order was properly made in order to prevent the spreading of disease in the way we have set out and therefore, prima facie, the Committee was entitled within its powers not only to make the Order, which it did and issue the licences, but to revoke it, provided it did so: 1) without malice; 2) with a reasonable belief in the validity of the order and its powers to revoke the licences; and 3) without an express intention to harm the plaintiff.

The nub of the duty of the Committee is set out quite succinctly in De Smith on the Judicial Review of Administrative Action 4th edition at p.96, because it is clear that the Committee has a discretionary power. The learned author says this:

"Discretionary powers must be exercised for the purposes for which they were granted; relevant considerations must be taken into account and irrelevant considerations disregarded; they must be exercised in good faith and not arbitrarily or capriciously. If the repository of the

power fails to comply with these requirements it acts ultra vires".

Now we take the list of the plaintiff's complaints:

1. The defendant deliberately delayed the revocation until the 31st October, 1985, notwithstanding the conviction of 10th September, 1985, which had it been a serious enough breach of the licences (which is denied) would have warranted an immediate revocation.

The plaintiff says that the reason the Committee delayed in bringing the revocation into effect was not that it wished to help him, but that it wished him to continue collecting swill which he says was a public service in order to make it easier for itself and it timed its revocation to coincide with the end of the tourist season.

In passing we may say that we heard no evidence from anyone to inform us in fact what was generally regarded as the end of the tourist season.

The evidence, however, does not support the plaintiff's allegation. The Committee and its officers knew of the plaintiff's predicament and tried to help him by giving him time to adjust his affairs. It regarded the decision of the Public Health Committee to allow the plaintiff to bury unboiled swill as something within the purview only of that Committee.

There appears to have been a reluctance to challenge that decision but that does not exonerate the plaintiff from observing strictly the requirements in his own licence issued by the defendant Committee.

The second matter claimed is this: the conviction of 12th September, 1985, was not so serious a breach of the licences as to one revocation of the licences.

The Committee did not consider revocation solely because of that conviction, which it was if taken alone, might have been insufficient ground to revoke; but it was not the sole ground. There had been a long history of difficulties with the plaintiff and the States Veterinary Officer was most concerned at the effect of the continuation of the plaintiff's activities on the animal health of the Island. That was his major concern.

The third matter is that the defendant desired to terminate the plaintiff's pig farming business in order to counter opposition to it in the locality of St. John. Neither the defendant nor members of the committee at the time accepted that there had been any pressure upon them by local neighbours, although they knew the opposition to the plaintiff's activities and his proposal to develop the Sorel field. We were left with the firm impression that whatever the officers suggested it was the individual members of the Committee themselves who decided what to do and any interference by outside persons would not have been effective and that their main concern was to prevent the spread of disease.

There are a number of records that were kept of visits by the Committee to Mr. Sauvage's establishments. Some of them were negative, some were satisfactory, and some were by no means complimentary. It is not necessary for us to detail them fully, but taken as a whole, they justify the Committee's grounds for concern.

As early as August, 1983, the States Veterinary Officer himself was concerned about the effect of unboiled swill on the

health of animals in the island and reported to the Committee in the form of a memorandum which the Committee received on 31st August. The Committee, in that Act of 31st August, noted an Act dated 11th July, 1983, of the Public Health Committee concerning the problem of cleanliness at the piggeries operated by Mr. J.P. Sauvage at Mont Vibert, St. Ouen, and noted that the Public Health Committee had issued a notice to both Mr. Sauvage and Mr. D.P. Le Brocq under the Loi (1939) sur la Santé Publique requiring them to improve the standards and conditions at the piggeries. The Committee also received a memorandum dated 31st August, 1983, from Mr. C. Gruchy, States Veterinary Officer, concerning his visits daily from the 22nd August to 27th August, 1983, to the piggeries at Mont Vibert and reporting on the situation thereof.

Clearly, the States Veterinary Officer was worried as far back as 1983. However, not everything was negative because on the 2nd September, 1983, Mr. Tardival, who was the predecessor of Mr. Bastion, wrote to Mr. Sauvage as follows:

"The Agriculture and Fisheries Committee is anxious to try and help resolve the problems which some pig breeders are currently experiencing with the disposal of swill which is surplus to their requirements, and generally to see whether there is anything else they can do to assist this section of the agricultural industry in the running of their businesses.

As a first step Senator Shenton would like to have the opportunity personally to discuss these matters with pig farmers and I am therefore writing to invite you to a meeting at this office at 4.00 p.m. on Tuesday, 6th September.

It would be helpful if you could write or leave a message at this office saying whether or not you will be able to attend so that we may know how many to expect at the meeting".

Therefore, there were positive steps being taken.

There matters more or less rested; there were a number of visits to the premises from time to time; some were satisfactory; some were unsatisfactory, which takes us up to Mr. Bastion's long memo which I have already mentioned of 15th April, 1985.

After that memorandum there were three visits which were negative.

Subsequent visits of the States Veterinary Officer on 30th July, 1985, led to the prosecution and the conviction which I have already mentioned.

There was no mention or suggestion that the pigs themselves had been able to eat unboiled swill, it was only birds and animals.

We find the allegations under paragraph 8/3 of the Order of Justice not proved.

The fourth matter alleged is: "the defendant knew that the collection of unboiled waste foods by the plaintiff was a service to the Island of Jersey and notwithstanding the defendant's ability to afford the plaintiff facilities to enable him to carry out the collection and disposal of the said unboiled waste foods, the defendant deliberately delayed in revoking the said licence until such time as alternative facilities had been arranged".

We find that the Committee determined the question of the plaintiff's licence quite apart from the general problem of swill disposal. In our opinion, therefore, the attempt to link the two, that is to say the private matter of whether Mr.

Sauvage was carrying out his duties properly under the licences issued to him and the general problem which affected all pig farmers of the disposal of unboiled swill is not sustainable.

Accordingly, we find for the defendant and the Order of Justice is dismissed.

Authorities

- 4 Halsbury 1, para. 197.
- 4 Halsbury 1, paras. 213-4.
- 4 Halsbury 45, para. 1204.
- 3 Halsbury 30, para. 1366.
- 4 Halsbury 45, para. 1214.
- Wade: Administrative Law (5th Ed'n) p.p. 655-674.
- De Smith: Judicial Review of Administrative Action, (4th Ed'n)
p.p. 321-339.
- Emery & Smythe: Judicial Review, p.p. 87-90; 192-193.
- Roncarelli -v- Duplessis (1952) 1 D.L.R. 680; (1959) 16 D.L.R.
(2nd Ed'n) 689.
- Abbott -v- Sullivan (1952) 1 All E.R. 226.
- Dunlop -v- Woollahra Municipal Council (1981) 1 A.B. 1202.
- Bourgoin SA & ors. -v- Ministry of Agriculture and Food (1985)
3 All E.R. 585.
- David -v- Abdul Cader (1963) 3 All E.R. 579.
- Diseases of Animals (Jersey) Law, 1956, Articles 36 & 37.
- Diseases of Animals (Waste Foods) (Jersey) Order, 1958.