

ALEXANDER ROBERTSON

- v -

LA COMMISSION POUR L'ASSISTANCE PAROISSIALE A ST HELIER

DEPUTY BAILIFF: This action is brought by Mr Alexander Robertson against La Commission pour L'Assistance Paroissiale à St Helier or the Welfare Board, claiming that the Board and therefore the Constable, really, has not observed what he says is the law of this Island, namely that they were obliged, as a result of that law, to pay him a fixed amount of welfare.

The position as regards welfare or relief, as it used to be called, to persons in need in this Island goes back a long way but it is not necessary for the Court to go through the history; suffice it is to say that throughout the centuries, there has been an acknowledged duty, firstly, on the part of the parishes, and then, in the latter years, on the part of the States, to see that persons in need, whether they were born in the Island or not, did not suffer want. That implied, in assessing the degree of want, the exercise on the part of the constables of a discretion; the discretion took many forms; the discretion might apply itself to the circumstances under which the person applying found himself; it might apply to the amount of that person's family; it might apply to the amount of work that person had had; it might apply to the amount of means that person had. All these were matters which, for centuries, the constables have taken into account in the exercise of their common law discretion.

Since there were twelve constables, it followed that that discretion could vary from parish to parish and in the course of time, it became clear to the States and the constables that that was not a position which led to good government. Accordingly, the practice grew up of the constables consulting with the Finance, and later, the Finance and Economics Committee as to what should be the standard recommended scales. Now, I use the words 'standard recommended scales' advisedly because if it had been intended that they should be obligatory and compulsory, no matter what the circumstances were of the applicant, then it would, as Mr Clapham submitted on behalf of the defendant, have required a clear statute for that to be provided.

These scales were arrived at annually and are, indeed, now arrived at annually after discussions between the Finance and Economics

Committee and the constables and the scales are laid before the States in a standard form. The wording is interesting; the latest recommendation which the Court has seen is that for 1984 and, therefore, must assume it is the last one before the States, which was made before the States, and it is in the following terms:

"Report setting out the revised rates of welfare benefit from the 1st October, 1984.

The Finance and Economics Committee wishes to advise the States that it has been decided that the rates of certain welfare benefits shall be increased with effect from the 1st October as follows ..."

and then follows the list of what the benefits are and the persons who qualify in their capacity as either a single householder, a married couple, and so on, and the various ages of the persons concerned. There are also two paragraphs referring to dependent relatives and the amount of capital which is to be taken to account.

It, therefore, seems to the Court that the nub of Mr Robertson's argument is that that recommendation and the wording which was used in it ... 'it has been decided ...' means that the constables have no longer a discretion but assuming that somebody meets the criteria of what is necessary before a person qualifies for help, that that person shall receive the whole of the proposed scale without any deductions. It seems to the Court you cannot divide discretion into watertight categories - either the constable has a discretion or he has not. If he has a discretion as to whether he shall pay the full scale or not, he must also have a discretion as to what items he takes into account as to whether that scale should be reduced or not.

The issue which Mr Robertson puts before the Court is quite clear: he says that that agreement entered into between the constables and the Finance and Economics Committee, ratified by the States, has the force of law and that being so, the constables are not entitled to say "We intend to exercise discretion notwithstanding whether a person is qualified to receive benefit because of certain circumstances we know about in an individual applicant and we propose to make certain deductions in respect of the payments." We do not think that is a valid argument which is acceptable in law, we can find nothing in any statute which removes from the constables their discretion. Of course, if

certain constables exercise their discretion differently from discretion in other parishes, that would lead to a discrimination and poor government and it might then be necessary for the States to change the law but as the law now stands, we can find nothing in the argument advanced by the plaintiff which leads us to suppose that the discretion of the constables and, therefore, in this case, the Welfare Board, which is only the machinery for payment and does not take away the constable's powers as such, do not have a discretion in administering the welfare payments. Having said that, of course it is quite clear to us that if a person qualifies in every respect for the proposed scale or the proper scale as it was laid down in 1984, and all things being equal, then, of course, the constables should pay that amount but it is a far cry from saying that and saying that the constable has forfeited his discretion to examine each case on its merits and, therefore, so far as the legal issues are concerned, we find against the plaintiff; there is no obligation on the parish to have paid Mr Robertson as he claims.

However, that doesn't dispose of the matter because, even if we are correct in our ruling on the law, there still remains over the issue whether, in exercising its discretion, or his discretion through the Welfare Board, the Constable has erred in some way which would entitle the Court to interfere with the exercise of that discretion and that is something which would have to be expressly pleaded, possibly by another action, possibly by asking leave to amend the Order of Justice but in either case, it will require the assistance of a lawyer; it is a difficult matter with difficult pleadings and we noted that Mr Robertson had the advice of a lawyer in his pleadings and we therefore allocate to him a further legal aid in order that this could be done if he wishes to pursue the matter and I think that is all we need say at this stage.

ADVOCATE CLAPHAM: Could I say, Sir, as I said at the outset, in my view, if there were to be a challenge of the exercise of the discretion, that should be a matter which would be brought at the instance of the Attorney General.

DEPUTY BAILIFF: Well, I don't want to get involved in a discussion, Mr Clapham, at this stage; I merely say that if that matter is to be pursued, then Mr Robertson should have legal aid to assist him and it may be that if ^{he} gets that legal aid, that will be the view

that his legal adviser will take but I do not think we can go into it at this stage. Therefore, it follows that I am afraid all the witnesses who are in Court will not be needed today and they are discharged.

ADVOCATE CLAPHAM: May I ask for Commission's costs in the action so far, Sir?

DEPUTY BAILIFF: Is this really practical?

ADVOCATE CLAPHAM: I would ask for them, Sir; it may not be practical but I would ask for them. The Commission has gained the day.

DEPUTY BAILIFF: Well, this is a legal point which, so far, had not been tested in the Court, Mr Clapham, I'm not prepared to make an order for costs.