

5th March, 1986.

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BETWEEN Alexander Robertson APPELLANT

AND La Commission pour l'Assistance  
Paroissiale à St. Helier RESPONDENT

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**MR. FENNELL:** This is an application by La Commission pour l'Assistance Paroissiale a St. Helier (the Welfare Board) to strike out an appeal by the appellant, Alexander Robertson, on the ground that the appellant has failed to comply with Rule 8 of the Court of Appeal (Civil)(Jersey) Rules, 1964, in that he has not, within the four months' period specified in the rules, lodged with the Judicial Greffier four copies of the contentions to be urged and the authorities to be cited by the appellant in support of his appeal.

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The relevant background to the matter can be summarised quite shortly.

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Mr. Robertson launched proceedings against the Welfare Board which, in short, alleged that he had not been paid the proper amount of welfare benefit under the appropriate law of 1908. The point which arose for decision was whether the benefits were payable in the discretion of the Board or whether there was an absolute entitlement. The matter was heard by the learned Deputy Bailiff on the 3rd September, 1985, who determined that there was a discretion and, accordingly, decided the point against Mr. Robertson.

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He specifically left open the point which had not been argued, namely, whether the Board had exercised its undoubted discretion properly. Mr. Robertson was dissatisfied with that decision of the learned Deputy Bailiff and he served notice of appeal on the 25th September of 1985.

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Thereafter, the matter became governed by the Court of Appeal (Civil)(Jersey) Rules, 1964, and Rule 8, in particular, which specified the documents to be provided for the use of the Court. This appeal turns, in short, on a construction of Rule 8(i)(f) which obliges the appellant, within a specified time, to lodge with the Judicial Greffier four copies of - and 1 read -

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"The contentions to be urged and the authorities to be cited by the appellant in support of his appeal."

The form in which the appellant, Mr. Robertson, chose to draft his notice was this:

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"The plaintiff will contend that the Connetables do not have discretion but only limited latitude and authorities cited shall be as follows:

1. Hon. Justice Hoffmann Q.C.;
2. Mr. T. Turvielle-Petre Lit. M.A., Lecturer in English., University of Nottingham."

A Mr. Clapham has argued that such a notice does not set out the contentions to be urged and certainly does not provide the authorities to be cited. He has referred me to the case of Shales -v- Jersey Granite & Concrete Limited, (1967) J.J. 755, reported in the Court of Appeal and I read from the leading judgment in that case at page 767 where the learned President said this:

B "We add a word upon a point of procedure which may be useful in the conduct of future appeals. Counsel on both sides in this appeal put in written cases setting out their submissions with some elaboration. It is obvious that a good deal of time and trouble had been devoted to the preparation of these documents. We desire to say that a considerably shorter document will constitute compliance with paragraphs 1(f) and (3) of Rule 8 of the Court of Appeal (Civil)(Jersey) Rules, 1964. It is necessary only to set out the contentions of the party in summary form and to annex copies of the authorities to be cited."

C Mr. Clapham, in short, says that the proper meaning of the words 'contentions to be urged' is, in effect, points to be argued in support of the appeal and the words 'authorities to be cited' means a reference in sufficient detail so that the reader of the document can follow and understand the case law and the statutes relied upon.

D I am satisfied that the notice which was drafted by the appellant, Mr. Robertson, fails to comply with Rule 8 (1)(f). The form in which he has set out his contentions and the authorities is simply not adequate as he, with a moment's reflection, will appreciate. In my judgment authorities to be cited requires a reference to the case to be relied upon, together with such information as will enable the reader of the document to identify which case is concerned. Merely to refer by name to a judge and to give no indication of the case from which the authority is supplied is neither helpful nor adequate in the context of Rule 8 (1)(f). So far as Mr. Turvielle-Petre is concerned, I express no view as to whether any opinion by him would be admissible or relevant. But Mr. Robertson will seek to rely on his opinion and has produced a letter supporting his contention as to the meaning of the word 'discretion'.

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H But the position then arises that Mr. Robertson has chosen, by the way in which he has drafted his notice - and I use this advisedly - to keep up his sleeve the true extent and thrust of the argument, the contention and the authority which he is going to provide. On the other hand if I accede to Mr. Clapham's submission, the effect of it will be that, at an interlocutory stage, Mr. Robertson will be shut out from arguing the substance of his appeal. That would be undesirable. Although it is not necessary for the purpose of deciding this case, I am satisfied that Rule 10 would enable the Court to make a declaration that the notice was inadequate and, accordingly,

**A** been deemed to be abandoned. But it seems to me that, particularly with a litigant in person, however experienced he may be and however many times he may have been before the Court, it is infinitely preferable for the case to be disposed of as a hearing of the substantive appeal.

**B** Thus I have to consider whether I should accede to Mr. Robertson's application for time to be enlarged under Rule 16(1) so that he can put his tackle in order. I believe that, though it may, in fact, prolong this appeal, which is undesirable, it would lead to a proper and fairer determination of the real issues in the case, if I were to give such leave under Rule 16(1) and, accordingly, I accede to Mr. Robertson's application. I allow a period of seven days in which he shall draft a further notice, setting out the arguments that he intends to advance and shall support his arguments and contentions by any authorities in law, with proper references so that those authorities can be identified by reference to the case, the report and the place in the report where the dicta of the judge upon which he relies can be established.

**C** Now, Mr. Robertson, would you stand up? Do you understand what I've decided?

**D** **APPELLANT:** Fully, Sir, yes.

**E** **MR. FENNELL:** Now, you are being given an indulgence. I want you to respect the indulgence. You will have seven days in which to put down on paper exactly what you are going to advance, the authorities - that is the cases that you are going to rely upon and to identify them and the passages that you rely on. Do you follow? Now, it may be that that simply involves only the two matters which you have referred to in the course of the argument this afternoon, in which case, no problem arises; but I warn you, if you trespass outside the matters that you have put down in that further notice which you must file within seven days, then the Court will not be so indulgent again.

**F** **APPELLANT:** Yes, Sir. May I request something further, Sir? Our most excellent library next door is closed for renovation, where do I pursue the books on law?

**G** **MR. FENNELL:** No. You have had four months in which to prepare your case. I am going to allow you only another seven days because you are being given an indulgence by the Court. In any event, Mr. Robertson, I believe you have thought out your arguments and prepared your case ready to argue it fully. Do you follow?

**H** **APPELLANT:** I follow, Sir.

**MR. FENNELL:** Very well.

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**APPELLANT:** Thank you.

**MR. FENNELL:** I will make no orders for costs; they will be reserved to the hearing of the Court of Appeal.

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