25th September, 1986.

COURT OF APPEAL

Alexander Robertson -v- La Commission pour l'Assistance Paroissiale à St Hélier

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President: J M Collins Esq., Q C.

PRESIDENT: The States' minutes of the 21st August, 1984, record that the Finance and Economics Committee, by Act dated the 8th August, 1984, had presented a report setting out revised rates of welfare benefit from the 1st October, 1984, and that the States ordered that such report be printed and distributed. By that report, the Committee advised the States that it had been decided that the rate for welfare benefits should be increased with effect from the 1st October, 1984, from £39 to £41.25 in the case of a single householder. Other provision was made in the case of applicants falling into different categories.

That figure of £39 had itself been the subject of similar treatment in 1983 and had been set for the year October 1983 to October 1984; this was the procedure which had been followed for some years.

By proceedings brought in the Samedi Division of the Royal Court and heard on the 3rd September, 1985, the appellant asserted that the respondents had failed to pay him benefit from November 1983 until June 1984, and then had paid him weekly sums which fell short of those set by the report for the year in question. His claim was for a continuing loss and he informed this Court that he has been in receipt of the full rate from the 17th February, 1986. This was, we were told by the appellant, the date from which an electricity pre-payment meter was installed in his house at the cost of the parish of St Helier and up to which the respondents, who are the appropriate body for paying benefit to the appellant, paid his electricity bill direct to the Jersey Electricity Company. We were shown a letter, dated the 14th February, 1986, by which it was confirmed that the parish would defray those costs.

Initially, the appellant had been refused assistance but he had taken the matter to the Constables' Supervisory Committee in June 1984 and this committee advised the constable that, in its opinion, the appellant was eligible to receive welfare benefit.

It was, indeed, after this process that he received benefit at the rates of which he complained in these proceedings.

It does not appear that the Supervisory Committee advised that benefit should be backdated to November 1983. It was conceded by the appellant that the Supervisory Committee did not advise the rate at which benefit was to be paid from June 1984, although it was the function of that committee both, where it thinks appropriate and if called upon to do so, to advise as to eligibility and as to amount.

When the appellant's action came before the Court of first instance, it became apparent that in the forefront of the issues between the parties was the question as to whether the report to the States, to which I have referred already, gave the appellant a right to benefit at the rates referred to or whether the constables for the twelve parishes in the Island retained a discretion as to the payment of benefit in general and as to the amount of benefit to be paid in particular in the case of any individual applicant.

The appellant's case was pleaded on the basis that it was enough for him to show payment at a rate less than that set in the report and that case did not assert that a discretion had been improperly exercised. Accordingly, the learned Deputy Bailiff, now the learned Bailiff, rightly, in my view, granted legal aid to the appellant so that he could be advised as to the proper procedure by which that further issue could be raised and to pursue any appropriate remedy in that regard. The proceedings were kept alive in that respect by an order contained in the Order of Justice that the issue as to whether the respondents had erred in the exercise of discretion would be adjourned to another day. I express no view as to whether it will be appropriate for this issue to be raised by amendment in these proceedings or as to whether separate proceedings should be instituted and at whose instance, or, indeed, as to the identity of the proper parties to such proceedings.

Accordingly, this Court is concerned solely with the issue determined by the Samedi Court as to the existence of discretion. The appellant raised four matters by his notice of appeal. First, it appears that, by a letter of the 28th July, 1985, written to the Bailiff, the appellant had asserted that the parish and the Welfare Board was in contempt of an order of the Royal Court of

the 7th June. To this letter, the Deputy Bailiff replied by letter of the 30th July, expressing the opinion that payment was at the discretion of the constable and that, accordingly, in his view, there was no contempt. It is contended by the appellant that the learned Deputy Bailiff had thereby pre-judged the issue. I do not consider that there is any merit in this ground. The appellant did not raise the matters at the trial although he knew both of the facts relied on and of the contention which it was open to him then to raise. Furthermore, the matters in issue, depending as they do upon the custom and procedure adopted in this Island, would be bound to have been within the personal knowledge and experience of any Court sitting here, so that, while preserving a proper judicial approach and readiness to consider the matter afresh, no Court could be expected to approach the issue free altogether from any preconceived idea.

The learned Deputy Bailiff, in a careful judgment, has considered the contentions advanced by the appellant and, in my view, has properly adjudicated upon them. I refer to the following passage in the judgment of the learned Deputy Bailiff, which the appellant accepted accurately set out the contentions which he raised before the Samedi Court. The learned Deputy Bailiff said this: "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 ..." (and then he quotes words which include the phrase, '... 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 deduction."

The second ground of appeal, which the appellant has raised, contains his contention that he was not allowed to outline his action as provided for in Rule 1 of Part 7 of the Royal Court Rules, 1982, made under the Royal Court (Jersey) Law, 1948. This Rule provides as follows: "At the hearing of a civil action, where any party intends to adduce evidence, he or if he is represented by an advocate his advocate shall, before adducing such evidence, be entitled to open his case to the Court." The appellant accepted that he addressed the Court for some considerable time, his first estimate was one of thirty minutes but he did not disagree when Advocate Clapham, who appeared for the respondents, both at first instance and in this Court, gave his estimate of one and a half hours.

The appellant had subpoena'd certain witnesses and he was told that their evidence was not relevant to the issue to be determined by the Court and it may be that there is some confusion in his mind on this score. It is not, of course, a ground of his appeal in this case that he was not permitted to call such witnesses. Further, it is to be observed that the appellant does, on occasion, need to be reminded of the particular issue upon which he is addressing the Court and, to this extent, it would not be surprising if the Court of first instance may have felt the need, at times, to prevent him from introducing irrelevancies into his argument. I consider that the issues were properly considered by the Court below and I, accordingly, find no substance in the second ground of appeal.

The third and fourth grounds can be taken together. They are, first, that the constables do not have discretion but only have restricted latitude and, secondly, that the law is, in itself, the complete discretion. The appellant was unable to criticise the following passage from the judgment of the Court delivered by the learned Deputy Bailiff and, indeed, that passage was supported by the respondents. I am quite satisfied that it correctly sets out the historical background to the administration of welfare benefit in the Island; in the course of delivering the judgment of the Court, the Deputy Bailiff said this: "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 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 are 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," and then the learned Deputy Bailiff goes on to use the phrase "as to what should be the standard recommended scales" and, of course, it is not accepted by the appellant that they are rightly described merely as recommended scales.

"These scales were arrived at annually," continued the learned Judge, "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," and the learned Deputy Bailiff then went on to refer to the procedure by which matters are laid before the States and ordered to be published, to which I referred at the start of this judgment.

It is to be observed that the learned Deputy Bailiff used the words 'standard recommended scales' and that he did so in the sense that those scales did not have the force of statute. It is clear from later passages in his judgment that the Court considered these to set the level at which, prima facie, the benefit was to be paid and at which an applicant could legitimately expect to be paid, all things being, in the Deputy Bailiff's words, equal.

The appellant himself concedes that the constables have a latitude to adjust the sums to be paid, for example, where there are other sources of income or in the case of certain stoppages; but he contends that there is no right to make any adjustment in the case of direct payments to third parties, for example, public utilities, for the benefit of the applicant in question, without that applicant's consent. He further contends that the constables do not have a complete discretion or, to use his words, an uncontrolled power of disposal. It is to be observed that the learned Deputy Bailiff said that - and here I quote 'all things being equal'- the constables should pay the amount but he said that that was a far cry from saying that the constable had forfeited his discretion to exercise each case on its merits. It was not, therefore, part of the conclusions of the Samedi Court that, to use the appellant's phrase again, payment could be made or withheld at the

constable's whim.

We were told by Mr Clapham that, from the early 19th century, the States have taken eventual responsibility for payment to non-natives so that these become a charge on the general exchequer. In the case of native-born Jerseymen, however, the payments remain a charge on the parish rate and are not re-imbursed by the States. The report of the Finance and Economics Committee, to which I have already referred, does not differentiate between these two classes of applicant but, clearly, the States has an interest in the setting of rates for relief and can be expected to budget for them, having regard to their liability in the case of non-natives. The Finance and Economics Committee was the successor, in this respect, to the Public Health Committee which, itself, in 1946, succeeded to the Comité pour l'Assistance Publique.

I am quite satisfied that the discretion vested in the constables has survived the practice of setting a rate of relief, reporting that rate to the States and publishing it by order of the States as described above. I base this conclusion upon the following grounds: first, that the report and the decision of the States to publish do not have statutory force; they are, I conclude, an administrative act of government. Secondly, the constables had, for many years, an established right and, indeed, duty to exercise a discretion in relation to their responsibilities in the parish which, as I have already observed, bears the cost of the relief in the case of natives. Thirdly, that the constables could only be deprived of this right by force of law and cannot be deprived by an administrative act. Finally, in this respect, I would add that I am quite satisfied that there was no contract between the constables and the Finance and Economics Committee when the rates were set. A contract can only come into existence where there is a mutual intention to enter into binding contractual relations. Agreement by different organs of government and administration to follow a particular course does not, of itself, satisfy this test.

The administrative discretion vested in the constable is one which has to be exercised properly so that where, for example, a constable can be shown to have taken something into account which should not, on any view, have been taken into account, or to have failed to take into account something which he should have taken into account, the Court will have jurisdiction to interfere. It will not, of course, have power to substitute its discretion for

that of the constable. It would not be lawful, in these circumstances, for the constable to exercise his powers capriciously or to reduce or refuse payments out of some personal prejudice.

It would not be right for us to seek to summarise the history, or that part of it of which we are aware, of the appellant's disputes with the parish; I note only that they have already resulted in litigation and have apparently involved the intervention of the Attorney General. I have formed no view as to whether, either in these or other proceedings, the appellant can succeed in an assertion that there has been a misuse of discretion of such a nature as to call for intervention by the Court, or indeed, at all. I do, however, think it right to say, in view of the arguments which have been placed before us, that I consider it to be a proper exercise of discretion to make direct payments for the benefit of an applicant for relief, for example, to public utilities, and to make an appropriate and proper reduction in the cash sum paid to him where circumstances make this appropriate. I reject the appellant's contention that consent of an applicant is a necessary pre-requisite for the exercise of discretion in this way. Such requirement, it seems to me, would not be in the interest either of the applicant or of the parish.

Accordingly and for these reasons, this appeal will be dismissed.

Judge Fennell: I agree.
Judge Chadwick: I agree.

PRESIDENT: We make no order as to costs.