

175.

ROYAL COURT

18th October, 1989

Before: Commissioner P.R. Le Cras,  
sitting as a Single Judge

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Between: **Kenneth Ancrum Forster** Plaintiff

And: **Harbours and Airport Committee  
of the States of Jersey** Respondent

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Appeal by plaintiff against a decision of the Petty Debts Court of the 15th March, 1989, dismissing the plaintiff's summons seeking to:

- (1) declare the respondent's notice to quit served on the plaintiff on the 23rd June, 1989, null and void; and
- (2) allowing the plaintiff's summons to be brought out of time.

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Advocate P.C. Sinel for the plaintiff  
Advocate S.C.K. Pallot for the respondent.

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## JUDGMENT

COMMISSIONER LE CRAS: This appeal arises on the failure of the appellant to serve a notice on the Committee through the Viscount as provided first by Article 2 of the 1946 Law and more recently by the Petty Debts Court (Jersey) Rules, 1977.

In dealing with the point on procedure the learned Judge in the Petty Debts said this:

"I must find that even if the summons was served within time it was not served as the rules required, 'Personal Service' - by the medium of Viscount, and left with the Greffier of the States of Jersey as is laid down. That summons was therefore "informe". In other words the purported summons was not in truth a summons in the sense required by the rules, and so by law.

It must follow that the States Committee was not "fait assigné", according to the 1946 Law. And as the statute, unlike the rules, does not afford the Court a discretion, as appears clear from D'Esterre's case, it must follow again that the plaintiff's case must fall on this point."

It is clear from this that the learned Judge found that he had no discretion in the circumstances. On looking at the 1946 Law it is clear that this originally required service by the Viscount under Article 2 and it is equally clear to our mind that this was a statutory requirement. However, the 1948 Royal Court Law extended to the Petty Debts Court by the 1967 Law Reform Law had the effect that the legislature gave to the Superior Number the power to make rules of Court. Put another way, the control over its procedure was handed over by the States to the Courts. But in 1967 there were rules the Petty Debts Court made and the present rules, the 1977 rules, prescribe a method of service in this case. The rules have been removed from the statute, as it would seem, into the rules and in my view they are no longer statutory rules as they were before 1967.

Mr. Pallot has contended that the Petty Debts Court is a mere creature of statute and cannot therefore look beyond its rules and he refers to the absence of a rule equivalent to Rule 7/7 of the Royal Court Rules in the Petty Debts Court Rules. We are not prepared to accept that argument. It seems clear to us that the Court must be in charge of its own procedure. The rules, however widely drawn, cannot cover everything and there must be an inherent jurisdiction over procedure.

It was put in this way by Mr. Sinel that the Court is a creature of statute but that the Judge is not a creature of rules. The object of the rules, in our view, must be as stated from the passage at Halsbury's Laws of England (4th Edn.) Vol. 37 paragraph 14: ..."to do justice between the parties and to secure a fair trial between them".

We order, therefore, that the case be remitted to the learned Judge of the Petty Debts Court; that he be advised of the findings of this Court that he is wrong in holding that he has no discretion and finding in consequence that the plaintiff's case must fall on this point. He must therefore re-hear this point.

Taxed costs to the appellant. It may well be that the appellant may have difficulty with his costs in the lower Court. On the other hand he is here only because we found the lower Court made a wrong decision, and therefore this part of it cannot really be laid at his door, Mr. Pallot. In those circumstances I think it right that he should be awarded taxed costs of and incidental to this appeal today.

Authorities cited:

D'Esterre Jerome McCarthy -v- Richardson (1961) 253 Ex 118.

Pritchard -v- Deacon 1 Ch. (1963) pp 502-527.

Baker -v- Palmer QBD Vol. 8 (1881-82) pp 9-12.

Hamp-Adams -v- Hall 2 KBD (1911) pp 942-945.

Halsbury's Laws of England (4th edn.) Vol. 37 paras. 14, 25 and 30.

Royal Court (Jersey) Law, 1948.

Loi (1946) Concernant l'Expulsion des Locataires Réfractaires.

Petty Debts Court (Jersey) Rules, 1977.

Loi (1919) sur la location de bien-fonds.

Loi (1902) sur la Cour pour le recouvrement de menues dettes.