

ROYAL COURT

3rd May, 1990

62.

Before: The Deputy Bailiff, and
Jurats Coutanche, Vint, Hamon,
Gruchy, Le Ruez, Vibert & Herbert

In re: the doléance of the Harbours and
Airport Committee of the States of Jersey
arising from the decision of the 18th
December, 1989, of Commissioner P.R. Le Cras
sitting as a Single Judge of the Inferior Number
of the Royal Court hearing an appeal against the
decision of the Petty Debts Court Magistrate
of the 29th March, 1989, under the "Loi (1946)
concernant l'expulsion des locataires réfractaires".

Advocate C.E. Whelan for the Applicant Committee,
Advocate P.C. Sinel for K.A. Forster.

The Court was requested to decide as a preliminary matter the first
of the two questions set out below:

- (i) Does the Superior Number have the jurisdiction to entertain a Doléance in the present circumstances?
 - (ii) Assuming an affirmative answer to question (i), should the Superior Number grant the relief requested by the Representor in the present circumstances?
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JUDGMENT

DEPUTY BAILIFF: The Court does not feel able to answer question (i) in isolation. The words "in the present circumstances" in both questions indicate that the facts and evidence relating to this cause or matter are relevant to both questions. To answer question (i) in the affirmative would require at least a preliminary decision on the facts. If the Court were to find a prima facie case in order to enable it to answer question (i) in the affirmative, it could be said to have gone a long way towards answering question (ii) in the affirmative which could be unfair to the respondent. We shall therefore hear all the remainder of both parties' submissions before deciding either question.

However, during our deliberations the question has arisen whether the doléance procedure is in any event available to a Committee of the States. The authorities submitted to us all appear to refer to individual grievances. A doléance was always brought by remontrance, a procedure available only for a 'tort personnel'. Mr. Sinel came close to addressing the question when he argued that the Committee had not suffered a wrong, but he did not address the question head on.

Mr. Whelan has treated the Committee as an individual throughout. Therefore, when next we sit on a date to be fixed in Chambers and we note that both counsel have accepted that the Court will be properly constituted with any five or six of the seven Jurats sitting today, we shall expect to be addressed on this point to complete so to speak the addresses on question (i) and expect counsel to go straight on to deal with question (ii).

Authorities cited:

- Court of Appeal (Civil) (Jersey) Rules, 1964 (R & O 4561) Rule 2(1).
Royal Court (Jersey) Law, 1948: Article 14.
Royal Court (Amendment No. 4) (Jersey) Law 1988: Article 10(c) - Powers of Commissioners.
Royal Court Rules, 1982 (as amended) Rule 3/6.
Loi (1946) sur l'expulsion des locataires réfractaires: Article 2(1).
Loi (1902) sur la Cour pour le recouvrement des menues dettes (Appels) - the headnote and preamble; and Article 2.
Petty Debts Court (Jersey) Rules, 1977: Rules 3(a); 4(a) and 17.
pp. Iiii-IV Report to Commissioners appointed to inquire into the Civil, Municipal and Ecclesiastical Laws of the Island of Jersey (1861); p.p. Iiv (Doléance); paras. 2872, 2873, 4496-4498 inclusive, 9534 and 9535.
Le Gros: Droit Coutumier de l'Ile de Jersey p.22.
Poingdestre 'Lois et Coutumes' pp. 235-237.
The Practice of the Privy Council in Judicial Matters: Safford & Wheeler (London) 1901 Part II pp. 228-231.
Maxwell on the Interpretation of Statutes (12th Ed.) pp. 153 and 154 "The Presumption against ousting established jurisdictions".
Dalloz: Lexique de termes Juridiques 5th Ed. p.36 "Assignment".
Harraps (1940) French English Dictionary p.257 "se faire".
The Inherent Jurisdiction of the Court (1970) 23 Current Legal Problems p.22 et seq.
Doléance Wiles re. Comité d'Assistance Publique (1939) 13 C.R. 14.
Re. Doléance Barker (1985-86 JLR 284).
D'Esterre femme McCarthy -v- Richardson (1961) 253 Ex 118 (Reported in the "Tables des Decisions de la Cour Royale" 1959-1963) on pp. 68 and 69).
Ex. p. Charles Nicolle (1879) V. App. Cas 346 (PC).
O'Brien -v- O'Brien (4th April, 1989) Jersey Unreported.
Bradshaw -v- McCluskey (1976) JJ 335.
R -v- Northumberland Compensation Appeal Tribunal ex parte Shaw (1952) 1 All ER 122.