Royal Court - Superior Number

11th November 1991

Before: Mr. V. A. Tomes, Deputy Bailiff,
Jurat the Hon. J. A. G. Coutanche
Jurat J. H. Vint
Jurat G. H. Hamon
Jurat C. L. Gruchy
Jurat Mrs. M. J. Le Ruez
Jurat A. Vibert
Jurat E. W. Herbert

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In re doléance of the Harbours and Airport Committee of the States of Jersey

and

In re Kenneth Aucrum Forster trading as Airport Business Centre

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Crown Advocate C. E. Whelan for the Committee
Advocate P. C. Sinel for Mr. Forster

The doléance of the Harbours and Airport Committee of the States of Jersey ("the Committee") showed that towards or about the end of 1986 the Committee permitted Mr. Kenneth Aucrum Forster, trading as Airport Business Centre ("Mr. Forster"), to occupy business premises at the States' Airport, St. Peter. On the 23rd June, 1988, the Committee served notice to quit upon Mr. Forster pursuant to the "Loi (1946) concernant l'expulsion des locataires réfractaires" ("the 1946 Law"). Mr. Forster sought to challenge that notice and the Petty Debts Court ruled against him on the 20th March, 1989. On or about the 30th August, 1988, Mr. Forster commenced parallel proceedings by Order of Justice seeking a declaration that (in effect) the notice to quit was invalid and that he had a valid and subsisting lease. The Committee issued a summons seeking the striking out of Mr. Forster's action on the basis that it attempted to ignore or circumvent the exclusive jurisdiction of the Petty Debts Court in matters of expulsion. On the 30th May, 1989, the Court dismissed the parallel proceedings which Mr. Forster had commenced by Order of Justice and held that the matter was within the exclusive jurisdiction of the Petty Debts Court. Mr. Forster appealed to the Inferior Number of

this Court in pursuance of the "Loi (1902) sur le Recouvrement de Menues Dettes (Appels)" ("the 1902 Law") against the decision of the Petty Debts Court ruling against him as to the validity of the notice to quit of the 23rd June, 1988.

The Committee resisted the appeal on the following grounds:-

(a) On the 23rd June, 1988, the Viscount, at the instance of the Committee, served Mr. Forster with notice to quit;

(b) The Greffier of the States subsequently received from Mr. Forster a form of summons (marked 21st July, 1988) challenging the notice to quit. The form of summons was not received by the Greffier of the States until 25th July, 1988, and had been sent through the ordinary post.

(c) The form of summons called upon the Committee to show cause why the application contained therein should not be brought out of time. It was this application which formed the subject of the hearing before the Petty Debts Court.

(d) Article 2(1) of the 1946 Law is in these terms: "S'il y a contention de la part d'un locataire que l'avertissement à lui servi de quitter le bien-fonds qu'il occupe est informe ou lui a été notifié sans droit, il pourra, dans le courant d'un mois après avoir reçu ledit avertissement, faire assigner le propriétaire à comparaître devant la Cour pour voir statuer sur la valeur dudit avis".

(e) The Committee submitted that the form of summons was improperly served and that an extension of time would be an empty thing, since it would not cure that fatal defect. The Committee submitted that the notice was improperly served because -

(i) Rule 3 of the Petty Debts Court (Jersey) Rules, 1977, ("the 1977 Rules") contains inter alia these terms:-

"3. Personal service is required in the case of the following summonses for appearance before the Court, that is to say, a summons - (a) to reply to an action brought under Article 2 or 3 of (the 1946 Law), as amended; (b) ...."

(ii) Rule 4 of the 1977 Rules provides that personal service has to be effected through the intermediary of the Viscount's Department; and Rule 5 of the 1977 Rules provides that personal service upon a States Committee may be effected by leaving the summons with the Greffier of the States.

(f) In this case Mr. Forster's form of summons had, therefore, to be served by the Viscount, and had to be left with the Greffier of the States. Neither of those things happened; Mr. Forster purported to use ordinary (postal) service and was unable to provide a record of personal service in the form required by the First Schedule to the 1977 Rules.

(g) Rule 7/7 of the Royal Court (Jersey) Rules, 1982, ("the 1982 Rules") provides that "no proceedings shall be void, or be rendered void or wholly set aside ..... by reason only of the fact that the proceedings were begun by a means other than that required in the case of the proceedings in question." The 1977 Rules, whilst incorporating several other provisions of the 1982 Rules relating to service, do not incorporate Rule 7/7 and the necessary implication of this is that proceedings which are begun in the Petty Debts Court by a means other than that required in the case of the proceedings in question are rendered void and that the learned Judge of the Petty Debts Court does not have a discretion to inject validity into that which is a nullity ab initio.

The learned Judge of the Petty Debts Court, by his judgment dated the 20th March, 1989, held that he did not have a discretion in the matter.

On the 18th October, 1989, the Inferior Number of this Court (the learned Commissioner Le Cras sitting as a single Judge) held on appeal as follows:-

> "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 Court. But in 1967 there were Rules of 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 the Rules. The object of the Rules, in our view, must be as stated from the passage at 4 Halsbury 37 para. 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 rehear this point".

The Committee's doléance went on to claim that the learned Commissioner was wrong in law to reject the Committee's submissions and to hold that the Petty Debts Court was possessed of "an inherent jurisdiction" and this because:-

(a) inherent jurisdiction can be exercised only by a customary law Court which exercises the full plenitude of judicial power in all matters concerning the general administration of justice within its territorial limits. The Petty Debts Court is not such a Court because it was created by statute and cannot take unto itself procedural powers in excess of those prescribed in Rules made by the Superior Number of this Court.

(b) Mr. Forster's purported summons before the Petty Debts Court was a nullity and, in spite of the decision of the learned Commissioner, it would still be impossible for the learned Judge of the Petty Debts Court to inject validity into void proceedings.

(c) The decision of the learned Commissioner would render the Rules of the Petty Debts Court nugatory in that a fundamental breach of the Rules might be disregarded by the Petty Debts Court in spite of the absence of a statutory power to waive compliance with certain rules of procedure.

(d) There was before the learned Judge of the Petty Debts Court no valid action upon which he could adjudicate.

(e) The learned Judge of the Petty Debts Court was disabled in all events from hearing Mr. Forster's purported summons because it was not brought "dans le courant d'un mois" as

required by Article 2 of the 1946 Law, and that statutory requirement was not amenable to waiver.

The Committee's doléance went on to claim that the decision of the learned Commissioner "constitue manifestement une erreur judiciaire" and thereby gave rise to a right of appeal by way of doléance.

We convened to hear the doléance on the 3rd May, 1990. Mr. Whelan had helpfully prepared outline contentions of the Committee in which he stated that, in order to succeed, he was required to satisfy us that two principal questions could properly be answered in the affirmative, namely:-

"(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 (Committee) in the present circumstances."

Both Counsel requested that the Court should answer the first question as a preliminary one on the basis that if the Court were to answer it in the negative the second question would fall. The hearing proceeded on that basis.

However, at the conclusion of the hearing, the Court did not feel able to answer question (i) in isolation. The words "in the present circumstances" in both questions indicated that the facts and evidence were 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 have been unfair to Mr. Forster. The Court decided, therefore, to hear all the remainder of both parties' submissions before deciding either question. The Court also indicated

that it would wish to hear Counsel on the question whether the doléance procedure was in any event available to a Committee of the States as opposed to an individual. (v judgment 1990/62 unreported series).

The Court re-convened on the 27th June, 1990, and again on the 11th October, 1990, to hear the further submissions of Counsel. At the conclusion of the latter hearing the Court announced its decision in the following terms:-

"When we sat on the 3rd May, 1990, both Counsel were agreed that we were required by them to answer two principal questions.

The first was whether the Superior Number has the jurisdiction to entertain a doléance in the circumstances of this case;

And the second, assuming an affirmative answer to the first, was whether the Superior Number <u>should</u> grant the relief requested by the Representor in the circumstances of this case.

At the end of that day we did not feel able to answer the first question in isolation because the reference to the circumstances of the case in both questions required an examination of the facts and evidence as well as an examination of the law.

The Court also added a supplementary question, which is really part of the first question relating to jurisdiction, as to whether the doléance procedure is in any event available to a committee of the States. Crown Advocate Whelan has satisfied us that it is so available.

We are grateful to both Counsel for the depth of their researches and the presentation of very interesting arguments and submissions.

The Court is satisfied that it has to answer both questions in the affirmative.

The Court finds that there was a manifest error of law in the judgment of Commissioner Le Cras.

Therefore, we quash the Commissioner's order that the case be remitted to the Judge of the Petty Debts Court and dismiss the appeal of the Appellant to the Inferior Number.

We reserve the reasons for our decision which will be handed down later."

The purpose of the present judgment, therefore, is to give the reasons for the Court's decision.

The Court wishes, at the outset, to dispel the popular misconception that the doléance is solely a personal attack upon the honour and integrity of the Judge. That misconception is drawn from a passage of the Code of 1771 (3rd edition page 104) which states that:-

"Les doléances étant en elles-mêmes odieuses, parce qu'elles sont particulièrement dirigées contre le Juge, dont l'honneur doit être maintenu à cause de la justice, Sa Majesté avec l'avis de son Conseil, doit imposer telle amende sur la Partie qui se plaignant de cette manière, faudra de justifier ses plaintes que les circonstances peuvent requérir." The reference, albeit not stated in the 3rd edition of the Code, is to an Order in Council of the 27th July, 1671.

C.S. Le Gros, in his Traité du Droit Coutumier de l'Ile de Jersey (1943) considers the doléance at page 155:

"Nous abordons maintenant l'examen de la doléance. Elle suppose que le juge a désobéi à la loi lorsqu'il a refusé appel sur une contestation susceptible d'appel; ou lorsque le jugement qui n'est pas sujet à appel constitue manifestement une erreur judiciaire. C'est le devoir du Juge de veiller à la manutention des lois."

It is difficult to conceive a case where, in modern times, a Court would disobey the law by refusing to hear an appeal where a right of appeal exists. Therefore for all practical purposes we are concerned only with Le Gros' second category, where there is no right of appeal but the judgment contains a manifest judicial error, i.e. judicial review.

Le Gros goes on to cite the extract from the Code of 1771 to which we have referred, with the succinct comment that "Le code de 1771 n'encourage guère l'emploi de la doléance."

The learned author continues:

"La doléance prend la forme de la Remontrance. Il incombe au doléant d'établir, prima facie, qu'il a de véritables griefs contre le Juge. Si le Corps de la Cour est d'opinion qu'il y a lieu de procéder plus outre, il ordonne que la Remontrance soit logée au Greffe et qu'il soit signifié à l'autre partie à la cause d'y répondre péremptoirement au jour qui lui sera assigné. Si, au contraire, la Cour refuse d'accorder l'appel, celui qui se porte pour doléant peut invoquer l'aide du Conseil Privé v. O. du C. 1708, Décembre 30. De Gruchy vers le Bailli et le Procureur Général "par quel Ordre est Arresté que toutes procédures a cet égard demeureront Sursises jusqu'à ce que ledit appel ait été ouy et déterminé par Sa Majesté en Son Conseil."

We note that the doléance was referred to in the Order in Council as a Petition and the proceedings as an appeal:-

"It is Ordered by Her Majesty in Councill That the Royall Court of the said Island do allow the Petitioner an Appeal in this

case, And that all further proceedings therein be Stopt, till the said Appeal be heard and determined by Her Majesty at this Board."

In fact, the doléance in that case was an appeal against sentence, several penalties having been imposed upon Mr. de Gruchy which he alleged were "infamous".

Le Gros, at page 156, said that:-

"Heureusement de nos jours, la doléance est peu usitée. Elle était autrefois d'un usage fort commun. La justice est maintenant administrée suivant les lois, coutumes et usages "tant au riches qu'aux pauvres sans acception de personne". Les luttes politiques d'autrefois, avec toutes les conséquences regrettables qu'elles engendraient, avaient leur répercussion sur le banc de Justice. Tout est changé. Il s'est produit un changement dans le caractère et le génie du peuple jersiais qui, d'abord peu marqué, se manifeste aujourd'hui par le désir du triomphe du droit."

We agree with Le Gros that, happily, the doléance is now rarely used as an attack on the honour and integrity of a judge. Political bias and corruption are unknown as motivation for biased judgments. But that is not to say that where no right of appeal is accorded by statute and where there is an allegation of manifest judicial error the doléance procedure should not be used as a means of obtaining judicial review of the suspect judgment.

The view we have just expressed is supported by a number of authorities.

The Report of the Commissioners appointed to inquire into the Civil, Municipal and Ecclesiastical Laws of the Island (1861) at page liv, says this:-

"In addition to the above recommendations (concerning appeals) we would beg permission to notice a proceeding in the nature of an appeal, known as a doléance. This is a petition for a review of

proceedings, not brought up in the ordinary course of appeal. We believe that, for many years, the doléance has been almost out of use, but its legality and adaptibility to general purposes are undisputed. (The Commissioners then cited the extract of the Code of 1771, supra). This discouragement to bringing forward individual grievances and complaints against judicial functionnaries may possibly have been politic at a period of strong party feeling and excitement; at the present day, however, we would humbly submit that the cause for the restriction had ceased; and we therefore strongly recommend that this unquestionably constitutional remedy should be greatly facilitated; at all events, until a strong and able Court shall have been established in the Island. First, it should be freed from its invidious character; and it will then no longer be difficult, with the present organisation of the Judicial Committee of Privy Council to make ..... a petition to review the propriety of an affirmative act of any kind nearly as easy as a motion for a certiorari, and one to review that of a refusal to act, as a motion for mandamus."

Whatever one's view of the reference to a "strong and able Court", it has to be accepted that certiorari and mandamus are the tools of judicial review and, where there is no right of appeal, the only remedies, by whatever name called, open to an aggrieved litigant who seeks not to attack the character or integrity of the Judge, but merely the reversal of a manifestly erroneous judgment.

In the evidence heard before the Commissioners at para. 9534, Mr. C. de Ste Croix, Judicial Greffier for some fifteen years and Commis-Greffier prior to that, was being examined:-

"9534. I was not aware there were any remonstrances entered before the full court? - Yes; doléances complaining of judgments of the inferior number in which there was no opportunity of appeal or no right of appeal. There are various instances of the kind in the records."

Poingdestre in his "Lois et Coutumes" deals with doléances at pp. 235 - 237. At page 235 he says that

"Les doléances servant de remede en causes ou il n'eschet point d'Appel, elles étoient anciennement fort ordinaires en Normandie; mais à présent on les conuertist en Appeaux par les ordonnances .....", and

"Et est à noter qu'une cause ou il y a doléance ne pourroit régulièrement choir en Appel; car s'il y eschesit appel la doléance ne seroit de mise; par ce que c'est un remede extraordinaire et odieux; et par ainsy ne doubt êstre pratiqué, tandis que partie a la voye ordinaire et favorable ouverte pour son remede".

And at page 236:-

" ..... elles .... sont un recours du droict permis aux parties greuvées par les Juges, lorsqu'il n'y a aucune voye d'appel, ny autre remede légitime".

Whilst it is true that Poingdestre also took the view that the doléance was odious he nevertheless accepted that it was the only mode of proceeding where no right of appeal existed; and it was less commonly used only because rights of appeal were granted within enacted ordinances.

That view was supported by the Privy Council in Ex parte Charles Nicolle (1879) V. App. Cas. 346 (P.C.). This was an appeal against interdiction. At p. 348 the Judicial Committee said this:-

"The Petitioner being dissatisfied with these orders (placing him under 'curatelle' as regards property only) and the Royal Court of Jersey having refused to give him leave to appeal against them presented a petition to Her Majesty in Council praying that he might have special leave to appeal against the orders in question in the usual way, or else that the merits of the case might be inquired into on the hearing of the petition by way of doléance, and that the orders might be reversed or varied and the Petitioner reinstated in the management of his property. When this petition first came before this

Board, their Lordships conceived that a case had been made for further inquiry into the correctness of the orders impeached; but thought that the proceeding by way of doléance would afford the least expensive and probably the most convenient mode of trying the question. This mode of proceeding, though termed "odious" by the Code of 1771, has been approved of and recommended by Her Majesty's Commissioners on the law of Jersey; and their Lordships need hardly say that its adoption on the present occasion implies no disrespect towards the Royal Court".

At p.349 the Judicial Committee said this:-

"Their Lordships will assume that the Court was justified in refusing the Petitioner leave to appeal, inasmuch as according to the law and practice of the island no appeal in such cases lies as of right to Her Majesty. That of course does not prevent Her Majesty from granting by virtue of Her prerogative either special leave to appeal or the relief sought by way of doléance."

Le Geyt, in his "La Constitution, les Loix et les Usages", Tome III (1847 edn.) at page 340 says that:-

" ..... qu'aujourd'hui l'on ne fait pas plus de difficulté d'en faire (des doléances), que si l'on interjetoit un appel. Aussi les juges regardent-ils ces doléances comme les suites naturelles de la non-admission d'un appel ....."

And, at page 343:-

"D'ordinaire les doléances de Jersey ne s'étendent que sur les erreurs en fait ou en droit, qui ne donnent pas d'attente à la probité".

In ex-parte Wiles re Président du Comité d'Assistance Publique (1939) 13 C.R.14 Wiles proceeded by means of a doléance to the Superior Number. He had actioned, in forma pauperis, the President of the Public Assistance Committee claiming damages for alleged

negligence on the part of the General Hospital. The Inferior Number found against him. He sought leave to appeal to the Superior Number. The Inferior Number granted conditional leave. The condition required Wiles to produce a surety for the costs of the appeal in the sum of £25 within one month. Wiles was impecunious and unable to provide the surety. He petitioned the Superior Number by means of a doléance against the condition imposed by the Inferior Number. In the event, the Superior Number found against him. However, the following paragraph (at p.15) of the judgment is relevant to the present case:-

"Qu'il est loisible à un appelant qui se croit lésé par la décision du Nombre Inférieur dans ladite matière de la fourniture de caution de s'addresser au Corps de Cour en vue d'obtenir la révision de la décision du Nombre Inférieur dans cette matière".

A recent example of a successful doléance is to be found In the matter of the doléance of Barker 1985-86 JLR 284. There, the Inferior Number had refused to order a remise de biens and ordered instead a dégrèvement of the debtor's property, subject to undertakings given by the second creditor. The debtor petitioned the Superior Number by means of a doléance, submitting that the decision of the Inferior Number should be annulled and a remise ordered. The Superior Number allowed the petition, annulled the dégrèvement and ordered remise de biens. The Superior Number held that in directing that the dégrèvement should proceed but that it should be subject to the second creditor's undertakings, the Inferior Number had exceeded its powers by creating a novel procedure. Furthermore, although the discretion to grant or refuse remise was unfettered, it had still to be exercised according to established principles which required that the conclusion reached should accord with common sense and justice; the decision was unfairly weighted against the petitioner and could not, therefore, be allowed to stand.

At page 288 Commissioner Sir Charles Frossard, Bailiff of Guernsey, who presided, said this:-

"Article 2 of the Law states "La Cour, après la présentation dudit rapport et avoir entendu ceux qui opposeront ladite remise, accordera ou refusera ladite permission. Cette décision sera finale et sans appel". Hence, there being no appeal, this doléance is presented to this Court ....."

At page 290, the Superior Number summarised the submission of Advocate R. A. Falle, who represented the opposing creditor, and who did not go so far as Mr. Sinel in the instant case, thus:-

"Mr. Falle, appearing for A.S.B., commenced his submission by reminding the Court of the nature of a doléance, which only provides a remedy if the court has exceeded its jurisdiction resulting in an injustice; it was an ancient remedy available when courts were not as professional as in modern times. Whilst it has been described as "plainte contre juge" it does not imply any criticism of the Inferior Number: see Ex p. Nicolle (supra).

"Before allowing a doléance, the Court has to be satisfied that there has been an excess of jurisdiction or a breach of natural justice which needs to be remedied, as a doléance is a remedy "in last resort" when all other doors are closed and a grave injustice will remain unless remedied. This being so, the onus to show this is on the petitioner and can only be described as a heavy burden".

It appears that the Superior Number accepted that submission, at least in part, because, at p.292 we find this:-

"We have considered all the submissions of counsel carefully, being well aware that to succeed, a doléance must show that there has been a failure of natural justice leading to injustice and that should a doléance be allowed, in the words of Hoffman, J.A. (1985-86 JLR at 195) "the Court should not be left with the uneasy feeling that in following the old authorities, it might have perpetrated an injustice upon one of the litigants". We have come to the conclusion ....."

Mr. Whelan also referred us to R. v. Northumberland Compensation Appeal Tribunal. Ex parte Shaw (1952) 1 All ER 122, a case where certiorari was granted to quash a decision of a statutory tribunal.

At page 127 Denning L.J. said this:-

"The statutory tribunals, like the one in question here, are often made the judges both of fact and law, with no appeal to the High Court. If then, the King's Bench should interfere when a tribunal makes a mistake of law, the King's Bench may well be said to be exceeding its own jurisdiction. It would be usurping to itself an appellate jurisdiction which has not been given to it. The answer to this argument, however, is that the Court of King's Bench has an inherent jurisdiction to control all inferior tribunals, not in an appellate capacity, but in a supervisory capacity. This control extends not only to seeing that the inferior tribunals keep within their jurisdiction, but also to seeing that they observe the law. The control is exercised by means of a power to quash any determination by the tribunal which, on the face of it offends against the law ...."

Mr. Whelan argued that the doléance is analogous to the writ of certiorari and is available to bring before the Superior Number the decision of the Inferior Number in order that the Superior Number may exercise a supervisory jurisdiction, review the decision of the Inferior Number, and intervene to correct a decision which is erroneous in point of law.

We agree that the doléance is analogous to the writ of certiorari but the analogy is not complete because the Queen's Bench does not substitute its own views for those of the inferior tribunal, as a court of appeal would do; but exercises its control by means of a power to quash the decision, leaving it to the inferior tribunal to hear the case again and in a proper case commanding it to do so. In the case of the doléance the Privy Council, or the Superior Number, does decide the issues between the parties. The doléance provides an

appeal where there is none. But there is more than ample Jersey authority upon which to found our decision.

Clearly, in the instant case the Committee had no right of Appeal.

Article 2 of the 1902 Law states that:-

"Les causes en appel des décisions du Juge se traiteront devant la Cour Royale, siégant comme Nombre Inférieur à la Cour du Samedi, tant en vacance qu'en terme, et le jugement rendu sera final ....."

Article 13 of the Court of Appeal (Jersey) Law, 1961, provides that no appeal shall lie to the Court of Appeal: " .... (a) from any decision which, by virtue of any enactment, is final; ....."

Therefore, the Committee, unless it can proceed by means of a doléance, is bereft of all remedy for an apparent injustice.

Mr. Sinel sought to outline the history of the relationship between Mr. Forster and the Committee and to attack the Committee for attempting to deny him any opportunity of having his case on the question of the validity of the notice to quit heard by the Petty Debts Court. These matters are not relevant to the issue whether a doléance is receivable in this case. Mr. Sinel then sought to distinguish between the judgment of Commissioner Le Cras and other decisions that have given rise to the use of the doléance procedure. He argued that all that Commissioner Le Cras' judgment did was to remit the matter to the Petty Debts Court for a hearing of the issue of the validity of the notice; thus that the judgment was in no sense final; that it does not exclude the Committee from a hearing on the merits; that nowhere in the long history of the doléance has a judgment such as this been appealed against; that the doléance is a constitutional safeguard and remedy in respect of manifest errors that are final and not appealable; that the doléance does not exist to deal with a case where a differently constituted Court might have come to a

different conclusion, but only to deal with something obviously very wrong; and that the doléance deals only with cases that are not susceptible to appeal and is not there as an option for those who have lost an appeal.

Mr. Sinel referred us to an extract from the work of Poingdestre (Lois et Coutumes - Chapter "Des Semonces ou Ajournements p.159) which can fairly be translated as follows:-

"In addition to these matters we also add others that are of little weight and which are matters more of style than of necessity; which we could omit, without any risk, if we were dealing with Judges who were less attached to the form, and more interested in the substance of the law. But the evil is that our judges allow the advocates to prate with regard to the spelling of words, and other ineptitudes of a similar nature, in order to establish that a summons is invalid, despite the fact that it is sufficiently valid in so far as its substance and essential requirements are concerned: Instead of which they should check all this chicanery, which is shameful; and only serves to multiply costs and lawsuits; and to waste time, which is so precious; and to give licence to imposters and (provide) amusement for sluggards; I say shameful, nay verily unbecoming in any Court; but much more so in a court of superior jurisdiction which derives its authority directly from Her Majesty's person, where nothing should be permitted that is trivial and which is not of a nature to be weighed with care and deliberation. And therefore I earnestly wish that this, amongst other things, should be the subject of reform".

Mr. Sinel submitted that had it not been for the "complicated procedural stance" taken by the Committee the matter would have been heard at latest a year earlier. He argued that the finding of the Report of the Commissioners at p.liv was that the doléance was a petition for a review of proceedings, "not brought up in the ordinary course of appeal" and did not apply to the present case because there had already been an appeal; that we now have the "strong and able Court" referred to, and a Court of Appeal procedure; and that the

doléance remained only to satisfy those cases where there was no appeal procedure, but not to give an additional appeal. He referred us to Mr. Dupré's intervention when Mr. de Ste. Croix was answering question 9535. Mr. Dupré said:-

"There is no case which originates before the full court, but there are cases which are brought before the full court, by remontrance. When an appeal has been refused and the party supposes he has a right of appeal, or where some irregularities may have taken place in certain proceedings from which the party has suffered a wrong, a remontrance may then be brought before the Royal Court and the decision of the Inferior Number suspended".

Mr. Sinel denied that the Committee had suffered any wrong; possibly it had been deprived of the opportunity to evict Mr. Forster without having to justify it - but that was not an injustice.

At question 4497, a witness having made complaints concerning the conduct of a dénonciateur, Sir John Awdry interposed:-

"I think these personal charges should not be brought forward here. If the court has refused you redress for such matters, and if no appeal in the ordinary mode has been allowed to you, it seems to me that that must be a case for doléance? - They refused to entertain the case.

"4498. Surely you are entitled to appeal against that refusal. If not, you have the doléance, which is a mode of appealing to the Privy Council in cases where you are not in a condition otherwise to appeal?"

Mr. Sinel argued that Sir John Awdry's comment indicates quite clearly that the doléance applies only where someone is refused access to justice. We do not read it in that way. We take the broader view that it is a means of obtaining judicial review where no other means is available.

In our judgment the arguments of Mr. Sinel were misconcieved. He claimed that in Ex-parte Nicolle (supra) the appeal was from the Inferior Number to the Privy Council direct. It was not. The petitioner appealed to the Superior Number which by a majority affirmed the decision of the Inferior Number, and refused him leave to appeal to the Privy Council. He then presented a petition to Her Majesty in Council. The distinction between that case and the present one is a distinction without a difference.

His argument, arising out of In re doléance Barker (supra) was that in the instant case there was no excess of jurisdiction or breach of natural justice which needed to be remedied. A decision to remit the case to a competent court for it to rehear the case could not possibly give rise to an injustice. Again, we could not agree. An important question of law was involved. If Commissioner Le Cras had wrongly decided the question, then a doléance was the only method "in last resort" whereby the Committee could obtain a judicial review of the decision.

Mr. Sinel's final argument rested on the fact that since the coming into force of the Royal Court (Jersey) Law, 1948, the Jurats have been Judges of fact only. It was not therefore possible or appropriate, he argued, to ask seven Jurats to deal with an appeal against a judgment on appeal on a point of law; that the doléance is just not there for a matter of this nature, but exists for matters of substance which the Jurats could assist with.

In the Court's judgment there is no substance in this argument. Rule 3/6 of the Royal Court Rules, 1982, provides that notwithstanding any rule or custom to the contrary, where pursuant to Article 13(1) of the Royal Court (Jersey) Law, 1948, the Bailiff alone shall be the sole Judge, the Inferior Number shall be properly constituted if it consists of the Bailiff alone. Because this provision relates specifically to the Inferior Number, the Bailiff cannot sit alone as the Superior Number. If Mr. Sinel was correct one would reach the artificial and perverse situation where a doléance would lie to the Superior Number on a mixed question of law and fact

but would have been abolished on a question of law alone. The law is not altered by a 'sidewind' in this way. In any event Rule 3/6 does not preclude the Bailiff from sitting with Jurats in the Inferior Number even on a point of law alone. The rule merely enables him to sit alone. In the instant case both questions posed by Counsel referred to "the present circumstances". "The present circumstances" meant the circumstances of this particular case, indicating that the facts were relevant to both questions. It may well be that the facts were undisputed but if the factual circumstances had to be assessed and determined, then that was a matter exclusively for the Jurats. In our judgment the Superior Number was properly constituted and could receive and hear a doléance on a question of law alone.

The Court itself raised for consideration the question whether the doléance procedure was available to a Committee of the States, or whether it was limited to cases of 'tort personnel'.

On the 6th April, 1889 Ex 189 The Provident Association of London Limited petitioned the Inferior Number, by its Attorney, Frederick Richardson Le Brun, by means of a Remontrance, to set aside (annuler) a judgment of the Petty Debts Court. The legislation then subsisting was the "Cour pour le recourement de Menues Dettes" of 1853, Article 3 of which provided that the decision of the Judge would be final and without appeal. But the Royal Court entertained a petition from a corporate body seeking to set aside a judgment which was final and without appeal and, on the 30th April, 1889, annulled (set aside) the decision.

In Fauvel v. Lemprière, Ordres du Conseil (1899 Edn.) Vol.2, p.307, the Privy Council, on the 1st June, 1705, admitted the petition by way of doléance of Philip Fauvel complaining that the Royal Court had denied him an appeal from a decision given against him on the 30th April, 1702, in favour of Michael Lemprière touching the petitioner's pretensions to part of the Estate of Hugh Lemprière. Whilst this was a petition by an individual it was in a matter of succession and not a "tort personnel".

On the 14th June, 1804, the Superior Number received and admitted a Remontrance from the Attorneys of the Vingtaine de la Ville complaining of certain acts on the part of the Lieutenant Governor in regard to the "Montagnes de la Commune de la Ville" (now Fort Regent). The Superior Number stayed the proceedings and referred the matter of jurisdiction to His Majesty in Council. However, the relevance to the present case is that the Vingtaine de la Ville is a corporation and, as is recorded in an Order in Council of the 20th September, 1804, "the Royal Court having heard Counsel touching the admissibility of the said Action, were of Opinion That the Court had competent Jurisdiction." It was only considering the object of the action and the fact that His Majesty was in possession of part of the Hill of St. Helier whereon a Fortress was already built for the defence of the Island that the Court deemed it expedient to submit to His Majesty in Council how far it might be competent for the Court to proceed to try the cause.

We were satisfied, on the authorities to which we have referred, that there was nothing in law or principle whereby the remedy of doléance should not be available to a Committee of the States.

Therefore, in our judgment, a doléance is not to be regarded as a personal attack on the integrity and honour of the Judge; it is not "odious"; it is a method of obtaining judicial review of a decision where there is no right of appeal and is to be allowed where the judgment contains a manifest judicial error; it is to be compared with the prerogative writs of a certiorari and mandamus; it implies no disrespect towards the Judge whose decision is thus reviewed; it is available as a remedy where a Court makes an error of fact or of law; and it is available to a Committee of the States as well as to any individual or body, corporate or otherwise. Thus the Court answered the first of the questions put by Counsel in the affirmative.

Article 2(1) of the 1946 Law is permissive in that the tenant has a choice whether or not he will challenge the validity of the notice to quit - "...il pourra ..... faire assigner le propriétaire

....." However, the time limit within which, if he wishes to exercise that choice, he must do so, is absolutely clear - "dans le courant d'un mois après avoir reçu ledit avertissement".

The article has two limbs. Whatever is to be done has to be done within one month; if so, the landlord must be "assigné". In the present case neither was done. The notice to quit was properly and regularly served by the Viscount on the 23rd June, 1988. The summons, although purporting to be dated the 21st July, 1988, was received, through the ordinary post, at the States Greffe on the 25th July, 1988. Therefore, not only was the summons received out of time but the Committee was never "assigné".

Mr. Forster's summons admits, notwithstanding its purported date of 21st July, 1988, that the summons was out of time, because it actions the Committee to show cause why "(i) (The Committee's) notice of termination issued to (Mr. Forster) on the 23rd June, 1988, via the intermediary of the Viscount's Department should not be declared null and void. (ii) The Court should not allow (Mr. Forster's) present application to be bought (sic) out of time."

Mr. Sinel argued that the Court should view with great scepticism the Committee's efforts to avoid a hearing as to the validity of the notice. He said that Mr. Whelan had spent eighteen months doing everything possible to prevent a hearing and that this was the sole purpose behind the doléance.

Mr. Whelan, on the other hand, argued that Mr. Sinel's submission overlooked the fact that Commissioner Le Cras' judgment deprived the Committee of a perfect defence, i.e. prescription.

Article 2 of the 1946 Law empowers a tenant to "faire assigner le propriétaire". The deletion by the 1967 Rules of the words "par l'entremise du Vicomte" after the words "faire assigner le propriétaire" did not alter the fact that there had to be an "assignation" and the only form of "assignation" known to the common law was service by the Viscount. "Faire" is a causative verb. The

complainant must cause his landlord to be summoned. (v. Harraps (1940) p.257). According to Dalloz: Lexique de Termes Juridiques (1981, 5th Edn. p.36) "Assignation" is an "Acte de procédure adressé par le demandeur au défendeur par l'intermédiaire d'un huissier de justice pour l'inviter à comparaître ...." The "huissier" is a process server or sheriff's officer (v. Harraps p.313), in our case a member of the Viscount's Department.

Rules 3(a) and 4(a) of the 1967 Rules, re-enacted by the same provisions in the 1977 Rules merely confirmed this. Personal service is required in the case of a summons to reply to an action brought under Article 2 of the 1946 Law. Service through the intermediary of the Viscount's Department is required where personal service is required. The procedure had not, in effect, altered.

Commissioner Le Cras, in his judgment, said that "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." We cannot agree. The Rules do not derogate from the Statute. They explain the method of "assignation" without altering it. They are Rules made under Statute and are subordinate legislation, having the force of law.

Rule 17 of the 1977 Rules states that:

"The Judge may issue directions as regards the practice to be followed in court in any matter where no provision has been made by the Rules."

In this matter provision has been made by the Rules. Consequently, and by necessary immplication, the Judge has no power to issue directions and no power to ignore the provision made by the Rules, still less to ignore the requirement to "faire assigner" under Article 2 of the 1946 Law.

Rule 7/7 of the 1982 Rules provides that:-

"No proceedings shall be void, or be rendered void or wholly set aside under Rule 7/6 or otherwise, by reason only of the fact that the proceedings were begun by a means other than that required in the case of the proceedings in question."

There is no like provision in the 1967 or the 1977 Rules. Consequently, and again by necessary implication, proceedings begun before the Petty Debts Court by a means other than that required in the case of the proceedings in question are void and are to be wholly set aside by that reason alone.

The learned Commissioner's judgment continues:-

"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. (The learned Commissioner does not say why - in our judgment he was in error). It seems clear to us that the Court must be in charge of its own procedure. (We have already shown that the Court is in charge of its own procedure only where no provision has been made by the Rules). 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."

Regretfully, we find ourselves in fundamental disagreement with the learned Commissioner. The Rules do cover the point in question as does the Statute itself.

Commissioner Le Cras referred to Halsbury's Laws of England, 4th Edition, Vol. 37, para. 14:-

"Inherent jurisdiction of the Court. Unlike all other branches of law, except perhaps criminal procedure, there is a source of law which is peculiar and special to civil procedural law and is commonly called "the inherent jurisdiction of the Court". In the

ordinary way the Supreme Court, as a superior court of record, exercised the full plenitude of judicial power in all matters concerning the general administration of justice within its territorial limits, and enjoys unrestricted and unlimited powers in all matters of substantive law, both civil and criminal, except insofar as that has been taken away in unequivocal terms by statutory enactment. The term "inherent jurisdiction" is not used in contradistinction to the jurisdiction of the court exercisable at common law or conferred on it by statute or rules of court, for the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or rule of court. The jurisdiction of the court which is comprised within the term "inherent" is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not a part of substantive law; it is exercisable by summary process, without a plenary trial; it may be invoked not only in relation to parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in the litigation between the parties; it must be distinguished from the exercise of judicial discretion; and it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise (1) control over process by regulating its proceedings, by preventing the abuse of process and by compelling the observance of process, (2) control over persons, as for example over minors and mental patients, and officers of the court, and (3) control over the powers of inferior courts and tribunals.

"In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in order to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them."

Commissioner Le Cras sought to rely on the final words of the above paragraph: "to do justice between the parties and to secure a fair trial between them".

The footnotes to paragraph 14 of Halsbury refers the reader, for a full analysis of the subject, to Jacob's The Inherent Jurisdiction of the Court (1970) 23 Current Legal Problems 23 et seq.

At page 24 Jacob says that:

" .... the court may exercise its inherent jurisdiction even in respect of matters which are regulated by statute or by rule of court, so long as it can do so without contravening any statutory provision." (Emphasis added).

At page 27, Jacob says that:

" ..... the essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court; it is its very life-blood, its very essence, it immanent attribute."

In the same way, the paragraph of Halsbury relied upon by Commissioner Le Cras was dealing only with the inherent jurisdiction of a superior court of record. In our view the learned Commissioner erred when he ascribed to the Petty Debts Court, an Inferior Court, the inherent jurisdiction of a Superior Court. The inherent jurisdiction of a Superior Court, e.g. the Royal Court, includes control over the powers of Inferior Courts and Tribunals, e.g. the Petty Debts Court.

At page 48 et seq. Jacob deals with control over powers of Inferior Courts and Tribunals and says that:-

"Under its inherent jurisdiction, the High Court has power by summary process to prevent any person from interfering with the due

course of justice in any inferior court and to punish any such misconduct as a contempt of court, i.e. of the High Court. The basis for the exercise of this jurisdiction is that the inferior courts have not the power to protect themselves. .....

"So far as contempt of court is concerned, an inferior court of record, such as a court of quarter sessions and a county court, has power summarily to punish for contempt, but this power does not extend to any contempt committed out of court, unless by virtue of statutory enactment. A court which is not a court of record has no jurisdiction to punish for contempt unless this power is specially conferred by statute."

The footnote states that "Magistrates have no power to punish for contempt", and cites McDermott v. Beaumont (1868) L.R. 2 P.C. 341.

We have judicial knowledge that the Police Court has, from time to time, exercised an alleged inherent jurisdiction or power to punish for contempt committed in the face of the court. Whether or not it has that power, which has never been challenged, it is not necessary for us to decide. However, we have no doubt that the Police Court has no inherent jurisdiction to overlook, or to treat merely as an irregularity, any breach of Rules enacted by the Superior Number of the Royal Court and, a fortiori, no power to ignore the requirements of a statutory provision.

In D'Esterre, femme McCarthy v. Richardson (1961) 253 Ex 118 the Inferior Number had already ruled that when a complainant is out of time under Article 2 of the 1946 Law, the Petty Debts Court has no jurisdiction. The Judge of the Petty Debts Court, in reaching the decision appealed from before Commissioner Le Cras applied "D'Esterre's case".

The report of D'Esterre, femme McCarthy v. Richardson in the Table des Décisions de la Cour Royale de Jersey, dixième série, 1959 - 1963, p.68 is sufficient for our purposes:-

"Action en expulsion en vertu des Lois (1946 à 1958) concernant l'expulsion des locataires réfractaires. Prétention de la défenderesse qu'elle est co-locataire avec son frère de la maison dont s'agit et qu'il n'a pas été notifié de quitter la maison. Réponse de l'actrice niant que le frère de la défenderesse soit co-locataire de la maison et prétendant que la défenderesse aurait dû se prévaloir de l'Article 2 de ladite Loi dans le courant d'un mois après avoir reçu l'avertissement de quitter pour voir statuer sur la valeur d'icelui. Vu que la défenderesse ne fit aucune démarche dans le courant d'un mois après avoir reçu ledit avertissement dans le but de voir statuer sur la valeur d'icelui. Jugé que, même si la défenderesse était co-locataire de la maison (question que la Cour n'a pas tranchée) elle vient à tard contester la validité de l'avertissement et son expulsion est ordonnée. Appel. Bien jugé, mal appelé."

Halsbury's Law of England, 4th Edition, Vol. 26, page 301, para. 580, deals with decisions of co-ordinate courts, as follows:-

"There is no statute or common law rule by which one court is bound to abide by the decision of another court of co-ordinate jurisdiction. Where, however, a judge of first instance after consideration has come to a definite decision on a matter arising out of a complicated and difficult enactment, the opinion has been expressed that a second judge of first instance of co-ordinate jurisdiction should follow that decision; and the modern practice is that the judge of first instance will as a matter of judicial comity usually follow the decision of another judge at first instance unless he is convinced that that judgment was wrong ..... "

In Re Cohen, National Provincial Bank Limited v. Katz (1959) 3 All E.R. 740 Dankwerts J. felt bound to follow a decision of Harman J. which had been doubted, although not overruled, in a dissenting Court of Appeal judgment. It is undesirable that different judges of the same division should speak with different voices: Re Howard's Will Trusts, Levin & Bradley (1961) 2 All E.R. 413 at 421 per Wilberforce J. and other cases.

It seems to this Court that Commissioner Le Cras should have considered himself bound to follow D'Esterre, femme McCarthy v. Richardson unless he was convinced that the decision was wrong.

Unfortunately, the learned Commissioner did not review the case or comment upon it. It appears that he decided that the position had been drastically altered by the Rule making power and the enactment of the 1967 Rules which, presumably, in his view, rendered the decision obsolete. We do not agree. In that case the Inferior Number was acting entirely in accord with orthodox principle and the Magistrate was correct to rely on it. The thrust of the Commissioner's judgment is that because there are Rules of Court, the express requirement of the Statute can be ignored and that there is no longer a prescriptive period that binds anybody. The Commissioner has, in effect, said that Rules can revive an action which the Statute says has been lost.

The inherent jurisdiction of Superior Courts is fairly extensive but not even Superior Courts can repeal, contradict or ignore the clear words of a Statute. The inherent jurisdiction of Inferior Courts is far more restrictive (if it exists at all). The Magistrate's discretion is prescribed for him by the Rules. It seems clear to us that in the instant case the 1946 Law has not been observed and should have been observed by the learned Commissioner.

No power to extend the time stipulated by Article 2(1) of the 1946 Law is given to the Courts by the legislature. The only power to extend time is at Rule 1(3) of the 1977 Rules, which in turn refers to Rule 1/5 of the 1982 Rules. That power refers only to time stipulations set by Rules of Court, judgments, orders or directions. It does not refer to time stipulations set in statutes.

Stipulations as to time contained in statutes are to be regarded as imperative and not discretionary (v. Maxwell on the Interpretation of Statutes, 12th Edn. pp. 320 - 322).

At page 321 Maxwell reports the case of Public Prosecutor v. Koi (1968) A.C. 829 at p. 852.

"A county court rule which required that in an action to recover land the summons should be delivered to the bailiff at least forty days before the return day, and be served within thirty-five days before that day, was similarly held imperative so that, if the summons were not delivered to the bailiff in due time, even though the latter should serve it in the prescribed time, the judge would have no jurisdiction to hear the case."

And:

" ..... Thus, ... the service of a writ which was not indorsed as required by the rules within three days of service, and the service of the writ itself upon a foreigner abroad instead of giving him notice of the writ, have both been held to be nullities; and so has the issue of an originating summons out of a District Registry of the High Court instead of the Central Office with the result that, the six months allowed for commencing proceedings under the Inheritance (Family Provision) Act 1938 having expired, the plaintiff's claim was gone beyond recall. (Re Pritchard (1963) 1 Ch.502).

In Hare v. Goacher (1962) 2 Q.B. 641, which dealt with time limits which are not directly relevant to the instant case, Winn J. said (at p.646):-

"Accordingly, hard as it may be for the defendant, he was 12 hours late when he delivered his application at noon on the following day .... Statutes have to be applied according to their terms where the terms are clear."

In re Pritchard dec'd. Pritchard v. Deacon and others, concerned proceedings asking for reasonable provision to be made for the widow of a testator out of his estate under the Inheritance (Family Provision) Act, 1938. On the 6th October, 1961, the

proceedings were, as required by R.S.C. Ord. 54F, r.1, begun by the preparation of an originating summons, which on October 9, the day before the expiry of the six-month period of limitation under the Act, was accepted and sealed in the local district registry. Further steps were thereafter taken by the parties under the direction of the district registrar; but in January, 1962, the district registrar informed the parties that, having regard to the terms of R.S.C. Ord. 54 r.4B, which required the orginating summons to be "sealed in the Central Office .... and when so sealed shall be deemed to be issued", he doubted whether he had power to proceed with the matter. As it was too late to start proceedings afresh in the Central Office, an application was made to the registrar asking why the cause, having irregularly issued from the district registry instead of the Central Office, should not be removed to the Central Office. The registrar refused the application, holding that the originating summons was a nullity and all subsequent steps were ultra vires. On a summons by the widow in the Chancery Division asking that the proceedings be transferred, Wilberforce J. held that the originating summons was a nullity and all steps taken under it void.

On appeal, the majority of the Court of Appeal (Upjohn and Dankwerts L.J.J.; Lord Denning M.R. dissenting) held that the originating summons had never been issued and was a nullity ab initio, and the Court had no power to cure proceedings which were a nullity. Accordingly, as the limitation period under the Act had expired, the widow had no remedy.

The headnote of Upjohn L.J.'s judgment is sufficient for our puposes:-

"Per Upjohn L.J. A review of the authorities on nullities and irregularities establishes as classes of nullity (1) proceedings which ought to have been served but have never come to the notice of the defendant at all; (2) proceedings which have never started at all owing to some fundamental defect in issuing them; and (3) proceedings which appear to be duly issued but fail to comply with a statutory requirement."

Dankwerts L.J., at p.527, put the matter very succinctly:

"The originating summons in this case, therefore, is a nullity and has no operation. It has no more application to the matter to be decided than a dog licence".

In our judgment, Mr. Forster's purported summons is likewise a nullity and has no more application to Article 2 of the 1946 Law than a dog licence. But even if it were not, but were as Lord Denning MR held, a mere irregularity, there is no provision in the 1977 Rules, as there is in the 1982 Rules, to amend an irregularity.

In Stephens v. Stephens (17 April, 1989, Unreported series 89/18) the Inferior Number rejected an application for judgment in accordance with Rule 6/7(5) of the 1982 Rules in an action commenced by way of simple summons where the plaintiff had not filed a statement of claim on the ground that the original summons set out the claim in sufficient detail. The Court considered itself to be bound by the relevant Rules, which were mandatory in form, however unattractive ("too strict in that they do not give sufficient discretion to the Court"). A fortiori, the Petty Debts Court, as an Inferior Court, is bound by the Rules made by the Superior Number and, a fortiori again, by the terms of the 1946 Law.

In Sayers et uxor v. Briggs & Company (Jersey) Limited (1963) J.J. 249 at p.251 the Court said that:-

"We do not believe that to insist on the niceties of pleading serves any useful purpose in the administration of the law unless it can be clearly shown that any failure so to do would have for effect to take a party to the proceedings by surprise or to deprive him of a defence that might otherwise be open to him."

That statement was repeated in a second action between the same parties (1964) J.J. 399 at p.401.

In Jackson v. Jackson (1965) J.J. 463 at p.467, the Court said this:-

"In our opinion, a Court is bound to enforce the substance of its own rules but not the letter if a failure to do so could have no real effect on the parties concerned."

That statement was approved by the Court of Appeal (1966) J.J. 579. Dealing with the question of rectifications the Court of Appeal said:

" ..... but one of the essential conditions would be that the rectification should not cause prejudice or embarrassment to the parties".

Jackson v. Jackson is of particular relevance to the present case. It concerned an attack on a will of real property. The will of realty was made within the forty days preceding the testator's death. It favoured exclusively the widow in second marriage of the testator. The only child of the testator wished to have the will set aside. The will was registered on the 10th April, 1964. On the 12th March, 1965, the only child began her action in vacation by an Order of Justice setting out the facts and duly served on the defendant by the Viscount's Department. Article 15 of the Law of 1851 on Wills of Realty provides that actions to set aside wills containing legacies of real estate must be commenced within a year and a day of the Act of the Court ordering registration. Thus the year and a day expired on 11th April, 1965, and, in the words of the Court "thereafter the will became unassailable". The defendant took exception to the form of the action and the issue was one of great practical importance to the parties because, if the plaintiff was non-suited, it was too late for her to recommence proceedings in a form procedurally acceptable to the defendant. The case for the defendant was based on two propositions. The first that there was an established rule of procedure that an action to annul a will, and a fortiori cancel a legacy untimely made, must be begun by a "Bille de Prévôt" (a simple summons served by a

Prévôt during term) and the second, that the Court had no power to vary or to ignore its own rules.

Counsel for the plaintiff argued that the fact that not one example could be found of such an action being begun other than by simple action did not mean that the method invariably followed had hardened into a rule, that there was nothing in the Law which laid down how proceedings under it should be begun or instituted (in contrast to Article 2 of the 1946 Law), and that the period of prescription established by the substantive Law was a year and a day and it was unjust that that period should be shortened by procedural niceties.

The Court, having made the statement cited above, and having considered the effect of the Royal Court (General) (Jersey) Rules, 1963, said this:-

"If we overlook what could be said to be no more than a mere technicality we also overlook a real right which, at the time this action was instituted, was about to accrue and has now accrued to the defendant. That we cannot do".

The Court of Appeal, upholding the judgment, said that:-

"To allow the variation which the appellant seeks would deprive the respondent of the right to plead that the action is time barred. The prejudice caused to her would be complete."

The analogy between Jackson v. Jackson and the instant case is remarkable. In Jackson v. Jackson the action had to be begun by simple action, in term. It was brought by Order of Justice in vacation. Because the wrong form was used and the next term did not commence until after the 11th April, 1965, the will, although contrary to law, was perfected and unassailable.

In the instant case the action had to be commenced by means of a simple summons served by the Viscount's Department ("fera assigner")

within one month the service of the notice to quit. Because the summons was not properly served within the specified period, the notice to quit, even if defective, was perfected and unassailable. The service of the summons was not an irregularity but a nullity. To allow the variation which Mr. Forster sought would deprive the Committee of the right to plead that the attack on the validity of the notice to quit was time barred. The prejudice caused to the Committee would be complete.

Mr. Sinel referred us to Goodwin Estates (Jersey) Limited v. Le Gros (1978) J.J. 115. At p.117 the Court said this:-

"It is interesting to see what the reasons are in England for limiting the time within which action must be commenced. At paragraph 330 on page 181 of Halsbury, 3rd Edition, Volume 24, is to be found the following passage:

'The courts have expressed at least three differing reasons supporting the existence of statutes of limitation, namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of action should pursue them with reasonable diligence'."

Mr. Sinel claims that none of these reasons apply in the instant case. We do not agree. Notices to quit must give one month's, three months', six months' or one year's notice as the case may be (notice of one week for a weekly tenancy is not attackable under Article 2 of the 1946 Law). Thus action to set aside must be taken within one month of service i.e. before the shortest notice takes effect. Otherwise, the notice is unassailable. Thus reason (3) is applicable to this case.

Counsel also referred us to Halsbury, 4th Edition, Volume 44, paragraph 933. This contains the following:-

"Although no universal rule can be laid down, provisions relating to the steps to be taken by the parties to legal proceedings in the widest sense have been construed with some regularity as mandatory ....."

The footnote to that sentence includes a number of cases analagous to the present one:-

"See e.g. Vaux v. Vollans (1833) 4 B & Ad 525 (action for a penalty barred by failure to adopt method of service prescribed for preliminary notice); Noseworthy v. Buckland-in-the-Moor Overseers (1873) L.R. & C.P. 233 (hearing of objection to voters' qualification barred for a similar reason); Taylor v. Taylor, Taylor v. Keiley, ex parte Taylor (1875) 1 Ch.D. 426 at p.431 (application to Court for exercise of discretionary power invalid unless in prescribed form); Barker v. Palmer (1881) 8 QBD 9 (no jurisdiction to entertain proceedings on summons delivered out of time); ..... Edwards v. Roberts (1891) 1 Q.B. 302 (no jurisdiction to hear appeal by way of case stated where the appellant has disregarded a provision requiring notice of the appeal to be served on the respondent before the case was transmitted to the appeal court); Hughes v. Wavertree Local Board (1894) 10 TLR 357 (application for case stated invalid if made out of time); R v. Pontypool Gaming Licensing Committee, ex parte Risca Cinemas Ltd (1970) 3 All E.R. 241 where a requirement to send a copy of a newspaper advertising an application to a committee within seven days of publication was held to be mandatory; R. v. Leicester Gaming Licensing Committee, ex parte Shine (1971)3 All E.R. 1082 .... where a requirement that an application to state a case be given within fourteen days of the magistrates' court decision was held to be mandatory."

In the same way, in our judgment, the requirement, in Article 2 of the 1946 Law, that where a tenant wishes to contest the validity of a notice to quit, he must take the necessary steps within one month of service, is mandatory.

R v. Croydon Justices, ex parte Lefore Holdings Limited (1981) 1 All E.R. 520 CA, concerned the decision of Magistrates on a question whether the applicants had been in rateable occupation of land. Lawton L.J. at p.523 said this:-

"It is necessary now to look at the terms of the relevant statutes and rules. Section 87 of the Magistrates' Courts Act 1952, as amended, reads as follows:-

'(1) Any person who was a party to any proceeding before a magistrates' court or is aggrieved by the conviction, order, determination or other proceeding of the court may question the proceeding on the ground that it is wrong in law or is in excess of jurisdiction by applying to the justices composing the court to state a case for the opinion of the High Court on the question of law or jurisdiction involved ..... (2) An application under the preceding sub-section shall be made within twenty-one days after the day on which the decision of the magistrates' court was given ....'

"It is clear, in our judgment, that the provisions of sub-s (2) are mandatory. There is no power in the Magistrates' Courts Act 1952 to extend the time in which an application can be made. It follows, therefore, that if what purports to be an application in law does not amount to an application no new application can be made after 21 days."

This is a direct analogy. A party 'may' question the proceeding but if he chooses to he must apply, in correct form, within twenty-one days after the decision. If he does not, no new application can be made after twenty-one days. A tenant may challenge the notice to quit but if he chooses to he must apply in correct form, i.e. cause his landlord to be summoned, within one month after service of the notice. If he does not, no new application can be made after one month.

Mr. Sinel claimed that there was no power in the Magistrates' Courts Act, unlike the 1977 Rules, to extend time. He was wrong. The

1977 Rules provide that Rule 1/5 of the 1982 Rules (power to extend and abridge time) applies to the 1977 Rules as it applies for the purposes of the 1982 Rules. However, Rule 1/5 of the 1982 Rules enables the Court by order to extend or abridge the period within which a person is required or authorized by rules of court, or by any judgment, order or direction, to do any act in any proceedings. The power to extend applies to rules of court, judgments, orders or directions. It does not apply to periods fixed by statute. Therefore, the Court regards R v. Croydon Justices as persuasive authority in favour of the case for the Committee.

For all the reasons we have adduced, the Court had no hesitation in answering the second question also in the affirmative.

The Court was satisfied that there was a manifest error of law in the judgment of Commissioner Le Cras. Therefore, we quashed the Commissioner's order that the case be remitted to the Judge of the Petty Debts Court and we dismissed Mr. Forster's appeal to the Inferior Number.

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