

3rd December, 1985.

AG. -v- Giggles Limited

Hearing to determine Defendant's plea in bar

Judgment of Deputy Bailiff sitting as a Single Judge.

**DEPUTY BAILIFF:** On the 4th March, 1981, consent was given to the defendant company, Giggles Limited, for the lease of 17/19 Burrard Street and 56 Don Street. Part of that property consists of a number of dwelling units and there were conditions imposed in that consent concerning the private dwelling accommodation - it is not necessary for me to detail them. As a result of information obtained, in 1984, enquiries were made on behalf of the Committee by Mr. Sugden, who is an Assistant Housing Officer, as to whether offences had been committed by the defendant company. A statement was made on the 2nd August, 1984 by Mr. D.J. Bisson on behalf of the company and that statement was made to Mr. Sugden. Prima facie, it is accepted by both parties, that that statement disclosed that there could well be evidence to indicate that an offence or offences against the Housing Law had been committed. That much is not disputed by Miss Nicolle on behalf of the Attorney General. What is in issue is whether that information as disclosed in the statement to Mr. Sugden could properly be imputed to be information, then known at the same time to the Committee. On the 9th August, 1984, a consent was issued on behalf of the Housing Committee by Mr. Connew, the Law and Loans Manager, to Mr. Scanlon one of the persons in occupation of part of the living accommodation. It is suggested that that consent implied that Mr. Connew, (whether or not he was entitled to act and issue consent on behalf of the Committee is not a matter for me to decide at the moment) would have known the circumstances of Mr. Scanlon's previous occupation of the premises and thus the details of the possible offences by his knowledge (as a Civil Servant, working for the Committee and the Law Loans Manager) should likewise, as in the case of Mr. Sugden's knowledge, be imputed to the Committee. On the 31st August, the matter of this prosecution was referred to the Law Officers and a summons was served on the 19th August, 1985. It is clear that that is less than the year after the 31st August, 1984, but more than a year after the statement of 2nd August, 1984 and more than a year after the consent issued by Mr. Connew on behalf of the Committee on 9th August, 1984. It follows of course, that if Mr. Bailhache is right in his arguments on behalf of the defendant company that the action is prescribed. I now turn to the Housing Law itself.

The Housing Law was passed in 1949 and its long title is as follows: "A law to provide for the constitution of the Committee of the States to administer matters relating to the housing of the population. To empower the States to acquire land by compulsory purchase with the purposes of housing and to control sales and leases of land in order to prevent further aggravation of the housing shortage." Article 2 of that law sets up the Housing Committee and Article 14, which deals with offences, is the relevant article which concerns this present case. I have already touched on the position of prescription but that matter is dealt with more fully in Article 14(3), that sub-article is as follows: "Notwithstanding any Enactment or Rule of law to the contrary, proceedings which may be taken against any person for an offence against this part of this law may be taken within the period of a year and a day from the date on which evidence sufficient in the opinion of the Attorney General to justify the proceedings come to the knowledge of the Committee or where the person in question is outside the Island at that date, within the period of a year and a day from the date on which he first lands on the Island thereafter whichever of the said periods last expires" and sub-paragraph 4 - "For the purposes of paragraph 3 of this Article a certificate under the hand of the President of the Committee as to the date on which such knowledge, as aforesaid comes to the knowledge of the Committee, shall be conclusive evidence".

It is to be noted looking at the Housing Law that in none of its provisions is a specific power on the part of the Committee to delegate its powers to its officers. It is clear nevertheless that the Court is entitled to take judicial knowledge of the administrative structure of the States' Committees and the Civil Service. The administration of the Island is vested, through the legislature, in Committees of the States and those Committees are served by the Civil Service and members of that Service are seconded from time to time, to various Committees. The position therefore with Mr. Sugden is that he is a Civil Servant employed by the States, working for the Housing Committee. That does not, of its own, make him that Committee's agent although in certain circumstances he might be. The Committee, although there was no power given to it, as I have said, to delegate its powers, did so on the 12th April, 1983 - I read the minute. "12th April, 1983. The Committee with reference to Act No. 1 of the 22nd December, 1981 of the Committees previously constituted decided to delegate to the Housing Officer and Chief Architect, Department of Public Building and Works the following" - I read only the first three as they are the only ones relevant to this case: "(a) to the Housing Officer to grant consent to certain non-contentious applications submitted in accordance with part 3 of the Housing (Jersey) Law, 1949 as amended, (b) to the Housing Officer to deal with all cases of a straightforward nature where applications

were received for loans in principle under the Building Loans (Jersey) Law, 1950 as amended, providing all such cases were notified to the Committee, (c) to a Housing Officer to deal with all cases of a straightforward nature for applications received for a second charge to be registered on a property subject to all such cases agreed to being notified to the Committee". It is to be noted in that delegation that it is in an extremely limited context. It allows the Housing Officer to deal with certain non-contentious applications and to deal with certain Building Loan matters provided the Committee is notified and secondly, in respect of a second charge likewise again requiring the Committee to be notified. There is therefore, if it is a delegation, a very limited delegation, which is now suggested by Mr. Bailhache to be redundant, partly because, as I have said the Committee has no powers to delegate in the way it has done under the Laws but partly because the arrangements which I have touched on, that is to say, the form of the Housing Committee's powers and the way it exercises those powers of necessity, requires that its officers should have implied in the way they carry out their duties certain delegated powers without which the Committee would not be able to carry out what has been described in another context as its 'multifarious duties'. What Mr. Bailhache has put to me is a straightforward question - can the officers of a States' Committee bind that Committee? I have no doubt that when the Law was first enacted in 1949, no delegation was mentioned in it and no powers to delegate because that was not the way the States' Committees worked in those days and it is not the way in which I believe they wish to work today.

I have been referred to three very interesting English cases. The first is that of the Lewisham Borough Council and another -v- Roberts reported at 1949 1 All England Law Reports at page 815 and also the case of The Carltona Limited -v- the Commissioners of Works and Others reported in 2 All England Law Reports 1943 at page 560 and, lastly, the case of The Queen -v- Skinner which is a Chancery case reported in 1968, 3 All England Law Reports at page 124. Those cases indicate that even where there is no statutory power of delegation, the English Courts are prepared to examine and have examined the relationship between a Minister of the Crown and his public officials and they have come to the conclusion that in order that the Minister can carry out his duties that so far as he is entrusted with administrative as distinct from legislative functions he is entitled to act, and I quote now from the Lewisham Borough Council case which is approved of in the Skinner case which is a related case of course: "He is entitled to act by any authorised official of his department". The word "authorised" of course, is interesting there.

I think that must have been authorised by the Minister and not authorised by the mere fact of the official being an official as such. That leads me

to the point that if Mr. Bailhache is right then any official of the Housing Department can, by his actions, bind the Committee. I think that is going too far - I would restrict it to saying that any official's acts known by the Committee and authorised by the Committee may bind it and no further.

Of course, it can be extended to the extent that if a Committee either tacitly accepts what its official has done or does not repudiate it, that of course could well be a matter to take into account in the matter of any future appeal against that official's decision purported to be made on behalf of the Committee concerned. But that is not the same thing as saying that every official of the Committee, not quite as far, Mr. Bailhache would conceive as the tea-lady, but any rate someone in authority under that Committee, the Housing Committee in this case can act and bind the Committee without the authority of that Committee. That is a general proposition which I find goes beyond the English authorities and it is not one I am prepared to accept. The tradition of dealing with a discretion has always been that that discretion has to be exercised by the elected members of the States and that unless they delegate the exercise of their discretion to an official that remains the position and indeed I question whether they can delegate the exercise of their discretion completely to an official. They have done so or have purported to do so in the minute of the 12th April, 1983 but as I have already noted that is a very limited delegation and does not touch upon any contentious matters which require in my opinion, the decision of the elected members of the Committee themselves. However, there is the case which Miss Nicolle referred us to, of Pinel and the Housing Committee which was decided in 1970 Jersey Judgments at page 1545 and I read from a passage on page 1556 where the learned Court after saying that they did not dispute that the Housing Officer was experienced nor were they, any way saying that the Committee should not instruct it to marshal for its consideration, all the information relevant to an application or should not enlist his advice on the information; the Court goes on: "But it is to the Committee that the Law entrusts the necessary exercise of discretion leading to the making of the final decision on an application, and the Committee fails in its duty if it does not exercise an independent discretion before acting on reports by its officers". That seems to me the exactly same position here; Mr. Sugden investigated this alleged offence and he prepared his report which took the form of a statement taken from Mr. Bisson. Even if he felt that indicated some offence and indeed of course, it is in fact in the opinion of the Attorney General that the decision finally rests which I think is based on argument of Mr. Bailhache that if I am right, that it has to be the Committee who has to decide these matters and not its officers and knowledge of the officers cannot be imputed to the Committee; and it would in theory, be

open, if knowledge came to the ears or eyes of an officer in 1974, for 10 years later for the Committee to issue a certificate or the president to issue a certificate under Article 14/4 and authorise a prosecution but of course it is not for the Committee to authorise a prosecution - the most that a Committee can do is to request the Attorney General to prosecute and as we all know, the decision whether or not to prosecute is vested solely in H.M. Attorney General. But I have come to the conclusion that attractive as your arguments are in a general form, Mr. Bailhache, you have asked me to rule in the course of your address upon the question of public policy. Now, it is well known that the horse of public policy is a very unruly one and might not know where it would lead you once you 'mount that steed'. I question whether it would be right for me to cast upon the civil servants of the States, this power which in the past has been jealously guarded by Committees and I do not think it would be right at this stage for me to do so - I do not think the law has yet evolved to the stage where I can follow English decisions which are based on a totally different jurisdiction and a different structure of government from ours. I do not think I can grant it in these circumstances and therefore the plea in bar does not succeed. Now I am not prepared I do not think, to deal with anything else there. Well, he may appeal but leave that aside for the moment.