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IN THE ROYAL COURT OF JERSEY
(Inferior Number)

Before: Mr. V.A. Tomes, Deputy Bailiff,
Jurat H. Perree,
Jurat G.H. Hamon.

Between Alexander Robertson Plaintiff
And The Jersey Electricity Company Limited Defendant

Advocate T.J. Herbert for the Defendant

In this case Mr. Alexander Robertson, who is a householder at 86, Great Union Road, St. Helier, complains about the calibration of an electricity prepayment meter installed by the Defendant in his home.

On the 16th November, 1983, the Plaintiff applied for a supply of electricity for the ground floor flat at 86, Great Union Road (the premises) with effect from the 17th November, 1983. He signed a declaration which, inter alia, contained the following "I hereby apply for and agree to take a supply of electricity at the above address and I further agree to be bound by and observe the Official Regulations and Conditions of Supply, a copy of which I have received and to pay on demand for all electricity consumed in accordance with the supply rates from time to time in force. I agree to be assessed and charged on the basis of the Domestic Tariff as published".

We should say at this point that the term "Official Regulations and Conditions" is a misnomer. Article 17 of the Electricity (Jersey) Law, 1937, as amended, (Recueil des Lois, Tome VII 1929-1950 p.230) (the Law) enables the States to make regulations in connection with electricity tariffs. Such regulations may determine the tariffs to be made by the Defendant in respect of electricity which it supplies and specify the manner in which the tariffs are to be assessed and make provisions incidental thereto. Any regulations so made, unless previously renewed by the States, lapse after twelve months from the date on which they come into force. No regulations have ever been made by the States under Article 17 of the Law. The so-called "Official Regulations and Conditions" are nothing more than the contractual terms imposed by the Defendant upon its customers. The title used is misleading and should be changed.

On the 25th October, 1985, because of unpaid bills for electricity supplied, the Defendant invoked Article 24 of the Law and obtained an Order of the Royal Court permitting access to the premises for the purpose of cutting off the Plaintiff's supply. There was also some difficulty between the Plaintiff and the Parish of St. Helier

Welfare Board. The details are not relevant to the present action but because the Plaintiff was finding it impossible to budget for his quarterly electricity accounts the Welfare Board wished a prepayment meter to be installed at the premises. Eventually, on the 29th January, 1986, Sir Godfray Le Quesne Q.C., sitting as a Single Judge of the Jersey Court of Appeal, decided that a stay of execution of the Order permitting the cutting off of the supply previously granted by the Royal Court to the 15th February, 1986, should remain, but that if, by the 15th February, 1986, the Plaintiff had not allowed the company access to the premises for the purpose of fitting the prepayment meter, the stay would come to an end and the Defendant would, therefore, be free to execute the Order of the 25th October, 1985, after the 15th February, 1986.

In the event the prepayment meter was installed on the 17th February, 1986. The arrangements for this to be done were assisted by Mr. Denis Audrain, Chief Clerk in the Viscount's Department, who acted with tact and diplomacy to avoid the necessity to execute the Order of the 25th October, 1985. Mr. Barry Colin Bliss, an Installation Inspector employed by the Defendant, carried out the actual installation. When the installation was complete Mr. Bliss asked the Plaintiff to sign two forms. One was to verify the final reading on the credit meter which had been removed and which the Plaintiff signed readily. The other was an "Application for the Installation of a Prepayment Meter" and was in the following terms:

ACCOUNT NO:

**JERSEY ELECTRICITY COMPANY LIMITED
APPLICATION FOR THE INSTALLATION OF A PREPAYMENT METER**

I, MR/MRS
OF

request to have a prepayment meter to register the consumption of electricity at the above address and agree to the following conditions:-

- 1) That a special prepayment meter charge will be payable by me each quarter for the provision of a prepayment meter, and that the special prepayment meter charge will be revised, when considered necessary, by the Company.
- 2) That all coins inserted into the meter are legal currency of the Realm.
- 3) That I accept responsibility for the safe custody of the monies in the meter until collected by the Company's representative, and understand that I am responsible for making good any cash shortage, however caused, this being payable on demand.
- 4) That I am responsible for the cost of repair of any damage to the meter.
- 5) That I am required to give the Company at least three working days notice of any change of tenancy of the property.

SIGNED:

DATE:

Clearly, this form should have been signed before the installation was carried out. It seems that the Defendant's practice in these matters is somewhat lax. Mr. Bliss explained that there did not seem to be any need to have the form signed in advance. He was requested to go to the premises on the basis that everything had been arranged. Sometimes, applications were signed at the Defendant's offices before the installation took place but the sequence of events followed in this case was not unusual.

We cannot but criticise a practice whereby an application is signed after the thing applied for has been provided. The application contains the contractual terms upon which the installation is made. Again these are imposed upon the Defendant's customers, although they do not appear in the so-called "Official Regulations and Conditions". It was explained to us that the installation of prepayment meters is discouraged and that nowadays they are fitted only at the request of a welfare authority. That being so conditions 3 and 4 are severe and we think that the Defendant should reconsider these. But the condition that is relevant to the present action is Condition 1, which provides for a special prepayment meter charge, because this forms part of the calculation upon the basis of which the meter is calibrated. Mr. Bliss stated that the installing inspector normally gives the form to the customer without explanation and that if the customer has any queries he will ask. The Defendant's Inspectors do not indicate the cost involved unless asked. Again, we have to say that the current special prepayment meter charge should be disclosed in every case in advance of installation.

This action stands or falls on paragraphs 4 and 5 of the Plaintiff's Order of Justice which read:-

"4. That the said coin meter, No. 063282, is calibrated at a rate higher than the published rate of 5.4 pence per kilowatt unit.

5. That the said calibrated higher rate has been set without the knowledge or consent of the Plaintiff".

Mr. Ralph Edward Le Cornu who has been in the employ of the Defendant for no less than forty years gave us a helpful explanation of the calculation of the calibration of a prepayment meter. We do not need to recite the whole of the calculation because the Plaintiff's complaint relates only to the fact that the meter is calibrated at a rate higher than the published rate of 5.4 pence per kilowatt unit.

In fact the meter is calibrated at the published rate of 5.4 pence per kilowatt unit, plus the annual fixed or standing charge, plus the annual prepayment service charge or special prepayment meter charge as it is variously called.

The annual fixed or standing charge is itself part of the tariff charge or "published rate". The Defendant's Tariff Amendment, dated the 30th January, 1986, and published in the Jersey Evening Post, which was exhibited to us, shows that on and after 1st February, 1986, the relevant tariff was to be "Domestic Tariff - Single Unit of Accommodation: Fixed Standing Charge £6.50/quarter. All units 5.40p".

It follows that the Fixed Standing Charge is itself part of the tariff or published rate and is additional to the 5.4 pence per unit. The Plaintiff contracted on the 16th November, 1983, to be assessed and charged on the basis of the Domestic Tariff as published. He argued before us that his contract with the Defendant became null and void when the Defendant obtained judgment against him containing the Order enabling the supply to be cut off. We reject that argument. For so long as the Defendant receives a supply of electricity he is bound to pay for all electricity consumed on the basis of the Domestic Tariff as published. On that ground alone the Plaintiff's action must fail.

With regard to the annual prepayment service charge or special prepayment meter charge, there was a conflict of evidence. Mr. Bliss told us that he handed the application form to the Plaintiff who read it through. The Plaintiff said that he would not sign the form because it contained the word "request" - the prepayment meter had been forced upon him. Mr. Bliss believed that the Plaintiff had read the whole form - he said that the part he could not agree with was the request - that if Mr. Bliss would like to take the form away and have it altered he would sign it. However, Mr. Bliss did not take the form away because the Viscount's representative said that it would "do for now", and that if there were any problems Mr. Bliss could telephone him and he would be a witness. Mr. Audrain, the Viscount's representative in question, told us that the Plaintiff looked at the form, said that he was not going to sign it and then read aloud part of the form; it was the word "request" that the Plaintiff objected to; whilst there was some brief conversation between the Plaintiff and Mr. Bliss, Mr. Audrain could not recall the Plaintiff saying that with the word 'request' altered he would sign the form; Mr. Audrain was not addressed on the refusal but he did say that he saw no point in bothering at that moment and that it could be sorted out later and he told Mr. Bliss that he could call on him, Mr. Audrain, as a witness to clear him of responsibility for his failure to obtain the Plaintiff's signature. The Plaintiff told us that he read only the first paragraph and had refused to sign because he had never requested the prepayment meter which had been forced upon him.

It is to be regretted that the form was not dealt with at that time. The simple substitution of the word "agree" for the word "request" would, we believe, have led to the form being signed by the Plaintiff.

We have to decide the facts on the balance of probabilities but the burden of proof is upon the Plaintiff. He had failed to discharge the burden of satisfying us, on the balance of probabilities, that he did not know of the special prepayment meter charge, or that he refused to contract to pay it.

Article 14 of the Law provides that the Defendant may, at its discretion, instal prepayment meters upon the premises of any consumer, in which case the Defendant shall at each collection from such prepayment meters make such cash adjustment as may be necessary to reduce the price of energy to the prevailing tariff, reduced by any scale of discount in operation for the time being.

On the 4th July, 1986, the Defendant sent to the Plaintiff a cheque for £4.34 by way of rebate on electricity used up to the 1st July, 1986. The Plaintiff accepted and encashed that cheque, thus accepting both the calibration of the meter and the calculation of the rebate.

The conclusion of this Court must be, although we have some sympathy with the Plaintiff as he obviously feels that he had been badly treated, as a matter of law and on the facts as found by the Court, that his claim fails.

Accordingly, we dismiss the Order of Justice. The Plaintiff depends on the St. Helier Welfare Board for his subsistence and we have found that the Defendant was careless in its procedures. In the circumstances we make no order for costs.