(6 a)

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16th December, 1986

(Before the Bailiff, Jurats Perrée and Gruchy.)

Between	John Audley Felkin	Appellant
And	The Housing Committee	Respondent

THE BAILIFF: This appeal arises from the refusal of the States of Jersey Housing Committee to grant consent to Mr. John Audley Felkin to acquire from his sister the undivided share in a property called "Kilimani", Les Champs Estate, Mont Cochon, which the appellant and his sister inherited jointly from their father after the death of their mother who had the "usufruit", or life enjoyment. The only grounds on which the Committee could have granted consent are those contained in Regulation 1(g) of the Housing (General Provisions) (Jersey) Regulations, 1970, because in every other case, apart from the remainder of those Regulations where certain consents are mandatory, the Committee is obliged to refuse consent. Paragraph (g) of Article 1 of the Regulations is as follows: (This being a ground on which the Committee shall grant consent) where "(g) the Committee is satisfied that the hardship (other than financial hardship) which would be caused to the purchaser, transferee or lessee or to persons ordinarily resident in the Island if consent were not to be granted outweighs the fact that he does not fall within one of the above-mentioned classes".

Now, Mr. Falle has suggested that before the Committee can apply its mind to that paragraph it has to ask itself whether a refusal would prejudice the housing situation within the two requirements of the Housing Law. The Committee of course is required by law to prevent further aggravation of the housing shortage and to ensure that sufficient land is available for the inhabitants of the Island. But if one looks at the Regulations, one sees that whereas in Regulation (j) that is to say, where "the Committee is satisfied that the intending purchaser, transferee or lessee either is, or will be, essentially employed in the Island and that consent can, in the best interest of the community be justified; or "(k) the Committee is satisfied that consent can be

justified on social or economic grounds"; there is an implied term in both of those requirements that the type of property for which consent is sort under (j) or (k) is important, and is one which the Committee inevitably considers before it grants consent or otherwise under (j) or (k). As regards (g), there is no such implication and we are satisfied that really it is only a question of the hardship which has to be considered. Of course, the result of the refusal is somewhat bizarre in as much as because "Kilimani" is inherited property, the two parties could, as Mr. Falle rightly said, avail themselves of the exemption in Article 6 of the law which exempts from any transaction any contract of partition of inherited or devised real estate, and pass a "partage des héritages léguer" giving the appellant practically all he wants except perhaps for a small portion and there is nothing we can see in the law which would prevent his compensating his sister in accordance with the ordinary common law of the land on "partage". Nevertheless, looking at the facts of this case, Mr. Felkin himself, the appellant, has no real connection with the Island. He has visited quite often, he has stayed with his parents, but he is basically resident in the United Kingdom and so is his sister. Having said that however, we want to make it quite clear that at one stage it seemed to us that the Committee possibly, we only say possibly, was falling into the trap of shutting itself in a principle of not granting consent in cases of this nature to persons who are resident outside the Island, which would have been contrary, I think, to accepted practice on the exercise of discretion. However, we have come to the conclusion that the Committee did not in the end do that, and applied its mind to the question of hardship. In our mind there can be no real hardship involved. It is an inconvenience that Mr. Felkin cannot have this family arrangement. It is one of the cases in our opinion where there can be two decisions, both reasonable. In our opinion it could be reasonable for the Committee to refuse consent and it could be equally reasonable if, as Mr. Falle suggested, to grant consent because of the exceptional circumstances. It is not for us to choose either if we are satisfied that each could be reasonably adopted. We cannot say therefore that the Committee either came to a decision to which it was not entitled by law or that its proceedings were unsatisfactory. It can proceed in everything it had to. It saw Mr. Stones and it considered everything properly. There was one matter which worried us which was the question of whether in fact it actually sat before it wrote a letter

through its Law and Loans

Manager, Mr. Connew, on the 29th July, confirming its decision. We are satified that it did in fact reconsider the application properly, and on balance we do not think that the decision to which it came was one which we would find totally unreasonable to the extent that we should not interfere. Therefore, the appeal is dismissed, but as I have said the result is nevertheless somewhat bizarre and under all the circumstances I do not propose to make an order for costs.

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