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COURT OF APPEAL

25th September, 1987

Before: Sir Godfray Le Quesne, Q.C., (President)
Sir Patrick Neill, Q.C., and
Robert Donald Harman, Esq., Q.C.

Between	M and R Properties Limited	Appellant
And	The Jersey Electricity Company Limited	Respondent

Advocate M. H. Clapham for the appellant
Advocate P. de C. Mourant for the respondent

JUDGMENT

The President: The appellants in this case redeveloped a building lying between the Esplanade and Seaton Place known as 40, Esplanade. When the development reached a certain stage, they applied to the respondents for a supply of electricity. What happened then is recorded in an agreed statement of facts which was prepared by the parties for the trial of the action. I read the first two paragraphs of this statement:

"1. The plaintiff's architect wrote to the defendant on the 22nd March, 1985, signifying the plaintiff's requirement of a supply of electricity to its new development at 40, Esplanade.

2. Following subsequent correspondence and discussions between the parties and their respective professional advisers the parties' positions were clarified as follows:

(a) The plaintiff wished to be supplied with the following three phase services:

One 400 ampère phase service;

One 200 ampère phase service;

Four 100 ampère phase services.

It wished to be supplied at medium voltage, that is 415 to 240 volts. It did not wish to provide space on its premises for a sub-station.

(b) The defendant stated that it would supply the plaintiff with electricity at 11,000 volts. As an alternative it offered to supply electricity at medium voltage, that is 415 to 240 volts, if the plaintiff was prepared to lease to the defendant a site for a sub-station for a period of 99 years at a rental of £1 per annum and pay a contribution of £9,994 after allowing certain rebates towards the cost of providing the mains supply and services, a large proportion of which cost comprises the cost of the transformer and switchgear apparatus contained in the sub-station".

This being the disagreement between the parties, the appellants started this action and by their Order of Justice claimed two declarations: (a) that the defendants' duty under the law is to supply electrical energy to the premises in a usable form to the maximum power requested by the plaintiff; (b) that the defendant is not entitled as a condition of such supply to require the plaintiff to provide a site for a sub-station. Alternatively, that an electricity substation is not an electric line within the meaning of the conditions of supply referred to in paragraph three of the Order of Justice and that the defendant is accordingly not entitled as a condition of such supply to require the plaintiff to pay for or contribute towards the cost of the supplying and installation of any such substation.

I may add that Mr Clapham told us that the expression 'in a usable form' used in the first declaration sought, meant at a voltage between 415 and 240.

It is helpful before going further to refer to a description of the electricity supply system in the Island which was given in a letter written by Mr Mourant who was acting for the respondents to Mr Clapham on the 28th January, 1986. He wrote:

"The company have established several levels of operating voltage within the Island to ensure the efficient transmission and distribution of electrical energy, relative to the capacity and consumption involved. These different voltage levels are referred to as systems and are briefly described below:
(a) 90,000 volt system. This is a relatively new system which has been introduced for the efficient importation of electrical energy from France and has a present capacity of 50,000 kilowatts.
(b) 33,000 volt system. This is the primary distribution system in Jersey and presently supplies four primary, 33/11 kilovolt stations, located at key distribution points in the Island, each via duplicate 33,000 volt circuits, with a capacity of approximately 20,000 kilowatts per circuit.
(c) 11,000 volt system. This is the secondary distribution system which is used to supply approximately 500 local network or consumer sub-stations throughout the Island. All network sub-stations include a transformer with capacities of between 200 and 1,000 kilowatts which converts the voltage to 415 to 240 volts. Your clients would need a transformer of a capacity of 800 kilowatts to meet their own service requirements. Several major commercial and industrial consumers requiring service capacities of this order are supplied and metered at 11,000 volts and have installed various distribution and transforming plant to suit their particular needs.
(d) 415 to 240 volts system. This is the general domestic distribution system throughout the Island. With each local area being supplied from an 11,000 volt system network substation. The system is used to provide individual single phase 240 volt and three phase 415 volt services to consumers requiring capacities of up to 20 kilowatts and 60 kilowatts respectively".

In the same letter Mr Mourant set out the position of the respondents in the argument which was going on between the parties. I quote three passages from the letter:

"I must make it quite clear that my clients do not and will not refuse to supply electrical energy to your clients. Your clients have requested a number of services with a total capacity of between 3,300 and 3,900 ampères. This in itself has prevented my clients from finalising their quotations and at the time of writing I understand that they are proceeding on the basis of the supply being required of a capacity of 3,300 ampères. My clients will supply and meter your clients at 11,000 volts and under the terms of Article 13 of the 1937 law will declare in their quotation that this is the voltage at which the supply will be delivered to your clients' terminals".

Later in the letter Mr Mourant explained that capacities of the magnitude required by the appellants could not be supplied from the 415/240 volt distibuting mains without, and I quote his words: "prejudicing the quality of supply enjoyed by those consumers". Those consumers being other existing consumers. He went on to add:

"Major industrial and commercial developments generally require a service capacity well in excess of that which can be provided efficiently from the 415/240 volt distribution system, or alternatively require a large number of separate single and three phase services within a defined area. For instance, office suites, blocks of flats, housing developments. In either case, unless a network substation with spare transformer and distribution capacity exists in the immediate vicinity, it is necessary to supply the development from the 11,000 volt system via a substation situated as close as possible to the effective load centre".

Finally, at the end of the letter Mr Mourant said:

"From the foregoing you will gather that my clients have no alternative other than to supply your clients at 11,000 volts and also meter them at this voltage".

The attitude of the appellants can be seen from some evidence which was given by Mr Lawson, a Director of the Company, at the trial. I quote from part of the cross-examination by Mr Mourant. Mr Lawson said: "He", (that was an official of the Electricity Company), was saying that it was not practicable to utilise the surplus capacity in the two substations at Seaton Court.

MR MOURANT: What do you want to hear to be convinced?
WITNESS: I don't want to hear anything, Sir, because I don't think it's our problem. I think it's his problem. Where I do not entirely without knowledge unreservedly accept that is that I have a strong feeling that it would be practicable to get something out of those substations, but it may be inconvenient, it may be expensive and it may be contrary to JEC policy.
MR MOURANT: Let's just look at that, Mr Lawson. Are you advised by an expert that this is the case?
WITNESS: No.
MR MOURANT: Have you tried to seek the advice of an expert that that is the case?
WITNESS: No, I'm just ...
MR MOURANT: No, no, please just answer the question.
WITNESS: The answer to that is, 'no'.
MR MOURANT: Why haven't you tried to seek to take expert advice that that is the case?
WITNESS: Because I am advised and believe that these are not matters which are relevant to the issues in this case.

It is therefore clear that the appellants' position was that they were entitled to electricity from the general supply at 240/415 volts and whatever problems the respondents might have in giving the supply required at this voltage, it was for the respondents to overcome. The respondents agreed that the appellants were entitled to a supply but said that it was they and not the appellants who had the right to decide at what voltage it should be given.

This dispute has to be settled under the terms of the Electricity (Jersey) Law 1937. There are three Articles upon which the matter turns. First, Article 13, which is headed: "Declared voltage. The Company shall, in respect of each consumer declare the constant voltage at which the supply shall be delivered to the consumers' terminals. Such declared voltage shall not be departed from to any greater extent than is permitted by the variations allowed in the regulations of the English Electricty Commissioners for the time being in force".

Article 14: "Supply compulsory. The Company shall, upon being required so to do by the owner or occupier of any premises situate within 50 yards from any distributing mains of the Company in which it is for the time being required to maintain or is maintaining a supply of energy for the purpose of general supply to private consumers, give and continue to give a supply of energy to those premises".

And I omit certain words and read from further on in Article 14: "Cost of supply line. The cost of so much of any electric line for the supply of energy to any owner or occupier as may be laid upon the property of that owner, or upon the property in the possession of that occupier and so much of any such electric lines as it may be necessary to lay for a greater distance than 60 feet from any distributing main of the Company, although not on that propoerty, shall, if the Company so require, be defrayed by that owner or occupier".

Article 15: "Maximum supply. The maximum power with which any consumer shall be entitled to be supplied shall be of such amount as he may require to be supplied with not exceeding what may be reasonably anticipated as the maximum consumption on his premises". There are then some words which I need not read and at the conclusion of the Article, a provision that any disagreement between the Company and the consumer as to what would be a reasonable anticipation of the maximum consumption shall be settled by arbitration under Article 29 of the Law .

It will have been noticed that Article 13 contains a reference to the regulations of the English Electricity Commissioners for the time being in force. There are in fact a number of references to these regulations at various points in the law and both sides have agreed that it is proper to look at those English regulations at least for the purpose of referring to the definitions of words. It being clear from the references to the regulations in the law that words which appear both in the regulations and in the law must have been intended by the States to bear the same meaning in the law as is given to them in the regulations. I refer at this point to two definitions in the Electricity Supply Regulations 1937. First, "Consumer. Consumer means anybody or person supplied or entitled to be supplied with energy by the undertakers". And "General supply. General supply means the general supply of energy to ordinary consumers and includes, unless otherwise specially agreed with the local authority, the general supply of engergy to the public lamps, where the local authority are not themselves the undertakers, but shall not include the supply of energy to any one or more particular consumers under special agreement".

The two sides have put forward contrasting interpretations of these provisions of the law. I take first that for which Mr Clapham contended on behalf of the appellants. Article 13, he submitted, was an Article inserted, not for the assistance of the Company but for the protection of consumers. Its essential purpose being to ensure that the consumer receives his supply at a constant voltage at the declared level with no greater variation than that allowed by the regulations. The first sentence Mr Clapham submitted which provides that the Company shall declare the constant voltage did not entitle the Company to declare for any particular consumer any voltage different from that declared for the general supply unless the declaration was made with the consumers' agreement.

Coming to Article 14, Mr Clapham submitted that in view of the reference to the general supply to private consumers in the definition of those entitled to a supply, and also of the reference in the provisions about the cost of the supply line to a greater distance than 60 feet from any distributing main of the Company, it was clear that the section intended to refer to a supply given from the distributing main and therefore given as part of the general

supply. So, Mr Clapham said, the right under Article 14 is not simply to demand the supply of electric current, but to demand a supply to be provided from the general supply and therefore at the voltage at which the general supply is given. It followed, Mr Clapham said, that by offering a supply at 11,000 volts the respondents were not fulfilling their obligations under that Article. The Article required them to supply his clients from the distributing main at the current used for the general supply. That is to say, at 240/415 volts.

Mr Mourant by contrast, submitted that the Company was entitled by Article 13 to declare the voltage at which the supply would be delivered to each consumers' terminals. It is true that under the Article, once the voltage has been declared, the Company is obliged to maintain the supply at that voltage, with no greater variation than is permitted by the regulations. But Mr Mourant submitted it is the Company which declares and therefore decides in the first place what the voltage of the supply for each consumer is to be. Article 14, according to Mr Mourant's argument, confers upon persons, owners or occupiers of premises in the defined area a right to a supply of energy, but not to a supply at any voltage except that which has been declared by the Company under Article 13. Article 15, Mr Mourant submitted, enables the Company to know what the maximum power which the consumer is going to require is going to be and so to decide what is the appropriate voltage at which to give the particular supply.

These are the two interpretations between which we have to decide. I start with Article 14 because that is the Article which confers the obligation to supply whatever its meaning may be. Now, it is quite true that in the definition of the area within which the owner or occupier has to have his premises, reference is made to distributing mains of the Company in which the Company is maintaining a supply of energy for the purpose of general supply to private consumers. It is also quite true that in dealing with the cost the Article provides that the consumer is to pay for so much of the electric lines as lie in more than 60 feet from any distributing main of the Company. And the distributing main will be a main carrying electricity at 415/240 volts. It seems to me, however, that the most significant feature of the Article is the language in which the obligation itself is expressed.

The words, "the Company shall give and continue to give a supply of energy". Now, in my Judgment, if it had been intended to provide that the obligation of the Company was to provide the supply at a particular voltage, this would not have been left to be gathered by implication from references to distributing mains and general supply in other parts of the section, it would have been stated explicitly. Since it is not, it appears to me that the section must be construed as giving to the consumer a right to a supply of energy but not a right to a supply from any particular main or at any particular voltage.

I turn to Article 13. That Article in fact provides expressly that the Company shall declare and in respect of each consumer the constant voltage at which the supply shall be delivered to that consumer's terminals. It is to be noted particularly that the Company is to do this according to the Article in respect of each consumer. If the intention had been as Mr Clapham submitted that the Company should declare a voltage of the general supply which would be applicable to all consumers, one would have expected the language to be in respect of all consumers, or possibly in respect of every consumer, but certainly not in respect of each consumer, since the clear implication of those words is that the Company is to decide and declare individually. Now, I do not suppose that in fact this is done for every individual, since the Company will wish to treat the majority of individuals in the same way, but the right of the Company under this section and indeed its obligation is clear, to declare in respect of each consumer. It appears to me that Article 13 is in fact inserted for two purposes, one for the benefit of each party. The first sentence gives to the Company, the power to determine the voltage at which each consumer shall be supplied. The second sentence provides that once the Company has done so the consumer is entitled to a constant supply at that voltage with no greater variation than is permitted by the regulations.

If this is the correct interpretation of Articles 13 and 14, Article 15 appears to fit quite naturally into the scheme. Under Article 15 the maximum power with which any consumer is to be supplied will be determined in most cases no doubt simply by the consumer's requirement, but in cases of dispute by arbitration. Once that has been determined it is then for the Company

to decide and declare under Article 13 at what voltage that supply will be provided and it is the obligation of the Company then to give the supply in accordance with Article 14.

This appears to me to be the correct interpretation of the law, but I make one further observation about this. As I have said the law contains various references to the regulations of the Electricity Commissioners in England and it is clear from authorities to which we were referred that much of the language of the law is taken from English statutes and subordinate legislation and in fact is language which goes right back to the beginning of legislation for electricity supply in the eighties and nineties of the last century. It is therefore relevant to see that the meaning of the Jersey Law as I have set it out seems to be quite consistent with the contemplation of the English Electricity Regulations. If one looks at the regulations, one sees in particular this feature. They contemplate, by Regulation 28, that supply may be given at a low voltage. Then by Regulation 29, that it may be given at medium voltage. Then by Regulation 30, that it may be given at high voltage. And then one finds Regulation 34, "(a) before commencing to give a supply of energy to any consumer the undertakers shall declare to that consumer (1) the type of current, whether direct or alternating which they propose to supply; (2) in the case of alternating current the number of phases and also the constant frequency at which they propose to deliver the energy to the supply terminals; and, (3) the constant voltage at which they propose to deliver the energy to the supply terminals". And later regulations provide for the constancy of supply.

It is therefore clear that the English Regulations contemplate supply at the decision of what they call the undertaker at low, medium, or high voltage and provide in Regulation 34 (a) in language which is even clearer than that of Article 13, that the decision is to be taken before commencing to give a supply of energy to any consumer. Language which seems clearly to point to individual decision.

I should refer to an authority upon which Mr Clapham relied and that is the case of London Investment and Mortgage Company Limited -v- Central London Electricity Limited reported in (1948)1 All E.R. at p.386. What had happened in that case was that a supply at 100 volts direct current was being converted by the Company in their district to a supply at 230 volts alternating current. The plaintiffs for some reason wished to retain their supply at 100 volts direct current. And I quote from the Judgment of Mr Justice Jenkins at p.388:

"The result has been a prolonged correspondence and an interminable discussion. The plaintiffs on the one hand sofar as I understand it, maintaining that they are entitled to continue to receive the 100 volts direct current supply for an indefinite period and the defendants on the other hand contending that their only obligation to the plaintiffs is to supply current of the new type, that is alternating current of 230 volts".

The passage upon which Mr Clapham particularly referred occurs at p.390. Mr Justice Jenkins there said:

"It is true that there is a continuing obligation on the defendants to continue to supply current to the premises in their area, but that I think is a purely general obligation to supply energy. It means, I think, no more than that anyone who is an owner or occupier of premises is entitled by statute to have the supply on the same terms as everybody is entitled to have it. I don't think that the view that the second or subsequent occupier can refuse to enter into a written contract if required to do so by the defendants is tenable. It seems to me that Article 27 of the Strand Order clearly requires this to be done. Unless there is some special bargain the individual for the time being occupying the premises cannot have a right to any particular voltage or kind of current other than the general supply provided by the defendants as approved by the Board of Trade or now by the Electricity Commissioners".

In that last sentence the learnèd Judge is clearly stating that the occupier has no right to a supply at a particular voltage other than the voltage of the general supply. It does not appear to me that one can infer from that that he meant to decide that the occupier is entitled to insist that his supply shall be at the voltage of the general supply. I say that because if one refers to the passage on p.388 which I read, setting out the dispute which had arisen in that case, it is quite clear that the problem with which the learnèd Judge was faced was not at all the problem which arises in this case and I do not think therefore that it is right to infer from the dictum on p.390 any view as to what the learnèd Judge would have decided if he had been asked to settle as we are, if a consumer is entitled to insist that the supply given to him shall be a supply at a particular voltage whatever the problems, inconvenience, or difficulty that may cause for the Company, or for other subscribers.

Mr Clapham also submitted that on the view which I have expressed of the law, it would be open to the respondent, if asked for a supply by a domestic consumer in a small house needing only small capacity that they would supply but only at 11,000 volts. This, I suppose is true. If one assumes people are capable of adopting entirely unreasonable and arbitrary attitudes, but it may equally be said that on the view for which Mr Clapham contends, a consumer is entitled to say to the Company that his supply, however large, must be given from the distributing main at 215/420 volts, whatever, as I have just remarked, the trouble, inconvenience, or expense that may cause to the Company or to other consumers.

The fact is, it appears to me, that one cannot interpret the statute by assuming thoroughly irrational attitudes being adopted by the parties concerned. The legislature has framed the law as it seems to me on the assumption that reasonable attitudes would be adopted and I do not by any means wish to be understood as meaning that if an irrational and arbitrary attitude were adopted by the Company in a particular case, the consumer would be without remedy.

It seems to me for these reasons that the first declaration was rightly refused by the Royal Court. If this declaration is refused, it follows that the respondents satisfy their obligation under the law by offering a supply at 11,000 volts and no question of their requiring as a condition the supply of a transformer will therefore arise. This means that it is unnecessary to consider the second declaration which was claimed and I prefer not to do so. The questions of interpretation which were raised in the argument on the second declaration were complicated; it seems to me that for their satisfactory settlement they would require rather more technical material than was available to the Court at this hearing and I therefore prefer to leave them to a future case in which they have to be decided. In my view, therefore, the appeal should be dismissed.

Cases referred to in the Judgment:

London Investment and Mortgage Company Limited -v- Central London Electricity Limited : (1948) 1 All E.R. 386.

Other cases cited:

James Barker -v- Jersey Electricity Company Limited : (1973) J.J. Vol.1 Part 4 p.2491.

Texts cited:

Halsbury's Law of England (4th Ed'n), Vol.16 : Electricity, Atomic Energy and Radioactive Substances; (3) Supply of Electricity : paras 103-111 pp.64-69.
The Digest Annotated British Commonwealth and European Cases : Vol.20 : Electricity, Atomic Energy and Radioactive Substances, Case 2132 (pp.198 & 199) (Butterworth 1982 Reissue).
Studholme : Electricity Law and Practice pp.77-79.

Legislation construed:

Electricity (Jersey) Law, 1937.