

5 The company was given a large number of statutory powers but was placed under an obligation to supply water for domestic purposes if asked (Article 7). Failure to do so, except in two exceptions, makes the company guilty of an offence. Article 14 of the Law is as follows:-

10 *"(1) Where it appears to the States to be necessary so to do in the public interest, the States may by regulations -*

(a) *determine the water rates and charges to be made by the Company in respect of water which it supplies: and*

15 (b) *specify the manner in which water rates and charges are to be assessed and make provisions incidental thereto:*

20 *Provided that any regulations made under this Article, unless previously renewed by the States, shall lapse after twelve months from the date on which they come into force.*

25 *(2) In determining water rates and charges, the States shall have regard to the following matters -*

(a) *the present needs of the Company and the future expansion of services provided by the Company;*

30 (b) *the ability of the Company so long as its undertaking is managed efficiently to pay -*

(i) *interest on any debentures or bonds charged on the real property of the Company;*

35 (ii) *a dividend on the preference shares issued by it at the rate fixed under the terms of issue of such shares; and*

40 (iii) *a reasonable dividend on the ordinary shares issued by it;*

45 (c) *any capital expenditure which the Company may reasonably be expected to incur during the next five years and the desirability of the Company's charging such expenditure, or any part thereof, to revenue;*

(d) *the ability of the Company to pay all proper expenses of and connected with the working, management and maintenance of the Company;*

50 (e) *the provision of any contributions, whether set apart out of revenue or otherwise, which the Company may*

lawfully carry to a reserve, contingency or amortization fund;

5 (f) the ability of the Company to make good depreciation, whether or not provision therefor is made by a reserve or contingency fund; and

10 (g) the ability of the Company to meet all other costs, charges and expenses, if any, properly chargeable to revenue."

No regulations have so far been made. The company owns a number of reservoirs in the island of which the relevant ones are:-

15 Queens Valley Reservoir in the Parishes of Grouville, St. Saviour, and St. Martin.

20 Val de la Mare Reservoir in the Parishes of St. Peter and St. Ouen.

Grands Vaux Reservoir in the Parishes of St. Helier, St. Saviour and Trinity.

25 Fern Valley Reservoir in the Parish of St. Helier

30 As is to be expected there is the usual number of filtration plants, treatment works, pumping stations and connecting mains and pipes commensurate with the size of its undertaking. All of these are spread over the parishes of the island and form an integral part of the company's business. A special Law was enacted in 1988 to provide for the building of Queen' Valley. By that Law the company was required to build it. Neither in the Water (Jersey) Law, 1972 nor in the latter Law was there an article exempting the

35 company from paying rates.

The law governing rating is the Parish Rate (Administration) (Jersey) Law, 1946 (as amended) which we shall call "the Law". Land is defined in Article 1 as:

40

"any land capable of actual occupation and except in the definition of agricultural land, includes any houses, buildings and structures thereon or thereunder and land

45 **covered with water."**

The words "except in the case of agricultural land " were added in 1960. A further amendment relating to property divided in accordance with the Loi (1991) sur la Copropriété des Immeubles bâtis was inserted by that Law. Agricultural land includes land used as arable, pasture or meadow but excludes, *inter alia*,

50

5 pleasure grounds or land kept or preserved mainly for sport or recreation. In brief terms, foncier rate is payable by the owner of land and occupier's rate by the occupier. An owner occupier is liable for both. Reservoirs, whether privately owned, or otherwise, are not exempted. Nor it should be noted are the other public utility companies. The rateable value is based on rental value which is assessed in accordance with the rules set out in the second schedule to the Law.

10 The relevant part of the second schedule covering land which is not let is at paragraph 1(1) which is as follows:

15 ***"The rental value of land which is not let shall be the amount which it might reasonably be expected to command as rent if it were let from year to year with the tenant undertaking to pay the usual tenant's rates and the landlord undertaking to bear the cost of repairs and insurance and other expenses necessary to maintain the land in a state to command that rent."***

20 The company is the owner and occupier of the Val de la Mare, the Queen's Valley, Grands Vaux and Fern Valley reservoirs. It is probably the owner occupier of its other reservoirs.

25 There are twelve assessment committees in the island one in each parish except that in St. Helier the parish is divided into four sections for administrative convenience. It is upon the assessment committees that the considerable burden of assessing the rates is placed by the Law. Over and above them is the Supervisory Committee of the twelve Constables each of whom in their respective parishes has the power to remit or reduce the rate in cases of hardship. (Article 19(2) of the Law). Article 30 14 of the Law provides for an owner or occupier who is aggrieved by the incorrectness or unfairness of the assessment by the parochial assessment committee to lodge an objection with the Supervisory Committee. Article 15 of the Law provides for meetings of the Supervisory Committee and the considerations of objections. The relevant part of paragraph (1) is as follows:-

40 ***"(1) The supervisory committee shall hold meetings for considering objections made to the draft list in accordance with the provisions of this Law, and, on the consideration of any objection, the Constable, the owner or the occupier, as the case may be, of the land to which the objection relates, and any agent duly authorised on behalf of any of them, shall be entitled to appear and to be heard:***

50 ***Provided that the supervisory committee may at any such meeting consider any objection, although notice thereof has not been given in accordance with this Law, if the persons to whom copies of the notice of objection are***

required by this Law to be given consent to the consideration of the objection."

Paragraph (3) is as follows:

5

"No person, being a party to the objection or a member of an assessment committee, shall be present while the supervisory committee is considering its decision on an objection."

10

At the beginning of 1992 the Assessment Committees of Grouville and St. Helier met, respectively, to consider what the appropriate rate should be for the Queen's Valley, Grands Vauxs and Fern Valley reservoirs. The Grouville Assessment Committee adopted as proper for the Queen' Valley reservoir (most of it is in that parish) a method known in England as the contractor's basis that is to say what a developer of the reservoir might expect to receive as rent from a hypothetical tenant including the company. Mr. P. R. Needham FRICS a partner in a London firm of chartered surveyors put it like this at paragraph 5.2 of his report: *"What has to be determined is not what rent the landlord would seek, but what a tenant would give"*. The St. Helier Assessment Committee took as its basis the mean rent charged by the States for commercial properties at La Collette and adapted it (apart from some scrub land) also by reference to the rental value of certain parts of the Jersey Electricity Company's premises at Queen' road. The effect of the Assessment Committees' calculations was that the company was assessed in each parish at a figure it thought both incorrect in law and in any case unfair and, accordingly, it lodged objections to each assessment with the Supervisory Committee.

20

The contractor's method adopted by the Grouville Assessment Committee required taking the capital value of the cost of the construction of Queen's Valley Reservoir at £19M, allowing £2M for land in other parishes and assessing the rental on a 5% return on a developer's capital giving an estimated rental of £850,000. The St. Helier Assessment Committee assessed 5 verges of scrub land at Grands Vaux Reservoir at £25 a vergee and the land under water at 35p a square foot making a rental value of £125 and £101,64 respectively, or £6,600 per vergee for the latter. A similar exercise for Fern Valley produced a rental value of £3,388.

35

40

The appeal against the Grouville assessment was heard at Grouville Parish Hall on 8th June. The following constables were present: St. Helier, St. Ouen, St. John, Trinity, St. Martin and Grouville. There were other appeals not relevant to this case and on each occasion as well as that concerning the Grouville appeal the Constable of the parish concerned withdrew. Mr. Colin Baird the spokesman for the Assessment Committee, was present and the company was represented by Mr. Peter Luce, its solicitor, Mr. J. M. S. Hobbs, and Mr. B. R. Queree, its secretary. Both sides

50

spoke and the Supervisory Committee reserved its decision. The minute of the meeting on this point was prepared by the Supervisory Committee's Secretary Mrs. R. Dawkins and reads:

5 *"Referring to the Queen's Valley, Grouville appeal, the*
 Panel, having heard both sides of the case
 (representatives from the Jersey New Waterworks Company
 and the Grouville Assessor) agreed a decision could not be
10 *reached without further investigations, taking into*
 account various factors, for example, assessments for
 other J.N.W.C properties, etc. A decision would then be
 attained once all the facts had been collected and
 examined."

15 A more detailed note was prepared later by Mr. Baird. Mr.
 Querée did the same. At that meeting the chair was taken by the
 constable of St. Helier who, on 12th June invited Jurat Peter
 Blampied, the Chairman of the company, to meet him on the 16th
 June. Jurat Blampied met Mr. Clark, together with Mr. Peter Luce,
20 Mr. Querée and Mr. James and later prepared a minute of the
 meeting which he sent to the Constable of St. Helier on the 29th
 June. Mr. Querée told us that Jurat Blampied's note was accurate.
 In his letter he said that he continued to hope that he might have
 an invitation to meet the Supervisory Committee. He did not get
25 one. His minute is as follows:

"The Constable had asked for the meeting as a result of
 the appeal made to the Supervisory Committee by the
 Waterworks Company against the Assessment made by
30 *Grouville Parish on the land that it owned in Queens*
 Valley. The Constable put forward the case that the
 Assessment was reasonable because of the capital
 expenditure that the Company had incurred at Queens Valley
 and that this represented the greater part of the
35 *Company's assets.*

 PGB said that the assets of the Company had a significant
 value which was not reflected in the Balance Sheet as the
 Balance Sheet showed the historic cost of the Company's
40 installations which had been constructed in some cases
 many years ago.

 PGB said that it seemed to him that it was wrong in
 principle to base an Assessment on a capital value. The
 notes of the meeting with the Supervisory Committee which
 had been prepared by BRQ said that Mr. Baird had spoken to
 Colin Powell who had thought a value of 5% or 6% return on
 capital was realistic and that they had taken a capital
 value of £19M and allowed 10% for land in other parishes
45 and had charged 5% of £17M. PGB said that Article 12 of
 the Parish Rate Law required the Assessment Committee to
 assess the rental value of all land and that in his
50

5 opinion it was not correct to assess a capital value and then apply a percentage to it. He doubted very much whether it would be possible to let the Reservoir to anyone and therefore it had no rental value. In addition PGB said that what had been constructed at Queens Valley by the Company was fixed engineering equipment together with pieces of engineering equipment which were active, underground pipes etc. He did not believe that the Rating Law envisaged the Assessment of engineering equipment.

10 FC asked why the Company had not appealed against any other Assessments. BRQ said that they had in fact appealed against the Assessment made by St. Helier Parish. FC then said that he was not aware of this but asked why we had accepted Assessments for other Parishes if we felt that Assessments were wrong in principle. PGB said because the Assessments were reasonable and the difficulty that the Company now had was that if the Grouville Parish Assessment was spread over all the Company's installations, the actual rate bill would increase to something of the order of £250,000. The Company was not a profitmaking company in the sense that the dividend was minimal and the actual dividend paid to the ordinary shareholders outside the States was £5072 only in the last year. This substantial increase would mean that it would have to be recovered from the water consumer and it merely shifted an expenditure from residents in certain Parishes to people who use the Company's water. This would be particularly onerous at a time when the Finance & Economics Committee had asked the Company to restrict any increase in its water charges to the minimum. PGB said that the Company would have no alternative but to take the matter to the Royal Court in order to establish a point of law. FC said that it was difficult for the Supervisory Committee to deal with the matter with a threat of legal proceedings. PGB said that it was not a threat in any way but that if the principle could not be agreed with the Supervisory Committee then it would be necessary for a higher authority to establish whether or not the view of the Waterworks Board was correct.

45 FC asked whether PGB would be prepared to meet the Supervisory Committee to discuss the matter and PGB said that he would be very pleased to do so. It seemed to FC and PGB that it might be possible to establish a formula to overcome the difficulties. PGB said that this would need time and some thought but the underlying principle must be that the Waterworks should not have to face this enormous increase in their expenditure."

50 Mr. Clark's note of the Grouville appeal shows that the matter was fully argued and supports the claim repeated by the

Chairman, Jurat Blampied, at his later meeting with the Constable, although there is a £10,000 difference, that if the method adopted by Grouville were to be followed in the other parishes where the Company had its installation, that could result in a total rent assessment of something like £1¼M.

No complaint is made by the company about the hearing of its appeal at Grouville. The position is different when we come to the appeals on the St. Helier assessment which were heard on 1st July. The Constables who were present at that hearing were the Constables of St. John, St. Ouen, St. Clement, St. Lawrence, St. Brelade, St. Mary, St. Martin, Trinity, St. Peter and Grouville. There is some conflict of evidence about what was said to Mr. Luce who, with Mr. Queree represented the company. His impression was that the Constable of St. John who presided, did not allow him to repeat what he had urged before the Supervisory Committee at the Grouville hearing. Mr. Le Sueur took a more relaxed view, but Mr. Luce's recollections were supported by Mr. Queree. The notes of the secretary show, nevertheless, that Mr. Luce took part in the discussions, although her notes are not very detailed. As in the case of Grouville the Supervisory Committee reserved its decision.

On 17th July the Supervisory Committee met at the Town Hall, St. Helier. The following Constables were present - St. John, St. Helier, St. Lawrence, St. Ouen, St. Brelade, Trinity, St. Martin, St. Peter, and Grouville. There was also a number of members of the parish assessment committees, including Mr. Baird. The relevant parts of the minute of that meeting are as follows:

"The Supervisory Committee had been convened for the purposes of arriving at a decision with regard to the two outstanding rating appeals; Queen's Valley Reservoir at Grouville and Grands Vaux Reservoir in St. Helier. The Chairman explained the assembling of the Connetables and Assessment Committee Chairmen of the Island, was to hear comments from the Assessors as to how assessments were attained throughout the Parishes, (where appropriate), for the Jersey New Waterworks Company property (holding/filling tanks, pumping stations etc) but with particular regard to reservoirs. In amassing all the information, the Chairmen believed a common assessment approach for such property could be arrived at.

Speaking for the Parish of Grouville, Mr. Baird explained his Committee had thoroughly investigated methods of assessing Queen's Valley, seeking expert legal and financial views, but faced with a completely new development, felt a formula differing from that applied in other Parishes should be used, subsequently arriving at what the Committee considered was a fair assessment for such an unconventional entity as a reservoir. The Committee had taken the cost of the capital outlay of

Queen's Valley (£19 million less £2 million) and applied a 5% return on its capital value, arriving at an Assessed Rental Value of £850,000. Three quarters of the area of land is submerged.

5

Dealing with the Grands Vaux Reservoir area of land situated in St. Helier, Mr. Gallichan, speaking for his Committee, said enquiries had been made with the States Land Office as to how land used for commercial purposes is let. Having ascertained the States charged land at 70 pence per square foot, the Committee applied 35 pence per square foot which it deemed fair, arriving at an Assessed Rental Value of £101,765. Using 70 pence per square foot would have doubled the Grands Vaux Reservoir area in St. Helier, said Mr. Gallichan. With 15 verges under water, the figure per verge in relation to the Assessed Rental Value, amounted to £6,776.

10

15

20

The Grand(sic) Vaux Reservoir area of 10 verges situated in St. Saviour had been rated at a nominal figure not using any particular formula, commented its Chairman.

25

For the Parish of St. Lawrence, Deputy Coutanche argued that the Grouville Assessment Committee should have dealt with Queen's Valley Reservoir as a public utility entity not on a commercial basis.

30

Mr. Baird said his Committee could not accept the argument that the Queen's Valley Reservoir is a public utility entity. It was remarked by the Chairman that the JNWC had paid in excess of £300,000 in income tax in one year.

35

40

45

All Parish Assessment Committee Chairmen outlined their methods of assessment, some assessing the total area of land, some assessing only submerged land areas, some assessing scrub land around reservoirs at nominal values, others not, etc., and all agreed on it being a difficult area to assess. The older Reservoirs of St. Ouen, St. Peter and St. Lawrence had historically been rated rather low, with no specific formula applying to assessments. Assessors had followed the assessment basis of their predecessors, and these had never been challenged by the JNWC. It transpired that the older Reservoirs, in relation to their Assessed Rental Values, ranged from £600 per verge to under £7,000 per verge.

50

All Assessors commented the JNWC completed extremely detailed property Schedules.

In receiving this information, the Chairman thanked the Assessors for attending the meeting, for their comments

and continued support, remarking on their dedication to duty. The Assessors then departed.

5 The Committee considered whether a general common policy approach for all Islandwide reservoirs should be examined based upon information provided or deal specifically with just the two appeals. The Connetable of St. Ouen remarked on the varying methods of assessing used by Parishes and advised the Supervisory Committee consider only the two
10 appeals lodged, it being obvious changing the mode of assessing within Parishes was impossible.

15 This was agreed and the Connetable of Grouville departed in order that the Committee could deliberate the Queen's Valley appeal. Following discussions, the Connetable of St. Lawrence, who had not participated in the original hearing of the Queen's Valley Reservoir appeal, declined to cast her vote. The Chairman (as part of the Panel of five Connetables to hear the original objection) then
20 proposed the Queen's Valley assessment be upheld, seconded by the Connetable of St. Helier and with support from the Connetables of St. Ouen and St. Martin, it was agreed to maintain the assessment. The Connetable of Trinity, (the remaining member of the sub-committee Panel), was against
25 the decision. There was general support from the other Connetables in attendance at today's meeting to maintain the assessment.

30 The Connetable of St. Helier then left the meeting in order that the remaining Connetables could consider the Grand(sic) Vaux Reservoir appeal. By majority decision, it was agreed to uphold the assessment as calculated by the St. Helier Assessment Committee."

35 It will be seen that the principal reason for the meeting was to reach a decision on the Grouville and St. Helier assessments. Unfortunately it was believed by the Chairman, Constable Le Sueur, that the main purpose was to invite the assessment committees to try to arrive at a common method of assessing reservoirs. He drew
40 our attention to Article 8 of the Law, but the minutes do not support his assertion. The relevant part of the Article is clause (2) which reads:

45 "The Supervisory Committee shall take such steps as it thinks fit for promoting uniformity in the principles and the practice of rating and for assisting assessment committees in the performance of their functions under this Law, and for this purpose, the supervisory committee shall have power to hold conferences with persons
50 representing assessment committees"

5 If the main purpose of the meeting was correctly described in
the minutes, as we think it was, then members of the assessment
committees of Grouville and St. Helier should not have been
present. (Article 15(3) of the Law). It was open to the
Supervisory Committee to meet in the absence of the assessment
committees to rule on the objections or to meet with them, as the
law puts it in "conference", but not both at the same time. If it
was intended to hear Mr. Baird again the representatives of the
Company should have been present and have been heard. At the
10 conclusion of the meeting the Supervisory Committee rejected the
appeals.

15 Two of the Constables appeared to have accepted the views of
their fellow Constables without hearing the Company's version.

The company now brings a representation to the Court in
effect asking for a judicial review of the decisions of both
parish assessment committees and of the Supervisory Committee.
That latter body in informing the company of its decisions of the
20 17th July said that it considered the assessments equitable and in
accordance with the Law. It thus found for the assessment
committees on both the (legal) correctness and fairness of their
decisions. The company's complaints are set out in paragraphs 10
to 14 of its representation and are as follows:

- 25 "10. The Company claims that the assessment of the
rateable value of Queens Valley Reservoir by the
First Respondent was made contrary to the provisions
of the Second Schedule to the Parish Rate
30 Administration (Jersey) Law 1946 as amended (the
"Law") and was therefore ultra-vires and unlawful.
- 35 11. The Company claims that the assessment of the
rateable value of Grands Vaux Reservoir and Fern
Valley by the Second Respondent was made contrary to
the provisions of the Second Schedule to the Law and
was therefore ultra-vires and unlawful.
- 40 12. Further or in the alternative, the Company claims
that the said assessments made respectively by the
First and Second Respondents were so unreasonable in
amount that no reasonable Assessment Committee
acting within the Law could have made them.
- 45 13. The Company claims that in failing to uphold the
objections made by the Company to the said rate
assessments, the Third and Fourth Respondents acted
ultra-vires and unlawfully; alternatively in
reaching a conclusion that the said assessments were
50 equitable according to law, the Third and Fourth
Respondents reached a conclusion that no reasonable

Supervisory Committee, acting within the Law, could reach.

5 14. Further and in the alternative, the Company claims that by reason of the matters pleaded in the second sentence of paragraph 7 of the Fourth Respondent acted in breach of natural justice; and by reason of the matters pleaded at paragraph 8 hereof, the Third and Fourth Respondents

10 (a) breached the requirements of Article 15(3) of the Law;

15 (b) acted in breach of natural justice."

It asks the Court to make the following orders:

20 "i) Order that the decisions taken by the Third and Fourth Respondents on 17th July, 1992 be quashed and declared unlawful and void.

25 ii) Declare that the assessments as to rateable value by the First and Second Respondents to which notice of objection was taken by the Company were not made in accordance with the provisions of the Law.

30 iii) Direct the Third and Fourth Respondents to rehear the objections made by the Company to the said assessments and to determine those objections in accordance with the Law.

iv) Make such other or further orders as the justice of the case may require.

35 v) Condemn the Respondents jointly and severally, or in such proportions as the Court may think fit, to pay the costs of the Company in and about these proceedings."

40 The principles which govern judicial review are well known. They were set out in Safeguard Business Systems C.I. Limited trading as B. H. Rowland v. The Finance and Economics Committee (1980) JJ at pages 172 to 173. Following these principles we have asked ourselves three questions: 1. Were the decisions of the
45 Assessment Committees and the Supervisory Committee ones which they could lawfully make under the Law? 2. Were the proceedings of the Assessment Committees and the Supervisory Committee in general sufficient and satisfactory? 3. Were the decisions of the
50 Assessment Committees and the Supervisory Committee ones to which they could reasonably have come having regard to all the circumstances? If the answers to all three questions are in the affirmative then we have a clear duty to maintain the decisions.

A later English case has put it in somewhat different terms but the principle remains unaffected. In the Council of Civil Service Unions and others v. Minister for the Civil Service (1984) All ER 935, Lord Diplock said this at page 950 letter h:

"Judicial review has I think developed to a stage today, when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality', and the third 'procedural impropriety'."

He continues at the foot of the page to explain in more detail as follows:

"By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.

By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness' (see Associated Provincial Picture Houses Ltd v Wednesbury Corp [1947] 2 All ER 680, [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. To justify the court's exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards (Inspector of Taxes) v Bairstow [1955] 3 All ER 48, [1956] AC 14 of irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though unidentifiable mistake of law by the decision-maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by judicial review.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness

5 *towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all.*"

10 All parties agreed that if it were possible, assessment committees should have regard to similar properties in the parish for the purposes of assessing the rental which need not be the actual or declared rental. In other words there has to be an
15 hypothetical exercise in each case. The difficulty lies in the fact that there are twelve autonomous assessment committees in the Island. Is the uniformity prescribed by Article 8 of the Law meant to ensure that assessment committees carry out their
20 functions, so to speak, in watertight compartments or should they look at the level of assessments in other parishes for similar properties? From the evidence we heard it is clear that not every
25 three bedroomed house, for example, is assessed identically in every parish. It is obvious that a house of this size in a busy and noisy part of St. Helier would not command the same rent as
30 one in a quiet rural area. The same qualification, however, cannot apply to a reservoir. Its rental value does not vary with its location. A gas or electricity plant, by contrast, may, for
 example, if it is close to the docks. It is unlikely that there would be any variation in the siting of a power station. It seems
 to us, therefore that where, as in this case, a public utility company has undertakings all over the island that the assessment
 committees of the parishes must have regard to the practice in the other parishes.

35 But the problem here is that no-one seems to know upon what basis the other parishes, apart from Grouville and St. Ouen, have
 worked. Even in the case of St. Ouen, although the Constable was able to tell Mrs. Dawkins the amount of the rates and, by
40 inference, the assessed rental, the Constable of St. John believed that the original method had been lost in the sands of time and
 all that had been done had been to increase the amount in line with inflation. Thus any comparison with Val de la Mare without
 knowing the basis of assessment was worthless. In passing we note that the assessment committees on the whole, Grouville is one
45 exception, do not appear to keep comprehensive records which, had they been available, might have been of great help not only to us
 but also to the Supervisory Committee.

50 On 22nd April, 1994, the Judicial Greffier ordered that the Court would not be asked to make any finding of facts as to the
 actual construction costs of Queen's Valley or of any of the other component parts of the overall cost. If the Court sets aside the

assessment of the assessment committees and/or the decision of the Supervisory Committee then it is asked to give directions as to the principles of assessment. We took this to mean that we have to determine the appropriate method, but this, of necessity, would be applicable to the two reservoirs in St. Helier as well. So far as these latter are concerned the company has pointed out that the assessments represent an increase of 300% and 1,136% respectively. Further in the case of Grands Vaux there should not have been any division between the land in use and the rest as if the latter had some independent value for some other purpose. Similarly, but to a lesser extent, in the case of Fern Valley. One final matter should be noted here. The complaint against the Supervisory Committee is really against its sitting differently composed but meeting together. That is to say, some of the constables sitting to hear the Grouville appeal and others hearing the St. Helier complaint, but since the Supervisory Committee sat in one body to decide how to deal with the objections, namely, on the 17th July, it is that sitting which is the important one at which the Constables reached their decision. But any irregularity as alleged by the company at the hearing of the St. Helier objection, if well founded, may be carried forward to the meeting of the 17th July.

We must now consider the position of the company, that is to say, to examine whether it can properly be called, in the words of its chairman, a free standing commercial company. It is possible to argue that until the States acquired effective control in 1982 it was such a company. After that the States were entitled to nominate four out of the seven directors. In his report to the shareholders at the time of the States debate in 1982 the Chairman said this:

"JNWW enjoys a special position in the life and economy of Jersey. It is responsible for the supply of water in the island and as such has had certain privileges and obligations imposed by statute, notably under the Water (Jersey) Law, 1972. Although it is privately owned its status is not wholly comparable with that of a free standing private sector company subject to the opportunities and constraints of the market. For these reasons the well being of the company and its employees and the public interest of Jersey with which that well being is inextricably associated are considerations to which the directors of JNWW regard it as proper to give weight in the discharge of their duties..."

There was an offer to the shareholders from a private individual based on the market value but the decision of the States to acquire the controlling interest may be said to indicate that the States accepted that the supply of treated water required something more than this. Indeed the report of the Finance and

Economics Committee supporting the proposition made this clear. It said, *inter alia*:

5 *"During the debate leading to that resolution (asking for*
a report from the Committee) members expressed their
appreciation of the manner in which the company and its
staff had provided the most vital of community needs over
10 *a period of no less than a century this year in fact being*
its centenary in a highly efficient and satisfactory way.
Nevertheless concern was felt at the recent unprecedented
volume of dealing in the shares of the company with a
consequential reak of control passing into the hands of
15 *overseas investors or other persons who might not approach*
the operation of the company with the same high level of
responsibility as had been shown in the past. Because of
such sentiments the resolution (to acquire a controlling
interest) was adopted without dissent...."

20 In 1990 the States used their voting rights to increase the
authorised share capital of the company by £4.5.m and took up the
resultant 4.5 preference shares. Whatever may have been the
company's policy before 1982 for some years it is apparent from
the extracts we have quoted that it does not regard itself
25 primarily there only to make profits but of course it must obtain
enough revenue from the water rate to fund its day to day
operations and to provide for reserves as a glance at its accounts
will show. Its present policy is expressed in its annual report
for 1993 as follows:

30 *"The Directors have a fiduciary responsibility like*
directors' of all companies to their shareholders. The
directors recognise also a duty of care for those who work
for the company. However the directors accept an over-
35 *riding responsibility in their duty to supply water for*
the whole of the island community. The company's policy
is therefore to secure an adequate supply of good quality
water available throughout the island which recognises
both the need to limit increases in the cost of water and
40 *the monopoly that the company enjoys while at the same*
time providing a reasonable return for its equity
shareholders and it seeks to maintain secure conditions of
employment and a proper reward for all its staff."

45 As against the suggestion that the company enjoys a
particular status in the Island is the undoubted fact that it does
make substantial profits but even a cursory examination of its
accounts will disclose that unlike ordinary commercial companies
in the United Kingdom it distributes a much smaller part of its
50 profits to the equity shareholders and of course it has to make
provision for the repayment of some £12M borrowings. The
preference shares are also a charge on the company's profits. Mr.
Baird and Mr. Lavery had no doubts that the company was a

commercial one and so it is if one defines such a company as one which trades and deals in a commodity such as treated water. Even Mr. Queree admitted that the company should pay substantial rates, and it should not be forgotten that "fair" in Article 14 of the Parish Rate (Administration) (Jersey) Law, 1946 means not only fair to the rate payer but also to the parish and the other ratepayers in that parish. The Company does make profits but it seems to us that its primary purpose is to fulfill its statutory duties and obligations. Whether the Company is satisfied with assessments in other Parishes is beside the point. It may be that the wrong method of assessment used in those Parishes may have produced a result which the Company, nevertheless, regards as fair. Proper comparison must always be the primary method of arriving at the rental value. Of course this assumes that there are other properties with which a proper comparison can be made. For instance, Mr. Gallichan referred in his evidence to a large house nearby that is close to Grands Vaux Reservoir. That cannot be a proper comparison; like should be compared with like. We have already mentioned the difficulties of the assessment committees in this respect. The same problems may occur in assessing the properties of the Jersey Electricity Company which is also controlled by the States with power to determine the tariffs of the company. It does not appear to have done so up to date. It may be that the conclusion we are now going to state ought to apply to that company but we are not called upon to determine that. In the course of the hearing much was made, as is apparent also from the Chairman's note of his meeting with the Constable of St. Helier, of the effect that would ensue on the water rate should the Court uphold the assessments, particularly that of Queen's Valley. We do not think that that is an argument to which we should have regard in considering whether the decisions of the assessment committees were ones to which they could lawfully come. In our opinion the company is in a special position which has to be considered in assessing its proper share of the rates burden. That was not done in any of the appealed assessments. Having said that we wish to make it clear that we are not criticising either committee. It is clear that each approached its task in a responsible manner. Indeed the Grouville assessors sought advice from a number of people who agreed with the assessment, but of course they were not asked if the method used was within the law.

We now consider the law on the rating of reservoirs and water undertakings. 4 Halsbury 39 says this:

"Except in the case of hereditaments assessed by a statutory formula and any other public utility undertakings there is no rule of law as to the method of valuation to be adopted for rating."

That is also the position here. There is, as we have said, power for the States to make regulations, but none have been made. We are, therefore, entitled to look at the common law position that applied in England before the method of assessing water undertakings was laid down in 1989 by a Statutory Instrument. It is interesting to note that the cumulative supplement of Halsbury of 1994 regards the leading case of Kingston Union Assessment v. Metropolitan Water Board (1926) A.C. 331 as establishing a rule of law. The paragraph refers to regulation 3 of the Non-Domestic Rating (Miscellaneous Provisions) (No.2) Regulations, 1989 (SI 1989/2303) which provides that notwithstanding any rule of law to the contrary any relevant evidence is to be taken into account in assessing the value of a public undertaking. The Kingston case was followed in 1953 in Metropolitan Water Board v. Borough of Hertford (1953) 1.W.L.R. p. 622. It is well established that the Royal Court may have regard to English cases even when relating to English statutes if the latter correspond, *mutatis mutandis*, to our own. (Renouf v. Brett (1968) JJ 853 and A.G. v. Contractor Plant Services (1967) JJ 785). At page 338 of the Kingston case Lord Cave sets out the cardinal principle of assessment under the provisions of the Parochial Assessment Act, 1836 which is very similar to our Rating Law. That Act required the rate to be made:

"upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes and tithe commutation rentcharge, if any, and deducting therefrom the probable average annual cost of repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent." But in applying that principle, so simple in appearance, to certain classes of hereditaments, great difficulties were encountered, and it was found necessary for rating experts and the Courts to have recourse to hypotheses of a more or less violent character. In particular, there was an obvious difficulty in applying the general principle laid down in s. 1 of the Act to a water company or other body supplying water in a number of different parishes and possessed in those parishes of reservoirs, mains and other property necessary for the purposes of its undertaking. The mains and other works in any particular parish, taken by themselves, might conceivably produce no rent at all, for it is almost impossible to suppose that any person would wish to become the tenant of them; but the same hereditaments, if looked upon as part of a great undertaking extending over a large and populous area, might be quite indispensable to the undertakers (who must be regarded as possible tenants) and so might command an extortionate rent. In these circumstances it was desirable, in order that a fair assessment might be arrived at, to devise some formula which, while allowing a

fair value to the hereditaments in each parish, would not compel the undertakers to pay rates on an aggregate sum exceeding the whole yearly value of their undertaking;"

5 It is necessary to cite at some length the judgment of Jenkins L.J. in the Hertford case where he says at the bottom of page 626:

10 "It is not in dispute that the method of assessment appropriate to the many and various rateable subjects comprised in the undertaking of the board is the method of assessment commonly called "the profits basis" which, though not enjoined by any statutory provision, has long been recognized in practice and judicially approved as
15 prima facie the proper method of arriving at the net annual values for rating purposes of the hereditaments comprised in a public utility undertaking such as that of the board with many rateable subjects situated in many different rating areas.

20 The nature and objects of "the profits basis" are authoritatively expounded in *Kingston Union v. Metropolitan Water Board*, and particularly in the speech of Lord Cave L.C., and the method is also recognized and
25 approved in the much earlier cases of *Reg. v. Overseers of Mile End Old Town* and *Reg. v. West Middlesex Waterworks*. It can, I think, be described with sufficient accuracy for the present purpose as a special method of arriving at net annual values which involves as a general rule
30 calculations of the following nature: (a) The ascertainment of the net revenue produced by the whole undertaking which is treated as representing the net annual value of the entire concern and is commonly known as "the cumulo value"; (b) a division of the
35 hereditaments comprised in the whole undertaking between those directly productive of revenue and those only indirectly so productive; (c) the ascertainment of the net annual value of the indirectly productive hereditaments by the method commonly referred to as "the contractor's basis," that is to say, by estimating their
40 respective capital values and taking an appropriate percentage thereon (now, I think, usually the same in a case of this kind as the percentage of the capital value of all the hereditaments comprised in the whole
45 undertaking represented by the cumulo value) as representing the net annual value of all the indirectly productive hereditaments of the undertaking; (d) the deduction of the last-mentioned figure of net annual value from the cumulo value; (e) the apportionment to the
50 indirectly productive hereditaments in each rating area of their individual net annual values ascertained as above, and (f) the allocation to the directly productive

hereditaments in each rating area of their proper shares of the balance of the cumulo value in proportion to the amounts of revenue arising in the several rating areas.

5 The hereditament here in question is admittedly of the indirectly productive class, so that no question as to the allocation of the balance of cumulo value attributable to directly productive hereditaments arises in this case, but references to that essential feature of "the profits
10 basis" method of assessment is necessary in order to appreciate the part played by the assessment of the indirectly productive hereditaments in the entire process, designed as it is to ensure that the hereditaments in each rating area, whether directly or indirectly productive,
15 should be fairly assessed, and at the same time that the aggregate of all the assessments in all the areas should not exceed, but should as nearly as may be equal, the cumulo value."

20 Mr. White cited a number of cases which, though most interesting did not concern water undertakings and, accordingly, we have not felt it necessary to refer to them in this judgement. All of them in fact dealt with certain aspects of the contractor's basis of valuation. Even that basis founded on the capital value
25 of an undertaking is not always acceptable even in non water or reservoir matters. See for example the observations of Denning M.R. in Cardiff Rating Authority v. Guest Keen Baldwin's Iron and Steel Co. Ltd. (1949) 1 K.B. 385 at p. 394. Mr. Bailhache's argument on the legality point is quite simple. Why should this
30 court accept a method of assessment that had been rejected by the House of Lords in Kingston until it was replaced by a statutory instrument in 1989? Against this Mr. White has proffered the evidence of Mr. Needham who accepted, in paragraph 4.9 of his report that until statutory formulae were introduced in 1989, the profits basis, in his words: "was considered the most appropriate
35 basis for valuing such hereditaments (i.e. a public utility) in the absence of special circumstances." He rejected the profits basis as unsuitable for assessing the rates payable by the company mainly because of the twelve rating authorities and the changeable
40 annual profit. We prefer the reasoning in the Kingston and Hertford judgments. A further relevant passage in the Kingston judgment is at page 348 of the judgment where Lord Atkinson says this:

45 *"In my view there is only one method by which the rateable value of a hereditament, the occupation of which is valuable, can be legally ascertained, and that is by the method prescribed by s. 1 of the Parochial Assessments Act of 1836 - namely, by the ascertainment of the rent at
50 which the hereditament might reasonably be expected to be let from year to year to a hypothetical tenant, free from the rates and charges, etc., "rebus sic stantibus." By*

5 these three latter words I mean to express the
considerations which are expanded in the following passage
in the judgment of Lord Buckmaster in the case of Port of
London Authority v. Orsett Union Assessment Committee. He
said that the hereditament the reasonable rent of which is
to be ascertained must be that hereditament "as it stands,
with all its privileges, opportunities and disabilities
created or imposed either by its natural position or by
the artificial conditions of an Act of Parliament." It is
10 the occupation of the hereditament in respect of which the
hereditament is assessed. Should that occupation be
absolutely worthless to everybody, it will have no
rateable value, but, on the other hand, if the occupation
of it may be very valuable to a hypothetical tenant though
15 that occupation does not secure to him any profit, or
bring in to him any income, it may be assessed as by this
section provided. No statement of the law on this point
could be more unsound and misleading than that which I
rather thought had been put forward by the appellants'
20 counsel in argument in this appeal - namely, "No income,
no taxable value, no profits, no taxable value."

Their Lordships also felt unable to disturb a method that had
been used for eighty years. The fact that there is now a
25 statutory method (not only for water undertakings but for other
public utilities) does not affect the position as it was at common
law before the Statutory Instrument was issued. Valuation on the
profits basis is dealt with also in paragraphs 116 and 117 of 4
Halsbury 39. The relevant parts of paragraph 116 reads:

30 "116. Valuation on the profits basis. In the absence of
rental evidence of value, the accounts, receipts or
profits of the occupier of the hereditament may be
relevant. The profits themselves are not rateable but
35 they may serve to indicate the rent at which the
hereditament might reasonably be expected to let,
particularly where profit is the motive of the
hypothetical tenant in taking the hereditament, or where
the trade can only be carried on upon that hereditament."

40 "The rent to be ascertained is that which the hypothetical
tenant would pay. The inquiry must therefore embrace the
whole of the profits made at the hereditament, even though
a part of them does not enure to the actual occupier, and
45 failure on the part of the occupier to take profits which
it is open to him to take must be disregarded.

The occupier of a hereditament may be compelled to
disclose his trading figures if they are reasonably
50 required to enable the valuation officer accurately to
compile the valuation list or to make or object to a
proposal."

Paragraph 117 deals with the calculations. The profits method is used where there is no true open market rental evidence and where the contractor's test is inapplicable. (Rating Valuation Services; Emeny and Eves). In our opinion the proper method to assess Queen's Valley following the absence of comparative properties is the profits method. The rental for only recreational purposes as suggested by the Company would produce, in the words of the Grouville Assessors when rejecting a comparison with Val de La Mare, a "*ludicrously low figure.*" Since we have found that the profits method is the appropriate one to use for Queen's Valley it follows that the reasoning in the Kingston case should, in the interests of uniformity of assessment throughout the island, be adopted in all the parishes. This will have to be achieved by co-operation amongst the twelve assessment committees but it may be that consideration should be given by those concerned with rating to the introduction of statutory formulae.

As regards Mr. Needham's criticism that such a method would depend on fluctuating profits that may well be true, but it should not be impossible to ascertain and agree with the company, using the principles set out in Halsbury and the two English cases we have cited an average profit forecast for a fixed period. We think that these arrangements should enable the Assessment Committees to achieve a fair assessment which reflects the requirement of the company to pay a proper share of its burden of the parochial rates and yet at the same time to take account of its special position which we have already mentioned.

As regards the assessments in St. Helier, we are satisfied that the wrong comparisons were used and they should be set aside. It follows that having answered the first of the questions we are required to do in conducting a judicial review in the negative it is not necessary to go further.

Since we have found that the decisions of the Assessment Committees were not ones to which they could lawfully come, it would be pointless to require the Supervisory Committee to re-hear the appeals as requested in the Representation. The proper procedure would be for the Assessment Committees to re-assess the Company for 1992 and possibly for 1993 and 1994, using either the profits method, which we have found to be the appropriate one, or comparability which, for the reasons we have already stated, would be difficult to do in the case of Val de la Mare Reservoir, the original basis for the assessment of which has been lost in the mists of time. It is possible that other reservoirs might provide a comparison, such as those in St. Lawrence, but we had no evidence concerning them. A fresh start should be made keeping the right of appeal by the Company open, should it so wish to exercise it, to the Supervisory Committee.

We wish to add, however, that it is desirable in all cases for the Supervisory Committee to ensure not only sufficient time is given to each appeal but that each appellant should be able to present his case fully. Furthermore, only those constables who were present at the appeal hearing should be concerned with the decision if the hearing is adjourned.

Our conclusions, therefore, are:-

- 10 1. That neither the two Assessment Committees nor the Supervisory Committee took account of the particular status of the Company and treated it as an ordinary commercial company.
- 15 2. That the contractors method was not one which should have been used because (a) at common law in England it had been rejected by the House of Lords in favour of the profits method and (b) it was not the appropriate means to adopt for the reasons in the Kingston judgment and, accordingly, the Grouville Assessors misdirected themselves.
- 20 3. By failure to compare like with like and rejecting the special status of the company which we have found for the reasons we have said, the St. Helier Assessment Committee both erred in law and reached a decision no reasonable Assessment Committee properly directed could have come to.
- 25 4. The appropriate method of assessing the company's resources which includes their adjoining land structures and buildings should be taken as a whole and should be the profits method.
- 30 5. The decisions of the assessment committees of Grouville and St. Helier are set aside.
- 35 6. The Supervisory Committee's proceedings on the 17th July were irregular and unsatisfactory and are declared void.

Authorities

- The Non-Domestic Rating (Miscellaneous Provisions) (No.2)
Regulations 1989 (SI.2303).
- Queen's Valley Reservoir (Jersey) Law, 1988.
- 4 Halsbury 39: paras. 124-125: p.p. 109-110.
paras. 114-118: p.p. 94-103.
- Parish Rate (Administration) (Jersey) Law, 1946.
- Parish Rate (Administration) (Jersey) Regulations 1991.
- 4 Halsbury 1(1) paras. 60-64: p.p. 91-107.
paras. 66-70: p.p. 113-125.
para. 77: p.p. 143-4.
paras. 84-85: p.p. 157-163.
paras. 94-96: p.p. 174-185.
para. 193: p.p. 298-300.
- Parish Rate (Administration) (Amendment) (Jersey) Law, 1960.
- Mesch -v- Housing Committee (4th October, 1990) Jersey Unreported;
(1990) JLR 269.
- Le Maistre -v- I.D.C. (1980) JJ 1.
- R -v- Willesden Justices, ex parte Utley (1948) 1 KB 397.
- R -v- Paddington South Rent Tribunal ex parte Millard (1955)
1 All ER 691.
- Tett -v- States of Jersey & Rent Control Tribunal (1972) JJ 2249.
- Water (Jersey) Law, 1972.
- Associated Provincial Picture Houses -v- Wednesbury Corporation
[1947] 2 All ER 680 C.A.
- Hackett -v- Housing Committee (1970) JJ 1523.
- Le Gros -v- Housing Committee (1974) JJ 77.
- Safeguard Business Systems (C.I.) Ltd -v- Finance & Economics
Committee (1980) JJ 169.
- Royal London Mutual Insurance Society -v- Finance & Economics
Committee (1982) JJ 37.
- Evans -v- Committee of Agriculture & Fisheries (1983) JJ 89.

Housing Committee -v- Phantesie Investments (1985-86) JLR 96.
Baker (née Knott) -v- Public Works Committee (1968) JJ 965.
Renouf -v- Brett & Le Louet (1968) JJ 853.
AG -v- Contractors Plant Service Ltd (1967) JJ 785.
Assessment Committee of Kingston -v- Metropolitan Water Board
(1926) A.C. 331.
Metropolitan Water Board -v- Borough of Hertford (1953) 1 WLR 622.
Garton -v- Hunter (1969) 1 All ER 451 C.A.
Dawkins -v- Royal Leamington Spa Borough Council (11th May, 1961)
Rating & Valuation Reporter 291.
Cardiff City Council -v- Williams (1973) R.A. 46 C.A.
Imperial College of Science & Technology -v- Ebdon & Anor (1986)
R.A. 233 C.A.
The Water Undertakers (Rateable Values) Order 1989.
Local Government Finance Act 1988.
Council of Civil Service Unions -v- Minister for the Civil
Service (1984) All ER 935.
Ryde on Rating and the Council Tax: Chapter 7.
Emeny and Eve: The Rating Valuation Service: p.p. B1/1.
Liverpool -v- Assessment Committee of Llanfyllin Union [1899]
2 QB 14.
Moran & Son Ltd -v- Marsland [1909] 1 KB 744.
R.S.C. (1993 Ed'n): Rule 83/36.
Phipson on Evidence (14th Ed'n): p.p. 804-813, 840, 841.
Hodgkinson: Expert Evidence: Law and Practice: p.p. 10-12
and 247-252.
Sullivan -v- West Yorkshire Passenger Transport Executive & Ors.
[1985] 2 All ER 134.
Loi (1991) sur la Copropriété des Immeubles bâtis: