

ROYAL COURT
(Samedi Division)

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23rd February, 1994

Before: The Bailiff, and
Jurats Vint and Vibert

In the matter of the Electricity (Jersey) Law, 1937.

And in the matter of the Representation of the
Jersey Electricity Company Limited, the Representor

And in the matter of certain real property situate within the
Island belonging to Larp Limited, First Party Convened

Mr. A. D. Goulding, Second Party Convened.

Application for directions by the Representor following objections by the First Party convened to the Representor's Notice, issued under Article 9 of the said Law, of its intention to lay an underground electricity cable beneath the said real property of the First Party convened for the purposes of supplying electricity to the property of the Second Party convened.

Advocate A.R. Binnington for the Representor.
Advocate R.A. Falle for the First Party Convened.
Advocate N.M.C.S. Costa for the Second Party Convened.

JUDGMENT

THE BAILIFF: In 1937, the States enacted the Electricity (Jersey) Law, 1937. In the preamble to that Law, we find the following paragraph:

"Considérant que la fourniture de force électrique est une entreprise d'utilité publique, et qu'il est avantageux et désirable que ladite force électrique soit à la disposition des habitants de l'île entière."

Article 14 of the Law gave effect to the expression of intention: it required the Jersey Electricity Company to provide a supply of energy to an owner and/or occupier of any premises

situate within 50 yards of any of the distributing mains of the Company, if proper notice is given to them for that purpose.

Article 7 of the Law deals with way leaves over or along a public road, street or lane, and Article 9 with way leaves over private property.

That last mentioned Article requires notice to be given to the adjoining landowner and makes provision for dealing with the position if he does not agree. It is interesting to note that if the landowner withholds consent altogether, the Article does not expressly provide what then happens. I shall now read the second paragraph of the Article:

"Provided that before placing any such line across any land the company shall serve on the owner and/or occupier of the land for the time being notice of its intention together with a description of the nature and position of the lines proposed to be so placed and if within 21 days after the service of the notice the owner and/or occupier fails to reply to such notice consent shall be deemed to have been given".

In this particular case I think it is correct to say that the owner and/or occupier are the same people, that is to say a company called Larp Limited. The paragraph goes on:

"Should the owner and/or occupier attach to their consent any terms or conditions or stipulations to which the company objects, and the parties fail to agree, the question at issue shall be referred to the Inferior Number of the Royal Court in the manner prescribed in the last paragraph of Article 7". I interpolate here: by means of a representation by the party aggrieved and I shall return to that in a moment. **"And in deciding whether to give or withhold its authorisation or to impose any terms or conditions or stipulations (including the carrying on of any portion of the line underground) the Court shall, among other considerations, have regard to the effect, if any, on the amenities or value of the land of the placing of the line in the manner proposed".**

As I have said, there does not appear to be provision in that Article for a situation in which the landowner and/or occupier totally refuses to give consent; however, that would make a nonsense of the Law which is intended to enable people who satisfy its provisions to be supplied with electricity, compulsorily, by the Jersey Electricity Company. It would be wrong if the Court were not to rule that the question of whether or not consent be given should also be referable to the Inferior Number; to rule otherwise would bring the Law to nought. It must be a necessary implication that an application could be made not only where

objectionable conditions are imposed, but also where consent is refused entirely.

Mr. Falle for the adjoining landowner, Larp Ltd., has made a very clear submission that the Court should not exercise its powers unless the supply of electricity cannot be achieved by another way.

We have visited the site and we have read the correspondence. It is clear to us from the correspondence that Larp Ltd., through its representative - we do not know exactly what the relationship is between that representative, Advocate Labesse, and the Company, but we have been informed from a map that Mr. Labesse has a house not far from the property concerned - with the best of intentions, wanted to get rid of the unsightly overhead wires which were the means of bringing electricity to his neighbourhood and to that end he entered into some correspondence with the Jersey Electricity Company but when he learned that it was going to cost £17,000, not unnaturally, he was no longer quite so keen. Be that as it may, it is quite clear from the tone of several of his letters that his dealings with Mr. Goulding, who is the owner of the property we have been considering today, really had for their aim to put pressure on the Jersey Electricity Company to bring an underground service to the neighbourhood. That may be a very laudable and conservationist attitude, but it really is not something which concerns us today. What concerns us is whether or not the route which the Company has proposed to supply a service to an adjacent building belonging to Mr. Goulding is the most reasonable route.

After visiting the site, the Court is in no doubt that the route proposed by the Company is the most practicable and reasonable one possible. Immediately behind Mr. Goulding's property there is a pole which is the end, so to speak, of an overhead supply of electricity. That pole is at the west end of Mr. Goulding's property and is at the top of a very steep bank which is itself surfaced by a solid wall. There is a supply of electricity from that pole going underground into his house. However, to put a line from the pole through very pleasant gardens, a patio and new tarmacadamed surface would, in the opinion of this Court, be totally unreasonable and there is much in what Mr. Costa, for Mr. Goulding, has said that in considering this matter, we should use by analogy the principles of appeals from administrative decisions. That is to say, we should ask ourselves: did the Company have the power to do what it did? Were the proceedings proper in every respect? Was the decision one to which it could reasonably have come? We find no difficulty in answering all three questions in the affirmative.

Secondly, we were referred to the case of Barker -v- J.E.C. Ltd. (1973) JJ 2491 where it is made quite clear that the Company's powers must be exercised reasonably and if it does

exercise its powers reasonably then the Court should not interfere.

After finding, as we have, that the line through field 341, that is to say Larp's field, immediately to the north of Mr. Goulding's house, is the most reasonable route to bring electricity to the other building owned by Mr. Goulding, we are still left with some other matters to consider. Article 9 requires us, amongst other considerations, "**to have regard to the effect on the amenities or value of the land**". Mr. Falle quite frankly and openly has admitted that there would be no prejudice to the owner of the field and therefore we take it that neither the value nor the amenities of that land would be affected by the installation of an underground electricity cable.

There is, however, more to it than that. We were invited by Mr. Falle to say that we should not exercise our powers at all unless we were absolutely satisfied that there was no other way. We think that is going too far. We think that could lead to an almost impossible position and it is not a principle which we are prepared to adopt. However, we do not think that we need to express more than an opinion on that matter because there were produced to us two letters which had originally been without prejudice but which were opened. One was dated 18th February, 1994, from Advocate Labesse to Mr. Crill acting for Mr. Goulding and the other was Mr. Crill's reply of 23rd February. There was clearly a softening by Mr. Labesse, if I may put it that way, in his previous attitude inasmuch as there appeared to be an offer to provide way leave, but the terms were not agreed and one of the terms, relating to financial aspects, was certainly not acceptable to Mr. Crill nor to Mr. Goulding.

We have found, therefore, that the most reasonable way to supply electricity is through field 341, as proposed by the Jersey Electricity Company. I should add that we accept the evidence of Mr. Myles, the Planning Engineer, on behalf of the Jersey Electricity Company, that the Company's prime object is to find the best engineering route and it is that rather than the question of expense which has influenced the Court in its decision.

Mr. Falle invited us, at the end of his address, to order that, if we held that a way leave should be granted in the manner proposed by the Jersey Electricity Company through field 341, then the terms between Mr. Goulding, the Company, and Larp Ltd., should be a matter for further negotiation and that we should adjourn this hearing to find out whether in due course the parties are able to come to acceptable terms. We think there is much merit in that.

Accordingly we make the following Order: a way leave shall be granted for the laying of an electricity cable along the bank in the manner proposed by the Company - that is to say along the west

side of field 341; however, we adjourn the application so that terms may be agreed between the parties. Thirdly, if they cannot be agreed, we will sit again to adjudicate on them.

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Authorities

M & R Properties Ltd -v- J.E.C. Ltd (1987-88) J.L.R. 231.

Barker -v- J.E.C. Ltd (1973) JJ 2491.

Safeguard Business Systems -v- Finance & Economics Committee
(1980) JJ 169.

Dalloz: Répertoire de Droit Civil: Tome IV: Expropriation pour
cause d'utilité publique.