

ORDRE EN CONSEIL

XVII

Ratifiant un Projet de Loi intitulé

1936

Loi Relative aux Douits

(Enregistré sur les Records de l'Île de Guernesey le
14 novembre 1936.)



1963.

ORDRE EN CONSEIL



A LA COUR ROYALE DE L'ÎLE DE GUERNESEY

Le quatorze novembre mil neuf cent trente-six, par devant Victor Gosselin Carey, écuyer, Baillif, presents : William de Prélaz Crousaz, Jean Allés Simon, John Roussel, Osmond Priaulx Gallienne, Arthur Dorey, Geoffrey Alfred Carey, Ernest de Garis, Jean Nicolas Robin, Cyril de Putron, Aylmer Mackworth Drake et John Leale, écuyers, Jurés.

Monsieur le Baillif ayant ce jour communiqué à la Cour au Ordre de Sa Majesté en Conseil en date du vingt-sept octobre mil neuf cent trente-six, ratifiant un Projet de Loi intitulé "Loi relative aux Douits"; la Cour, après avoir eu lecture du dit Ordre, ouïes les conclusions des Officiers du Roi, a ordonné que le dit Ordre en Conseil sera enregistré sur les Records de cette Ile, duquel Ordre la teneur suit:—

AT THE COURT AT BUCKINGHAM PALACE,

The 27th day of October, 1936.

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

LORD STEWARD.

MASTER OF THE HORSE.

LORD CHAMBERLAIN.

EARL STANHOPE.

MAJOR ALEXANDER HARDINGE.

MR. MACKENZIE KING.

Loi relative
aux Douits.

WHEREAS there was this day read at the Board a report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 13th day of October, 1936, in the words following, viz.:—

“YOUR MAJESTY having been pleased by Your General Order of Reference of the 31st day of January, 1936, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

(1) That on the 18th day of March, 1936, the States of Deliberation passed a resolution approving, with certain modifications, the recommendations contained in a Report submitted to them by a Committee appointed for the purpose of considering the question of Surface Drainage in the low-lying districts of this Island, and requested the Royal Court to prepare the legislation necessary to give effect to the said Resolution. (2) That on the 27th day of June, 1936, the Royal Court adopted a Bill or Projet de Loi prepared by the Law Officers of the Crown, intituled “Loi relative

aux Douits", and requested the Bailiff to submit the same to the States for approval. (3) That on the 29th day of July, 1936, the said Bill or Projet de Loi was duly considered by the States, when a resolution was passed approving the same and authorising the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. (4) That the said Bill or Projet de Loi is in the words and figures set forth in the Schedule annexed to the Petition. And most humbly praying that Your Majesty would be graciously pleased to grant Your Royal Sanction to the Bill or Projet de Loi of the States of the Island of Guernsey intituled 'Loi relative aux Douits' and to order and direct that the same shall have the force of Law within the Island of Guernsey.

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HIS MAJESTY having taken the said Report into consideration is pleased, by and with the advice of His Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HIS MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the

Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor or Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other His Majesty's Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

M. P. A. HANKEY.

PROJET DE LOI referred to in the foregoing Order.

PROJET DE LOI

INTITULE

LOI RELATIVE AUX DOUITS

VU les délibérations des Etats en date du 18 mars 1936:

Les Etats ont approuvé les dispositions suivantes lesquelles, moyennant la Sanction de Sa Très Excellente Majesté en Conseil, auront force de Loi en cette Ile.

CENTRAL COMMITTEE

1.—The powers and duties specified in the next succeeding section in relation to watercourses in this Island are hereby conferred upon and entrusted to the States Public Thoroughfares Committee (in this Law referred to as "the Central Committee") and all such powers and duties in relation to any watercourse and to the Committee of any watercourse as have hitherto vested in or been exercised by His Majesty's Sheriff shall henceforth cease to so vest or be exercised and shall vest in and be exercised by the Central Committee.

POWERS AND DUTIES OF CENTRAL
COMMITTEE

2.—The Central Committee, any sub-committee thereof thereunto authorised by the Central Committee and any States employee thereunto authorised by the Central Committee or by a sub-committee thereof, are hereby authorised at all times between sunrise and sunset to enter with such vehicles, apparatus, implements and materials as may be necessary or expedient in the circumstances upon any land upon which it may be necessary to enter in order to gain access to any watercourse for the purpose of inspecting the same and of executing any work in connection therewith which the Central Committee is authorised by this Law to execute.

3.—(1) It shall be the duty of the Central Committee—

- (a) to consider every report submitted to it by a Stream Committee:
- (b) to serve a notice on any person who has failed to carry out any duty legally incumbent upon him in relation to the cleaning of any watercourse, the clearing of obstructions to the free flow of the water therein and the repair of the banks thereof, requiring such person within the time specified in the notice to carry out such duty:
- (c) to institute legal proceedings against any person who fails to comply with the terms of a notice served upon him by the Central Committee:
- (d) to execute work in relation to the cleaning and clearing of any watercourse or the repair of any bank of any watercourse at the expense of any person legally liable to execute the same who

has neglected to comply with a notice requiring him to execute the same served upon him by the Central Committee:

- (e) to report annually to the Court of Chief Pleas at its Christmas session, upon—
 - (i) the condition of the watercourses of this Island;
 - (ii) any failure by a Stream Committee to carry out the duties imposed upon it whether under this Law or under an Ordinance of the Royal Court or under a mandate otherwise given to such Stream Committee:
- (f) to report to the States upon any scheme for the alteration or improvement of any watercourse which the Central Committee recommends should be carried out at the expense of the States or of some other person or persons or partly at the expense of the States and partly at the expense of such other person or persons:
- (g) to execute such works in relation to the alteration or improvement of any watercourse as may from time to time be authorised by the States and (in so far as sanction of the Royal Court to the execution thereof shall be necessary under the provisions of this Law) as shall be sanctioned by the Royal Court.

(2) Save with the previous written permission of the Central Committee, no alteration shall be made to any part of the bed of a watercourse or to any part of any bank of a watercourse, nor shall a watercourse or any part thereof be covered nor the stream flowing therein or any part thereof be enclosed, whether wholly or partially, by the laying of pipes or otherwise.

(3) Before granting any such permission as may be requisite under the provisions of the last preceding subsection, the Central Committee may require the applicant for such permission to furnish the Central Committee with such plans and other written particulars as the Central Committee may deem necessary or expedient.

(4) Any person carrying out, whether in whole or in part, without the previous written permission of the Central Committee, any work for the carrying out of which such permission is required under subsection (2) of this section shall be guilty of an offence and shall be liable upon conviction before the Royal Court sitting as an Ordinary Court to a fine not exceeding £25 and, upon any such conviction, the Court may, in addition to imposing a fine, direct that such work as may be necessary to restore the watercourse to the state in which it was before the commission of the offence shall be carried out by the offender at his cost within such period and upon such penalty in the event of non-compliance as the Court may prescribe.

STREAM COMMITTEES

4.—Where in the case of any watercourse there is in existence at the commencement of this Law a Committee entrusted with the supervision thereof, that Committee shall, subject to the provisions of this Law, continue to exercise its functions in accordance with the provisions of the Ordinance or other instrument from which its powers and duties are derived.

Provided that nothing herein contained shall be construed so as to prevent the modification from time to time of any such Ordinance or instrument as is mentioned in the foregoing section.

5.—Where in the case of any watercourse or of some part thereof there is in existence no Committee

having supervisory powers with respect thereto, the Constables and Douzaine of the Parish in which such watercourse or part thereof is situate shall be the Stream Committee in respect thereof.

Provided that it shall be lawful for the Constables and Douzaine of any parish to appoint a Committee of not less than five persons resident in that Parish as the Committee having supervisory powers in respect of the watercourses situate in that Parish and upon notification by the Constables of that Parish to the Central Committee of the appointment in that Parish of any such Committee and for so long as that Committee shall continue in existence, that Committee shall be vested with and shall carry out as regards that Parish the powers and duties by this Law conferred upon Stream Committees in the place and stead of the Constables and Douzaine of that Parish.

Provided also that as regards any part of any watercourse forming in whole or in part the boundary between any two parishes, the Constables and Douzaines of such parishes shall together be the Stream Committee in respect thereof unless in one of such parishes there is in existence a Committee appointed under the last foregoing proviso, in which case that Committee and the Constables and Douzaine of the other of such parishes shall together be the Stream Committee in respect thereof, or unless in each of such parishes there is in existence a Committee appointed under such proviso, in which case those Committees shall together be the Stream Committee in respect thereof.

POWERS AND DUTIES OF STREAM COMMITTEES

6.—(1) It shall be the duty of the President of every Stream Committee in existence at the com-

mencement of this Law to forward to the Central Committee before the expiration of two months after the commencement of this Law a statement containing the names and addresses of the members of that Stream Committee and the name and address of the President or other member thereof to whom communications from the Central Committee to the Stream Committee are to be addressed.

(2) It shall be the duty of the Constables of each Parish upon the appointment of a Stream Committee in that parish to forward to the Central Committee a notification of the appointment of that Stream Committee together with a statement of the names and addresses of the members of that Committee and of the name and address of the President or other member of that Committee to whom communications from the Central Committee to that Committee are to be addressed.

(3) Changes in the personnel of any Stream Committee and any change of the member thereof to whom communications are to be addressed shall be notified to the Central Committee by the President of that Stream Committee as and when such changes occur.

(4) It shall be the duty of each Stream Committee at least once in each calendar year to inspect the watercourse or watercourses as regards which it has supervisory powers and thereafter to prepare and forward to the Central Committee a report concerning the condition of such watercourse or watercourses. An inspection shall be made between the thirtieth day of September and the fifteenth day of October of each year and the report concerning such inspection shall be forwarded so as to reach the Central Committee not later than the thirty-first day of October next following. The report shall contain

details of all obstructions to the free flow of the stream in any such watercourse and of any lack of repair of the banks thereof and the situation thereof and shall set out the names and addresses of the persons responsible for the removal of such obstructions and for the repair of such banks.

(5) It shall be the duty of the Stream Committee upon being requested so to do by the Central Committee to make such further inspections of any watercourse over which that Stream Committee has supervisory powers as the Central Committee may require to be made and to furnish the Central Committee with all such written particulars concerning any such watercourse as the Central Committee from time to time may reasonably require.

(6) A Stream Committee is hereby authorised at all times between sunrise and sunset to enter upon any land upon which it may be necessary to enter in order to gain access to any watercourse for the purpose of inspecting the same.

LA TURQUIE—LE PONT ALLAIRE STREAM

7.—For the purposes of this Law, the holder from time to time of the office of Prévôt du Valle shall be deemed to be a Stream Committee as regards the watercourse containing the stream which flows from La Turquie to Le Pont Allaire and as regards that watercourse it is hereby declared that such reports concerning the same as are required by this Law to be made to the Central Committee shall be made to His Majesty's Receiver General for transmission to the Central Committee.

NOTICES

8.—Service of any notice which the Central Committee may require to serve on any person for the

purposes of this Law may be effected by posting the same in a prepaid envelope to that person and upon proof of the posting of any such notice service of the notice shall be deemed to have been effected, unless the contrary is proved, at the time at which such notice would have been delivered in the ordinary course of post.

APPEALS

9.—(1) Any person aggrieved by the requirements of a notice served on him by the Central Committee may, if the conditions specified in this section are fulfilled, appeal therefrom to the Royal Court sitting as an Ordinary Court and may apply for an order that the notice be set aside or varied in such manner as to the Court shall seem just, and the order of the Court so obtained shall be final.

(2) The conditions to be fulfilled for the purposes of this section are as follows:

(a) Notification in writing of intention to appeal, stating the grounds upon which the appeal will be made, shall, within eight days after the date of service of the notice, be delivered by the person intending to appeal therefrom to the Central Committee.

(b) The appeal shall be brought within twenty-one days after the date of service of the notice in respect of which the appeal is made.

(3) In any case in which notification of intention to appeal has been delivered in accordance with the provisions of this section, no liability to penalty shall arise by reason of non-compliance with the notice nor shall any proceedings be taken or work be done by the Central Committee until after the determination of such appeal unless such appeal ceases to be prosecuted.

PROCEEDINGS AND PENALTY

10.—(1) Subject to the provisions of the foregoing section, where a person upon whom a notice to perform work in relation to any watercourse has been served by the Central Committee makes default in complying with any requisition contained therein within the time specified therein, the Central Committee may summon such person to appear before the Ordinary Court, and, if it shall appear to the Court that the person upon whom the notice is served is the person liable to perform the work required by the notice to be performed and that his default is wilful and without just cause, the person making such default shall be liable to a fine not exceeding £25, and the Court may make such further order as to the carrying out of the work as to the Court shall seem just. No appeal shall lie from the decision of the Ordinary Court.

(2) Where a notice is served upon an owner of real property by the Central Committee under this Law it shall not be a ground for an appeal against the requirements of that notice or a defence to proceedings against that owner for failure to comply with the requirements of that notice that there exists between that owner and some other person a contract or arrangement whereby that other person has assumed responsibility for the execution of the work required under the notice to be carried out by such owner.

(3) Where any person has failed to comply with the terms of a notice served on him by the Central Committee or with the terms of an Order of the Court made in relation thereto, the Central Committee is hereby empowered at the cost of that person to execute all such works as were required by that notice or Order to be done.

PROCEDURE, ETC., AS REGARDS
ALTERATIONS AND IMPROVEMENTS
WHEN THE COST IS NOT WHOLLY
BORNE BY THE STATES

11.—(1) Where the States have approved a scheme for the execution of any alteration or improvement of any watercourse or some part thereof and have approved a proposition that the cost of such alteration or improvement or part thereof should be borne otherwise than by the States, then, unless the person or persons at whose expense the cost of such alteration or improvement or part thereof is proposed to be borne shall have agreed to bear the same, it shall be the duty of the Central Committee to publish on two occasions in *La Gazette Officielle* a notice containing a general description of the scheme of alteration or improvement, a statement as to the estimated cost thereof, as to the amount of such cost which it is proposed should be borne otherwise than by the States and as to the person, persons or class or classes of persons by whom it is proposed that the cost should be wholly or partially borne and of the method of determining the amount of the contributions thereto of those persons or of the persons of that class or of those classes and to the effect that the Central Committee will apply to the Royal Court sitting as a Full Court on and at a particular date and time for sanction to proceed with the execution of the scheme upon the basis that the cost thereof which it is not proposed should be borne by the States shall be borne in the manner indicated in the notice.

(2) On the date of the making of such application, the Royal Court shall hear the representations of any person who, in the event of the scheme being sanctioned, would be a contributor to the cost

thereof and, if the Court is of opinion that the cost of executing the scheme will not bear unfairly on any proposed contributor, the Court may sanction the execution of the scheme.

(3) As regards any such scheme as is mentioned in this section the execution of which has been sanctioned by the Royal Court, upon the completion of the work to which the schemes relates, the Central Committee shall be entitled to recover the contributions to the cost thereof of the person or persons by whom it was proposed in the notice that such cost or part thereof should be borne as though each of such contributions was a simple contract debt due by the contributor thereof to the Central Committee.

INDEMNITY

12.—Where in relation to any watercourse work is or has been undertaken by the States whether wholly or partly at the expense of the States or of any person or persons and, whether by reason of the acceleration of the flow of the stream in that watercourse or of any other happening which may arise out of such work, the supply of water from that stream to any person is diminished or any person is deprived of a supply of water from that stream, no action shall lie against the States at the instance of any person claiming to have suffered such diminution or deprivation of supply.

LIMITATION OF ACTIONS AGAINST STATES

13.—Where as regards any watercourse the States have canalised any part of the same or have undertaken the work of maintaining such watercourse or

part thereof clear of obstructions whether wholly or partly at the expense of the States or otherwise and by reason of any failure by the States to maintain the same clear of obstructions flooding of the land of any person results, no action whether in damages or otherwise arising out of the claim of any person that he has suffered loss or damage by reason of such flooding shall lie against the States unless it be shown therein that within seven days after the date on which such flooding commenced the claimant served upon the Central Committee a notice in writing giving a description of the land so flooded and the situation thereof and indicating the watercourse from the obstruction of which the flooding results and that, for the space of seven days after the receipt of such notice by the Central Committee, the Central Committee failed to take all reasonable steps to clear that watercourse of such obstructions as existed therein and were the cause of such flooding.

APPLICATION OF FINES

14.—The amount of all fines recovered under the provisions of this Law shall be applicable half to His Majesty and half to the States.

ORDINANCES

15.—The Royal Court sitting as a Court of Chief Pleas is hereby authorised to pass such Ordinances for the carrying out of this Law as may be necessary.

INTERPRETATION

16.—In this Law, save as regards Sections 4, 11, 12 and 13 thereof, the expressions "watercourse" and "watercourses" shall only apply to such watercourse or watercourses as are declared by Ordinance

of the Royal Court sitting as a Court of Chief Pleas to be a watercourse or watercourses subject to the application of the provisions of this Law.

QUERTIER LE PELLEY,
Greffier du Roi.