

**IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES**

SUIT NO.: 457/1999

**BETWEEN: ROLAND FRANK
 JENNIFER FRANK - PLAINTIFFS
 V.
 HENRY BROWNE - DEFENDANT**

**APPEARANCES: Ms Paula David for the Plaintiffs.
 Ms Kay Bacchus-Browne for the Defendant.**

21st and 29th October, 1999

DECISION

Mitchell J.

This is a ruling in the matter of an application by the Plaintiffs for an interlocutory injunction in a suit for nuisance.

The Affidavits filed reveal that the Plaintiffs' house is built alongside a public road down a slope from where the Defendant's house is located. The Plaintiffs constructed a low concrete wall out into the public road to stop and divert water and mud flowing down the road from flooding their driveway and front entrance area. The Defendant admits he destroyed and removed this wall from the public road. He explains that (a) he did not start destroying the wall, he merely completed the destruction begun by vehicles and others using the road; and (b) there was exposed steel protruding from the damaged wall that was dangerous, and he was merely protecting the public and himself by completing the destruction of the wall. Both the Plaintiffs and the Defendant have submitted various Affidavits in support of their claims. They have both submitted photographs that illustrate the location of the wall in question and the amount of water and mud that have been flowing into the Plaintiffs' front entrance area since the wall has been destroyed. The Plaintiffs say they want the injunction to prohibit the Defendant from destroying their wall because they intend to reconstruct it, and the injunction will stop the Defendant from destroying it again.

They pray in aid the American Cyanamid principles. The Defendant opposes the granting of the injunction.

The Roads Act, Cap 357, is the principal statute in St Vincent and the Grenadines regulating the use of public roads. In particular, section 20 provides that:

Whenever any road shall (a) be obstructed or encroached upon by any fence, gate, tree, brushwood, ditch, trench, enclosure or thing; ... the Chief Engineer may, after three days notice to the owner or occupier of the adjoining land, cause such fence, gate, enclosure, tree, branch, brushwood, ditch, trench or thing to be removed, lopped or filled in, as the case may require, and may, if he thinks fit, recover all expenses incurred in so doing from the person who shall have caused such obstruction ...

Section 24 of the same Act prohibits the erection of structures of any kind within 11 feet from the side of a road, except in certain circumstances on penalty of a fine of \$50.00 for every day during which default is made after a notice has been given to comply.

Section 27 creates various offences of public nuisance. It provides that :

Any person who, without lawful excuse

(a) injures, damages, obstructs, alters or in any manner interferes with any road, made or kept in order or repair at the public expense or any other work in connection with a road; ...

(e) makes, or causes to be made, any dam, ditch, drain or watercourse upon or across any road, or breaks up or injures the surface of any road;

(f) constructs any house or other building so as to project or encroach upon any road; ...

is guilty of an offence and liable to a fine of one thousand dollars

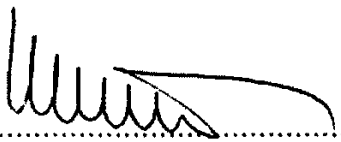
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There is no doubt that the construction of the diversionary wall into the public road by the Plaintiffs, useful though it has been in diverting water away

from their front entrance, and minimal though it may have been in obstructing the public road, was a public nuisance under the Roads Act. Only the Chief Engineer however had the authority to make the Plaintiffs remove the road. The Defendant had absolutely no right to destroy or to finish off the destruction of the wall constructed by the Plaintiffs in the public road. The common law would have given him the right to sue for any special damage he may have suffered from the steel protruding from the wall damaging his car tyres, for example, if that should have happened. But, he had no right to trespass on the wall and to destroy or complete the destruction of it. His duty was to report the illegal wall to the Chief Engineer, and request the Chief Engineer to have it removed. If the Chief Engineer failed to act in response to his complaint, he might even have sought an order of the Court to compel the Chief Engineer to perform his duty. He may perhaps be liable in trespass to the Plaintiffs, though it is difficult to see how the Plaintiffs will be able to maintain their present action for nuisance against him.

If the Plaintiffs should reconstruct the wall, they will in the circumstances be committing a public nuisance. They have stated that the purpose of obtaining this injunction is to permit them to do just that. The only sensible course for the Plaintiffs is to obtain the advice of some competent professional as to what steps they can take on their own property to prevent the water and mud from flowing into their front entrance. They have no right to reconstruct the wall in the public road whether or not this injunction is granted.

In the circumstances, the application is refused. The parties having both taken the law into their own hands, and neither party appearing more innocent than the other, no order is made as to costs.



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Ian Donaldson Mitchell, QC
High Court Judge