

JERSEY / JUDGMENT

Venturini -v- Ghyll Limited

[2016] JRC 004 (07 January 2016)

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judgment

the commissioner: 1. The plaintiff owns a wooden hut known as "The Boat Hut" on Rozel Pier, which is threatened by a potential landslip on the steep bank behind it which belongs to the defendant. 2. The Boat Hut is one of a number of adjacent huts which face the same threat, namely:- (i) The Yellow Hut, which belongs to Mr and Mrs Vasse. (ii) The site of the former Blue Hut, which belongs to Mrs Daniels. (iii) The Ecobichon Hut, which belongs to Mr and Mrs Ecobichon. 3. The owners of these adjacent huts/site attended the hearing in support of the plaintiff, but have not sought to be joined in as parties. 4. Approximately half way up the steep bank belonging to the defendant is a man-made shelf on which previously sat another hut known as the Green Hut. At the top of the steep bank, the defendant's land adjoins a property known as Roches Douvres. 5. Whilst admitting owning a piece of land acquired from Mrs Valerie Sarre on 17 th May, 2002, the defendant in its answer did not admit that the land it acquired is situated above the Boat Hut or that any land directly behind the Boat Hut is part of property owned by the defendant. We have received an affidavit dated 25 th November, 2015, from Michael David Philip Falle, an experienced conveyancer employed by Viberts, who confirms that the defendant does indeed own the steep bank adjoining the Boat Hut and the other huts and we so find. 6. In or around 2006, it appears that the defendant obtained planning permission to develop the Green Hut, but it was a condition of that permission that it first stabilize the steep bank. 7. The plaintiff believes that development of the Green Hut commenced in or around May 2012, but for reasons unknown to her, it was stopped. No works to stabilize the steep bank have been carried out. 8. There was a small landslip in 2011, which damaged the Boat Hut. The plaintiff wrote to Mr Kevin Leech, the sole director (it would seem) of the defendant and thought to be its beneficial owner, on 15 th February, 2011, expressing concern at the instability of the bank and asking for remedial action. On 28 th October, 2012, Mrs Daniels, the owner of the Blue Hut, wrote to Mr Leech in these terms:- "I have written to you several times and have telephoned and left messages on your answer phone many times recently, regarding the perilous state of the bank at Rozel, behind my blue chalet. My concern is still the same, though my anxiety at the state of the bank at Rozel is increasing daily. This summer, my family have felt unable to spend a night in the chalet because of fears that the bank might collapse at any time. I have been at Rozel today and have spent some time clearing debris and encroaching branches and weeds from my balcony. The falling earth is

building up behind my chalet and balcony wall and the slippage is increasing. The wet earth is putting increasing pressure on the little wooden chalet and I am so worried that it will soon break the wood and the concrete blocks. Please, Please Mr Leech, I shall be so very grateful if you could organize a clear up of the area as a matter of great urgency." 9. In December, 2012 a landslide lifted the Blue Hut bodily into the middle of the public road comprising the pier. We were shown photographic evidence of this. The Blue Hut was subsequently demolished. That incident also caused some damage to the Boat Hut, estimated by the plaintiff at £1,000. 10. Jersey Harbours procured a report from Arup, Engineers, dated 10 th January, 2014. That report concluded as follows:- " Conclusions and Recommendations A localised slope failure occurred in December 2012 in the slope immediately behind the Blue Hut. It is considered that the failure was triggered following a period of intense rainfall causing local surface water run-off to be channelled into this area of the slope causing the saturation of the near surface superficial deposits and vegetation and their failure. The hut was in all likelihood not structurally connected to its foundation and unable to resist the lateral pressure from the failure debris causing it to slide laterally across the access road. The instability is considered to be localised and not part of a wider, deeper, area of instability. The type and nature of failure mechanism is a common in steep coastal slopes and similar failures can be seen in adjacent areas. No evidence of positive drainage of surface water flows from the upslope areas into the failure area could be seen during the site inspection. With time further localised failures or near surface deposits and vegetation may occur in other parts of the slope. It will therefore be important for the weaker surface materials and vegetation to be protected from on-going erosion from surface water flows. In addition the weathered jointed rock mass exposed in the lower parts of the failed slope and adjacent areas is breaking down along existing fracture joints and failing towards the huts and access road." 11. The report made the following recommendations:- "It is recommended that the land ownership of the slope be determined and the following remedial measures agreed: 1. Remove the failure debris at the base of the slope. 2. Locally trim and re-grade the exposed failure surface and vegetation using a mechanical excavator from the access road. 3. Protect the exposed failure surface on the slope from surface water run-off using proprietary erosion control netting pinned to the surface of the slope (in a similar way to other adjacent sections of the slope) and tie into adjacent sections of the slope. 4. The Rozel conglomerate bedrock in the lower section of the slope is being weathered and breaking away along fracture joints forming small slabs of rock which may pose a risk to occupiers of the adjacent huts, in particular the Yellow Hut and in addition failed rock slabs may fall onto the access road. These rock slabs should be carefully trimmed back and removed to a safe sub-vertical angles using hand tools." 12. We did not receive any evidence as to how Jersey Harbours responded to the receipt of the report, but it is clear that none of the recommendations have been carried out. 13. The plaintiff commissioned her own report from Geo-Design, Consultants in Rock and Tunnel Engineering, dated 5 th March, 2015, together with further written advice from Dr John Sharp of the associated firm of Geo-Engineering. Dr Sharp had inspected the bank the day before the hearing and gave evidence before us. We would summarise the advice given to the plaintiff, which we accept, as follows:- (i) The presumed geology of the bank is as illustrated in Figure 4 (which we have attached to this judgment), although it is not clear, without investigation, how much is soil and how much is rock.

Figure 4 refers to "Loess" which is windblown silt, and which comprises the majority of the steep bank. Dr Sharp explained that Loess loses strength when it becomes wet. (ii) There is a history of instability in these slopes, which include a large failure of the slope behind the White House, which is situated to the south of the huts, which impacted and passed through some of the building. Remediation involved the use of medium capacity double twist rock netting with erosion control mesh with some form of soil nailing. In the late 2000s, a moderate sized failure took place adjacent to Dolphin Cottage (situated next to the Yellow Hut) involving several cubic metres of loess which flowed along and blocked the pathway. In December 2012 there was the above mentioned failure behind the Blue Hut. (iii) In addition to these failures, there is evidence of ongoing movement in the slope. (iv) The type of landslide that is likely to occur in the future is shown in Fig. 5 (which is attached to this judgment), the most serious being "C", namely a deep circular failure involving the entire slope height below Roches Douvres. (v) Quoting from the report of 5 th March, 2015:- "From this study it is concluded that whilst the slopes remain in the existing, un-engineered, condition ongoing movement is inevitable, and there is a significant risk that this will eventually result in further failure of at least part of the slope. Until such time as the stability state has been established and necessary measures put in place the owners should consider carefully the need to occupy the properties. Whilst failure is more likely during wetter periods, there is no guarantee that this will be the case. Monitoring displacements in the slope could be considered, but this is unlikely to assist with predicting failure. Slips of the scale that occurred at the Blue Hut site are thus likely, although it is noted that this part of the slope may have been most vulnerable on account of the low level of rock at this location. What remains less certain is whether a larger more deep seated failure, of the kind that occurred behind the White House is likely." (vi) Quoting from Dr Sharp's report of 30 th July, 2015:- "In my opinion and based on the conditions as described ..., the land behind Mrs Venturini's hut is considered potentially unstable, notably following periods of heavy prolonged rainfall. On the balance of probabilities, given the adverse precedent at the site in terms of past failures (including behind the former adjacent property), it is considered that the land to the rear and above the huts currently has limited (inadequate) safety reserve and could undergo failure under the type of adverse climatic (rainfall) conditions that can occur in Jersey. Because the situation cannot be reliably monitored, the risk of sudden collapse is severe and is considered unacceptable in terms of normal residential safety standards." 14. In evidence before us, Dr Sharp confirmed that there was evidence of stress within the bank which could be seen in places to be moving. The potential for failure was very possible either this winter or next. Bearing in mind the residential use of the huts below, the level of safety was inadequate. 15. In Dr Sharp's view, the remedial works recommended by Arup were superficial and insufficient. In essence, they had attributed the problem to soil erosion but in his opinion, which we accept, it was more serious than that and the more comprehensive work that had been undertaken to stabilize the bank behind the adjacent White House was likely to be the most appropriate solution. 16. Dr Sharp was asked whether the landslips that had occurred and which were likely to occur in the future could be attributed to natural or man-made causes. In his view, there were elements of both. In terms of man-made causes, at some stage the platform on which the Green Hut stood had been carved out of the bank, thus potentially increasing the steepness of the bank both above and below it. 17. Before

any detailed works could be designed and specified, it was necessary to carry out a topographical survey and geo-technical investigation. The topographical survey would provide details of the geometry of the slope in plan, elevation and cross section. The geo-technical investigation will provide more detail on the geological profile that makes up the slope and will provide a measure of the strength of the soil profile, including the level of the top of the rock. This work will involve drilling approximately six holes, some of which we note from the report would appear to be situated in the lower slopes of Roches Douvres, the owners of which would have to grant access.

18. In so far as these proceedings are concerned, the first issue for the plaintiff is to get access to the steep bank owned by the defendant in order to have this investigatory work carried out. 19. The defendant did not appear at the hearing. Mr Leech had appointed a Mr Stewart Halstead of the Partsworld Group, to represent him in negotiations with the plaintiff and her advisers. From what we can gather the Partsworld Group is based in Chesterfield and provides parts and accessories for motor vehicles. Mr Halstead is not, however, an officer of the defendant. He put forward an offer on the part of the defendant to build a retaining wall, by reference to two websites, the first, "Retainpro" which provides retaining wall designs and the second, "Allanblock", which manufactures a number of retaining wall products. However, as Dr Sharp pointed out, reference to these two websites hardly takes the plaintiff any further, as it is an actual design that is required, calculated to stabilize the steep bank. A retaining wall could only sensibly be carried out by removing the Boat Hut, constructing an integrated slab, wall and footing, and then rebuilding the hut. 20. Advocate David Steenson had acted for the defendant for a brief period and on 10 th November, 2015, and out of courtesy, he passed on a message to the Court from Mr Leech, who apparently does not live in the Island and who was anxious that court time should not be wasted, to point out that the defendant had endeavoured to resolve the matter, either by putting up a retaining wall or by offering to sell the land to the plaintiff and the other hut owners for a nominal sum. Although the defendant had been meeting its debts as they fell due, it had no assets and would be unable to satisfy any judgment obtained against it. He would not be defending the case and hoped that this would avoid the need for expensive legal argument.

21. What we would deduce from this is that the only asset of the defendant is the steep bank, which includes the site of the former Green Hut, and that any development of that site is not financially viable because of the cost of stabilizing the bank; hence, the offer to transfer the land for a nominal sum. Advocate Hall informed us that the hut owners had felt unable to take ownership of the land as they could not obtain public liability insurance for it. Her client had not ruled out acquiring the land but needed access to carry out the investigatory work, so that she could assess whether it was financially viable to do so. Injunction 22. At this stage the plaintiff seeks an order granting her access to the steep bank in order to carry out the recommended investigatory works. Geomarine Limited had submitted an estimate for this work in the sum of £3,900. An injunction is not a cause of action in itself but rather a remedy to be granted in support of and ancillary to a substantive cause of action (see *Abbott Industries Incorporated v Warner & Ors* [1985-6] JLR 375). It is the plaintiff's case that the defendant is in breach of its duties owed to the plaintiff as its neighbour pursuant to the law of voisinage . Voisinage 23. Advocate Hall had not prepared a skeleton argument to provide the Court with an analysis of the law of voisinage , but she provided the Court with a copy of the most helpful report by the Jersey Law

Commission on voisinage of October 2011 (Consultation Paper No. 2/2011/TR), and an extract from the equally helpful Institute of Law Immovable Property Study Guide on voisinage . She also referred the Court to *Mitchell v Dido Investments Limited* [1987/88] JLR 293. 24. The law of voisinage is now firmly established as part of the law of Jersey - see the decision of the Court of Appeal in *Rockhampton Apartments Limited & Anor v Gale and Clarke*

[2007] JLR 332 . It was defined in *Searley v Dawson*

[1971] JJ 1687 as a mutual duty that the customary law of Jersey imposes on neighbours quasi ex-contractu not to use their properties in such a way as to cause damage to each other. As the Court of Appeal held in *Reg's Skips Limited v Yates*

[2008] JLR 191 , the duty of voisinage is an obligation incumbent on neighbours owed whether as owner or occupier. 25. The Law Commission observed that voisinage is evolving as a concept and the extent of its application is unclear. It is clear, however, that it extends to physical damage. Quoting from the judgment of McNeill JA in *Rockhampton v Gale* at paragraph 154:- "Therefore, whilst some of the rights and obligations set out by Pothier may now be covered by other areas of Jersey law, where there are contiguous properties and where there is substantial damage to land or buildings, these should be covered by voisinage." 26. In the case before us, there has been actual damage to the Boat Hut caused by the landslide in 2012 and there is a serious threat of future substantial damage as a consequence of the instability of the steep bank. 27. In its answer, the defendant denied that the law of voisinage had any applicability in respect of anything falling naturally from higher ground to lower ground, relying upon the law relating to éboulements . 28. In *Mesney v Marett*

[1931] 236 Ex 337, ground and other debris fell from the upper lying property owned by the defendants on to the lower lying property owned by the plaintiffs. The defendants pleaded that the landslide had been an Act of God or an inevitable accident, that they had used their property in a normal and lawful manner and that the damage caused by the landslide had not been caused by their fault or negligence. Moreover, it was a principle of law that the fonds inférieur was bound to receive the éboulements of every kind which fell from the fonds supérieur without human intervention. The Court decided:- "... l'éboulement du 5 mars 1931 ne paraît pas avoir été provoqué par aucun acte, omission ou négligence de la part des défendeurs lesquels n'ont usé de leur propriété « Beauvoir » que d'une manière normale et légale ; mais paraît plutôt être dû à des causes naturelles ... » [The fall of the 5th March 1931 does not appear to have been brought about by any act, omission or negligence on the part of the defendants who only used their property Beauvoir in a normal and lawful manner ; but appeared rather to be due to natural causes.] 29. *Mesney v Marett* was considered by the Royal Court in *Mitchell v Dido* , in which it was alleged that the owner of the upper lying land had placed a quantity of soil that had encroached on to the lower lying land belonging to the plaintiff, causing drainage problems against the wall of the plaintiff's house. The action was pleaded in nuisance, rather than voisinage , and the Court followed the English law of nuisance, as enunciated in *Goldman v Hargrave*

[1967] 1 AC 645 and *Leakey v National Trust*

[1980] QB 485 and as summarised in this extract from Halsbury's Laws of England 4th edition at paragraph 365:- "365 An occupier of land is liable for a nuisance, even though he has not created it, if he has continued it while he is in occupation. Further, the occupier will be liable for a nuisance created after he became the occupier if he had knowledge, actual or constructive, of its existence. An occupier of land continues a nuisance if, with knowledge (actual or constructive) of its existence, he fails to take reasonable steps to bring it to an end..." 30. It was argued by the defendant that on the authority of *Mesny v Marett*, the last sentence of this citation from Halsbury's, based on the English cases of *Goldman v Hargrave* and *Leakey v National Trust*, did not form part of the law of Jersey. Tomes, Deputy Bailiff, said this at page 306: - "It is not difficult to distinguish *Goldman v Hargrave* from *Mesny v Marett* and the court has no doubt that in a proper case the court would apply *Goldman v Hargrave*. It was a case where an occupier, faced with a hazard accidentally arising on his land, failed to act with reasonable prudence so as to remove the hazard. Their Lordships found the existence of a general duty on occupiers in relation to hazards occurring on their land, whether natural or man-made. The existence of the duty must be based on knowledge of the hazard, ability to foresee the consequences of not checking or removing it and the ability to abate it. We respectfully agree. *Leakey v National Trust & c*. was concerned specifically with landslide. For many years there had from time to time been slides of soil, rocks, tree-roots and other debris caused by the effect of natural weathering. Later, a large crack had opened up in the bank and it was pointed out to the defendants that there was a grave danger of a major collapse on to the house below. Some weeks later there was a large fall of the bank on to the land of the plaintiff. The defendants were found to be liable in nuisance and their appeal was dismissed. The Court of Appeal held that under English law there was both in principle and on authority a general duty imposed on occupiers in relation to hazards occurring on their land, whether the hazards were natural or man-made. A person on whose land a hazard naturally occurred, whether in the soil itself or in something on or growing on the land, and which encroached or threatened to encroach onto another's land thereby causing or threatening to cause damage, was under a duty, if he knew or ought to have known of the risk of encroachment, to do what was reasonable in all the circumstances to prevent or minimise the risk of the known or foreseeable damage or injury to the other person or his property, and was liable in nuisance if he did not." 31. He continued at page 307:- "The instant case is not one concerning landslide or *éboulement*. The law of Jersey on landslide or *éboulement* was not argued before us and we are not prepared to say, therefore, whether *Mesny v Marett* should be overruled on the basis of *Leakey v National Trust & c*. Moreover, in *Leakey v National Trust & c*. the defendants were aware of the danger and of the possible consequences; there was knowledge that a potential nuisance of a significant nature existed and the defendants failed to take steps to prevent damage occurring. There is nothing in the report of *Mesny v Marett* to show that the defendants knew or ought to have known of the risk of encroachment. Nor are we prepared to decide,

without full argument, whether *Leakey v National Trust &c* . should overrule the principle of Jersey common law that the fonds inférieur is bound to receive the éboulements which, without human intervention, descend upon it from the fonds supérieur." 32. We endorse the commentary contained in the Law of Immovable Property Study Guide on voisinage at paragraph 11.18:- "11.18 There does not appear to be any inconsistency between the law of England as propounded in *Goldman v Hargrave* and *Leakey v National Trust* etc on the one hand and the law of Jersey as propounded in *Mesney v Marett* on the other. The Royal Court in *Mesney v Marett* based its decision, inter alia, on the fact that the fall had not been caused by any negligent act or omission on the part of the defendants. If there is a hazard on the upper lying land of which the owner is or ought to be aware, and he does nothing to remove the hazard, that failure to remove the hazard may amount to negligence within the meaning of *Mesney v Marett* . The owner of the upper lying land will be responsible if damage is subsequently occasioned to the lower lying land by the hazard he has omitted to address." 33. As McNeill J commented in *Rockhampton v Gale* at paragraph 26:- "So, whilst the Royal Court decided the matter on principles of the law of nuisance cited from Halsbury, the Court found the decision in *Searley v Dawson* and the writings of Pothier equally of assistance in identifying the same overriding principle, namely, that neighbouring properties had an obligation of support one to another." 34. In the Royal Court decision of *Gale v Rockhampton*

[2007] JLR 27 , Bailhache, Bailiff said this in respect of the use of the English law of nuisance in *Mitchell v Dido* :- "30 ... I would respectfully differ from Tomes, Deputy Bailiff, in thinking it appropriate to apply principles relating to the England law of nuisance when the cause of action actually lies in voisinage. For my part, even if the principles are similar, I would hold that the court should insist that the correct nomenclature is applied and that the court should apply those common principles in developing and explaining the law of voisinage. In my view causes of action arising in the law of land or quasi-contract should be pleaded accordingly. It is not appropriate to plead trespass or nuisance for the reason presciently given by Le Quesne, Lieut. Bailiff in the Guernsey Insurance Authority case. If England technical terms are used to describe a cause of action in Jersey law, they are apt to mislead, and to give the false impression that the relevant body of English law has been incorporated into Jersey law." The Court of Appeal agreed, quoting from paragraph 141 of the judgment of McNeill JA:- "It is therefore my opinion, in line with the views expressed by the learned Bailiff below, that there is no persuasive evidence that the English law of nuisance had, either at the time the decision in *Searley v Dawson* or by the present time, been assimilated into the law of Jersey." 35. *Mesney v Marett* should now be taken as part of the law of voisinage, as Bailache, Bailiff, said at paragraph 23 of the Royal Court decision in *Gale v Rockhampton* :- "In my judgment, *Searley v Dawson* was not "plainly contrary to earlier authority", nor indeed wrong. It seems to me that the judgment of Le Masurier, Bailiff, was plainly right and that it set in their proper jurisprudential context a number of other provisions of the law relating to immovable property with which practitioners would be familiar. One instance is the law relating to éboulements [falls],

that is the rule which requires the owner of lower land to accept anything falling or descending naturally from higher ground. Another instance is the law relating to water ... Other instances are the law relating to banks ... and the law relating to trees ... None of these obligations is founded in contract. All of them could perhaps be characterised as natural servitudes (*servitudes naturelles*) but can equally well be analysed as obligations, arising in quasi-contract, to be a good neighbour and not to use one's land in such a manner as to injure that of the adjoining owner - obligations arising from the law of *voisinage*." 36. For the purposes of this case, we draw the following principle from the authorities, namely that, whilst the owner/occupier of lower lying land is required to accept anything falling or descending naturally from higher lying land, if there is a hazard on the higher lying land, whether natural or man-made, of which the owner/occupier is or ought to be aware, and he does not take all reasonable steps to prevent or minimise the risk, that failure will constitute a breach of his duties under the law of *voisinage* to the owner/occupier of the lower lying land; rendering him responsible if damage is subsequently occasioned to the lower lying land by the hazard he has failed or omitted to so address. Decision 37. Applying the law of *voisinage* to the facts of this case, we find that:- (i) The steep bank adjoining the Boat House (and the other huts) constitutes a hazard in that it is unstable. It has given rise to landslip in the past and the risk of sudden collapse in the future is severe. (ii) A landslip could cause substantial damage to all of the huts, if not their entire destruction, and could extend to the public road. The landslip in December 2012 lifted the Blue Hut bodily into the middle of the public road. A deep circular failure involving the whole slope, as illustrated in Fig. 5 under "C", might, we venture to suggest, give rise to very serious consequences both in relation to the huts themselves but more importantly, to any occupiers of the huts and members of the passing public. In view of the evidence of Dr Sharp that the risk of sudden collapse is severe, those responsible for the public road and the safety of those who use it might want to give consideration to whether it should remain open to the public. (iii) The defendant is fully aware of the serious hazard the steep bank presents and has done nothing to address it. 38. We conclude, therefore, that the defendant is in breach of its duty to the plaintiff under the law of *voisinage*. 39. Where a hazard has been identified and the owner/occupier will not or cannot take all reasonable steps to prevent or minimise the risk, then rather than wait for damage or even injury to occur, it follows that the Court must have the power to permit the owner/occupier of the lower lying land to do so, *prime face* at the cost of the owner/occupier of the higher lying land. 40. The first stage is to carry out the site investigation so as to ascertain what remedial works are required. Given the fact that the defendant has not appeared at the hearing and according to the message received from its director Mr Leech, has no means of meeting any judgment, we see no point in first allowing the defendant itself time to carry out the site investigation; particularly where the risk of sudden collapse is severe. It is clear that it will not, or cannot do so. In that case, the plaintiff must be permitted to do so. 41. We do, therefore, order that the plaintiff and her duly appointed engineers, shall have access onto the defendant's property in order to carry out the topographical survey and geo-technical investigation and the defendant will

not obstruct that access. 42. The plaintiff shall not be liable to the defendant for any change or damage whatsoever caused to the defendant's property in carrying out this investigatory work, save to the extent that such change or damage is caused by her negligence or that of her agents. As the plaintiff is inevitably investigating the entirety of the steep bank, which is in the interests of all of the hut/site owners, it seems to us only reasonable that they should give the plaintiff a release from and indemnity against any claims that might be brought against her as a consequence of her carrying out this investigatory work. It is clear from our discussion with Advocate Hall that this is already contemplated. 43. As this is work which the defendant is under an obligation to undertake and the cost involved is relatively modest, we are prepared to order the defendant (which does own the steep bank) to reimburse the plaintiff the reasonable costs that she incurs in carrying out the necessary investigations. 44. Following that investigatory work, the engineers will be in a position to advise on the remedial work necessary to stabilize the steep bank, and the plaintiff will have to apply back to the Court for further injunctive relief permitting her to carry out that remedial work, assuming the defendant fails or is unable to do so. Realistically, that remedial work cannot be limited to that part of the steep bank immediately behind the Boat Hut and so all the hut/site owners will have to consider, together with the appropriate authority responsible for the public road, how that work will be funded in the first instance, bearing in mind that the defendant is not apparently in a position to discharge any order that the Court might make that it should reimburse the cost of such remedial work, its only asset apparently being the steep bank itself. 45. We have referred to the appropriate public authority because it seems to us that this is not a matter which just concerns the private rights of the hut/site owners; there is a real risk here to members of the public that use the public road. Statutory nuisance 46. Advocate Hall also drew our attention to the Statutory Nuisances (Jersey) Law 1999 . Under Articles 4 and 5 of that law, the Minister for Health and Social Services has the power to investigate a complaint of statutory nuisance and if satisfied that one exists, serve a notice upon the person responsible to undertake any necessary works. Failure to comply with such a notice without reasonable excuse is a criminal offence. 47. The matters that constitute a statutory notice are defined in Article 2(1) of the law and Advocate Hall suggested that the facts of this case came within Article 2(1)(a) which is in these terms:- "Any premises in such a state as to be prejudicial to health"; Certainly none of the other matters listed could have any possible application. 48. Advocate Hall informed us that one of the other hut owners had made a formal complaint to the Minister under this law but he was not satisfied that a statutory nuisance existed. We were not shown any of the relevant correspondence and no such complaint has been made by the plaintiff. 49. Advocate Hall said she was hoping that the Court might feel able to suggest, obiter , that there was a statutory nuisance here which the Minister should act upon, although what good service of such a notice by the Minister on the defendant would do is open to question, bearing in mind it has no means with which to comply. In any event, it would be quite inappropriate for us to do so in the absence of the Minister and when under the law it is the Minister, not the Court that decides whether a statutory nuisance exists.

Authorities Abbott Industries Incorporated v Warner & Ors [1985-6] JLR 375. Mitchell v Dido Investments Limited [1987/88] JLR 293. Rockhampton Apartments Limited & Anor v Gale and Clarke

[2007] JLR 332 . Searley v Dawson

[1971] JJ 1687 . Reg's Skips Limited v Yates

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[1980] QB 485 . Halsbury's Laws of England 4th edition. Gale v Rockhampton

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