

1971/4

ROYAL COURT (INFERIOR NUMBER)

Before: Peter Leslie Grill, Esq., Deputy Bailiff,
sitting alone by virtue of Rule 5/6 of the
Royal Court Rules, 1968, as amended.

Between Reginald John Wade Plaintiff
And Edward Frank Weston and Defendants
 Gayler George Triggs

Advocate M.C. St. J. Birt for the Plaintiff
Advocate B.E. Troy for the Defendants.

In this case, the Plaintiff is a co-owner of property with the Defendants, and I have had the advantage of being given an agreed Statement of Facts upon which the case is based.

It is a principle and fundamental rule of construction that words should be given their ordinary grammatical meaning. It is not right for the Court to interpolate further words in a clause which was entered into willingly by the parties. They are bound by the terms of the contract and it is simply a matter of interpretation. The Court cannot go beyond the ordinary and natural meaning unless the contract would be of no effect.

It is suggested by the Defendants that the words "maintenance" and "upkeep" import some wider meaning within the terms of the judgment of Jessel, M.R. in the Sevenoaks case. He extended "maintenance" to include reasonable improvements. He gave examples. It is important to note that the essential character of the railway and works were not affected in this example. An example in our case, perhaps, would be whether the concrete

kerbs should be replaced with granite kerbs. That would be a fair comparison with the example which he gave.

Mr. Troy suggested that the road was laid out so that persons using it might have safe access to their houses. This was not the purpose. The purpose is that persons be able to use the road. There is no question of safety. They take it as it is. There is no implied right that the layout must be safe for use.

Here we have a flat road. There may, of course, be slopes and bends. It may be dangerous. Can the Court have regard to that on the question of "maintien" and "entretien"?

There are two questions posed to me.

My attention was drawn to legislation and I think that I was able to help in connection with Jersey legislation. In the Roads Administration (Jersey) Law and the Loi sur la Voirie, a distinction is drawn between "reparation" and "construction" of the road.

Article 2 of the Loi (1914) sur la Voirie imposes a duty on the parish concerning "la reparation et l'entretien des chemins". There is no power in that law for improvements.

The Roads Administration (Jersey) Law 1960 was passed for improvements. The definition of "improvement" in that law is important. "Improvement" in relation to any road includes "the widening of the road, the adjustment of the boundaries of the road, the levelling of the road and the doing of other works in respect of the road beyond ordinary repairs essential to placing it in a proper state of repair....".

This is a convenient way of describing "maintien" and "entretien".

/Mr.

Mr. Troy says that I should take a wide view of Domas⁶. Domas has authority in this Court and turning to Book II, VI we find the following: "Aucun des propriétaires d'une chose commune nē peut y faire de changement, qui ne soit agréé de tous: et un seul même peut empêcher contre tous les autres qu'il ne soit innové. Car chacun d'eux a la liberté de conserver son droit tel qu'il est. Ce qu'il faut entendre des changements qui ne sont pas nécessaires pour la conservation de la chose."

What is the conservation of the thing? It is a road. It is used by cars, bicycles, motorbikes and pedestrians. There is no evidence before me and without the Jurats one cannot decide this but what is safe for a car may not be safe for a bicycle.

It is my view that the placing of speed bumps is not "maintien" or "entretien".

Turning to the second question, Mr. Troy fairly conceded that on his approach, twenty-three owners could impose their will on twenty-one owners. This cannot be equitable or right. A right to use the road is a right to use real property. By analogy with the Gaudin case, the agreement must be of all concerned.

The owners might wish to consider whether a clause in the form of the Parc de l'Oeillère might be a way out. I would emphasize that if the road is in disrepair, then the minority cannot refuse.