



Friday, 20 December 2024

Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

Allen v Yarra Valley Railway Incorporated (VSC) - interlocutory injunction restraining from restoring and reconstructing a historic railway line outside normal business hours, on the basis of alleged nuisance, refused



HABEAS CANEM

Merry Christmas from McGregor

Benchmark

Summaries With Link (Five Minute Read)

Allen v Yarra Valley Railway Incorporated [2024] VSC 796

Supreme Court of Victoria

Quigley J

Nuisance - the plaintiffs lived on a large rural property in a green wedge zone - YVR was a not for profit incorporated association who leased a rail corridor adjacent to the plaintiffs' property, and who was restoring and reconstructing a historic railway line in that corridor - the plaintiffs contended YVR's work caused a nuisance, in that that works were carried out before and after hours, and on weekends - the plaintiffs said their mental and physical health was being affected, as was that of their children, their horses, and their other animals - the plaintiffs sought an interlocutory injunction restraining YVR from doing work outside normal business hours - held: the tort of private nuisance occurs where a person interferes with another person's use or enjoyment of their land in a way that is both substantial and unreasonable - one type of interference that can constitute nuisance is unduly interfering with the comfortable and convenient enjoyment of land - public benefit may be relevant to the reasonableness of the interference, but does not operate as a defence - the strength of the plaintiff's nuisance claim was marginal, although it was possibly arguable - however, damages would potentially be an adequate remedy after trial - the plaintiffs had proffered no undertaking as to damages and no explanation for not having done so - the balance of convenience favoured refusing the injunction - interlocutory injunction refused.

[Allen](#)



Poem for Friday

Somewhere

By Rev David Conolly

Somewhere,
unexpectedly,
hope is born.

A voice.
At first, only the cry
of a new-born
gulping for breath.

In time, a voice.

The voice speaks to
a world grown used to
darkness, despair.

The voice says,
*You are light for the world;
Let it shine.
Love, and forgive*

And suddenly, hope is born.

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