# Aberdeenshire Council v Lord Glentanar



Case Report: 1999 SLT 1456

This case was heard in 1931, but not reported until the Scots Law Times report in 1999.

Aberdeenshire Council had applied to the court for a declarator that there was a public right of way for vehicles (horse-drawn or mechanically propelled) and generally for all forms of road traffic including ‘by horse or cycle’. The case is significant for Lord Mackay’s comments in relation to the use of bicycles on rights of way. The case was subsequently appealed to the Inner House of the Court of Session but settled by an agreement that was ratified by that Court on 10th December 1931. The Inner House, therefore, had no opportunity to consider Lord Mackay’s views.

Lord Mackay said:
“The age old distinctions of the Civil Law and the not quite corresponding distinctions in our Scots Law viz: cart road, bridle road, footpath, loaning, were not developed out at the date when a velocipede or any such wheeled contrivance existed. Probably then they didn’t contemplate such a monster. But the expression ‘horse-drawn vehicle’ or the expression ‘vehicle’ itself as used in right of way cases, is in my opinion apt to express a sharp distinction between machines for carrying passengers over the country by some sort of motive power which precludes them from using their own legs for the purpose, and on the other hand, any form of contrivance such as a skate or roller skate or ski or snow-shoe which merely facilitates the use of the individual’s own muscle to cover ground more quickly. Accordingly, I take the view that the pedal cycle is only an aid to pedestrianism. I think it would be unfortunate in Scotland to take any other view, for otherwise tracks which had only been used by the comparatively innocuous two-wheeled pedal cycle might be appropriated by the public thereby to all purposes of traffic.”