Alvis v Harrison

Relationship of public rights of way with private servitude rights of way · https://scotways.com/ken/alvis-v-harrison/

Case Report: 1991 SLT 64; 1991 62 P. & C.R. 10

Key points: Private servitude right of access under an express grant – different principles apply to those which would apply in the case of a servitude acquired by prescription.

Facts: Alvis was the owner of a driveway to his property (a castle). Harrison had a private right of access over part of the driveway to his own land. There had been an express grant of this right. Harrison built a new junction on the verge of the driveway in order to link with a new access road that he had built on his own property to link with a public road. There had already been a separate link to the public road from Harrison's land. Alvis claimed that this new junction was an unjustified increased burden on his land.

Decision: Alvis succeeded in the Court of Session, but their decision was reversed in the House of Lords on the basis that Harrison was entitled to build the new junction within the terms of the express grant. The court said that the position was different from if the right of access had been acquired by prescription, and also that, as there was already a link with the public road, no additional traffic would be generated.