Ayr Burgh Council v British Transport Commission

Creation of public rights of way – use as of right by the public for the prescriptive period · https://scotways.com/ken/ayr-burgh-council-v-british-transport-commission/

Case Report: 1955 SLT 219

Key points: Prescriptive use - public use of non-adopted road - effect of exclusion of public on three days of the week - whether cul-de-sac a proper terminus of a right of way.

The facts: This Action was brought by the Burgh of Ayr to prevent the British Transport Commission from levying charges for the parking of motor vehicles. Ayr Cattle Market is a public place. For more than 40 years, the public had access from Station Road to the market over a strip of land owned by the British Transport Commission (and not, therefore, adopted as a public road). The Council claimed that this strip was subject to a right of way for the public from a public road at one end to the market at the other end. The Writ issued by the Council did not seek a Declarator of the existence of a right of way, but sought simply to prevent the levying of parking charges.

Decision: From the Council’s written statement of their case, the Court inferred that the public did not have access to the area in dispute on three days in the week when the market was closed. No case was cited in which the public had such restricted access and, on principle, it was held that such a place could not be a ‘public place’ in the sense of a proper terminus of a right of way. It would be an unreasonable burden on a landowner to have to permit access along a route leading only to a locked gate (i.e. of the market, in this case), from which no egress is possible.

Comments: (1) This case deals with a number of issues other than public rights of way and was decided on the basis of the parties' written pleadings, without evidence being led. (2) There is an obiter dictum (i.e. a judicial statement of legal principle) to the effect that there is no known servitude right in Scotland for the loading and unloading of cattle or - as is relevant in this case - for the parking of vehicles. [But see now Moncrieff v Jamieson,] (3) The case of a cul-de-sac which has been adopted as a public road or footpath, is of course different.

Cases referred to:
(1) Jenkins v Murray (1869) 5 SLR 131
(2) Wallace v Police Commissioners of Dundee (1875) 2 R 565 (Not in Ken).

(3) Edinburgh Corporation v North British Railway Co. (1904) 6 F 620