British Transport v Westmoreland County Council

Rights of way – land owned by statutory undertakers or the Crown · https://scotways.com/ken/british-transport-v-westmoreland-county-council/

[1957] 2AER 372

The facts: The railway line was carried over a private road by a bridge. The lower courts had held that members of the public had so used the road as to justify the inference of a dedication of a public right of way. British Transport appealed. British Transport argued that no right of way existed and the test was whether the existence of the right of way might, in any possible circumstances, at any future time, hamper the undertaker in carrying out the statutory purpose to the best advantage. The Council argued that the test is whether at the time the matter is being considered there is any likelihood that the existence of a right of way would interfere with the adequate and sufficient discharge of the statutory duties.

Decision: The Judges agreed with the latter approach and held that the right of way was compatible with carrying out of the statutory purpose, and refused the appeal.

Comment: The judges analysed Ayr Harbour Trustees v Oswald and several thought the grant of the right of way, in that case, was incompatible with the carrying out of the Trustees' statutory purpose. Lord Keith thought it was ultra vires for the trustees to bind themselves in such a way as to prevent them from using the land for the statutory purposes which provided the sole justification for acquiring the land. He also held that the onus was on the statutory undertaker to show if there was incompatibility with their operations. Lord Keith expressly stated that there was no difference between Scots and English law on this particular issue. He also commented on Lord Kinnear's statement in Edinburgh Corporation v North British Railway Company, which was inconsistent with the authorities if it meant that in no circumstances could the public acquire rights over railway property.