Crawford v Lumsden

Different kinds of use of rights of way · https://scotways.com/ken/crawford-v-lumsden/

Case Report: 1951 SLT 64

Key points: Servitude rights recorded in title deeds - express grant of access by horse and cart - whether a motor vehicle could be used - interpretation of terms of express grant.

The facts: Crawford had a servitude right of access in his title deeds for access "by a horse and cart", for certain specified purposes, over land belonging to Lumsden. Crawford now wished to have access using a motor vehicle. Lumsden argued that a right conferred by an express grant must be strictly construed (i.e. limited to the terms of the grant - in this case, to use by horse and cart and for the purposes specified).

Decision: Where a grant of this nature is made, it is intended to endure for a long stretch of time, during which modes of travel may possibly change. The use proposed was held not to be a different kind of use. To allow a servitude to be enjoyed using a new form of vehicle is not widening the grant in any real sense (c.f. Mackenzie v Bankes, where works were envisaged which would open up the route to a new type of use).

Comments: This case involves a private servitude but does have a relevance to some public right of way issues. Note that the Court relied upon the fact that no limit of time was placed on the original grant and that no averments (allegations) of increased burden (e.g. by extra wear and tear on the road surface) were made by Lumsden. However, this decision did not prejudge any questions of future damage which might arise due to the use of a motor vehicle. This case - relating only to a private servitude - would require to be treated with caution in any case involving a public right of way, such as Mackenzie v Bankes.

Cases referred to:
(1) Moyes v McDermott (1900) 2 F 918 (Not in Ken).
(2) Smith v Saxton 1928 SN 59