Cuthbertson v Young

Creation of public rights of way – need for public place end points · https://scotways.com/ken/cuthbertson-v-young/

Case Report: (1851) 14 D 304

Key points: Definition of a public place - intermediate public places not necessary at estate boundaries - more than one proprietor - definition of the terminus of a right of way.

The facts: A public right of way was claimed by Cuthbertson and others in respect of a footpath between Burntisland and Aberdour. Robert Young was the proprietor of land lying westward of Burntisland, through which the alleged right of way passed. It was held by a jury that for more than forty years a public path had existed from Burntisland westwards, through and to the western boundary of Young's lands, then on to Starleyburn Port and Harbour, thence westwards to Aberdour. Young disputed the existence of a public right over the route, on the basis that it did not lead to a public place at the boundary of his lands.

Decision: It was not necessary in this case to prove that there was a public place at each end of a footpath through ground belonging to Young. It was stated by the Lord Justice Clerk that it would be preposterous if it were proved, that the public had enjoyed a right of way over Young's grounds for more than forty years, that Young could defeat this by showing that there was no continuation of the right of way through the ground of an adjoining proprietor.

Comments: The facts, in this case, are somewhat special, inasmuch as the public had exercised a public right of way over Young's land to (1) a small harbour, (2) the foreshore, (3) a public road, and (4) a public path to Aberdour, a section of which passed over Young's land. There are various judicial pronouncements on particular aspects of the termination of a right of way (e.g. the starting point of a circular walk, and the end of a cul-de-sac), but it would be unwise to use this case as authority for the proposition that a public place is not a prerequisite for the termination of a right of way. It was necessary to show that the route through Young's property was part of a (longer) right of way, leading to public places at its ultimate termini.

Cases referred to: (1) Rodgers v Harvie (1830) 8 S&D 611
(2) Crawford v Menzies (1849) 11 D 1127 (Not in Ken)