Darrie v Drummond

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

Case Report: (1865) 3 M 496

Key points: Creation of right of way - route terminating at seashore - whether sea shore generally is a ‘public place’ - necessary characteristics of the terminus of a right of way.

The facts: A road, which had been used by the public for the prescriptive period, led from a village which was accepted to be a public place, through private ground to a part of the seashore which was claimed by Darrie, being one of several local fishermen who used the road, to be a harbour but which was arguably only a creek with an adjoining beach. The fishermen kept their boats at this ‘harbour’ and Darrie sought a Declarator that the road was a public right of way.

Decision: The question was whether or not a part of the seashore where a route terminated was a ‘public place’ for the purpose of establishing a right of way. Generally speaking, the seashore is a public place in the sense that anyone getting there lawfully is entitled to use it on arrival. It is, however, the type of use made of the shore that decides whether it is a public place of the kind required for the terminus of a right of way. If the only object of a track is to reach the shore, the part of the shore at which it arrives is not necessarily a ‘public place’ for right of way purposes. The Court required to be satisfied that the part of the seashore in question was a ‘public place’ of the kind required; for illustration, the Court observed that the beach at Portobello was used for military reviews and by the public for walking, driving, riding, bathing and other purposes of health and recreation and that a beach used in that way was undoubtedly a ‘public place’ such as is required for establishing the terminus of a right of way; but a part of the shore which is not self-evidently a public place must be proved to be such and this is a question of fact, which depends on the evidence. Darrie had failed to satisfy the Court on this point and was refused the Declarator sought.

Comments: This case illustrates the difference between the general character of the seashore as a public place and the character which a particular part of the shore must have in order to qualify as a public place for right of way purposes. See contrasting outcome in Duncan v Lees, which illustrates this point more fully. Also, see Scott v Drummond, and Home Drummond & Another (Petitioners) below.

Cases referred to:

(1) Cuthbertson v Young (1851) 13 D 1308, 14 D 300, 1 MacQ 455

(2) Campbell v Lang (1851) 13 D 1179, 1 MacQ 451 (Not in Ken).