Davidson v Earl of Fife

Case Report: (1863) I M 874

Key points: Closure of old roads - substitution of new roads - public / private status of new roads - road used as public road for more than prescriptive period.

The facts: Two roads near Duff House, Banff, had been in public use from time immemorial. The Earl agreed with Banff magistrates in 1756 to create new roads for the public if he was allowed to close the existing roads. This was done, but, in or about 1860, the then Earl closed the new roads.

Comments: The case is a technical one on points relating to written pleading under a procedure now obsolete, and the final outcome of the case is not stated in the report. However, the following principle, stated at p 884 by the Lord President (Lord Inglis), remains relevant: ''I am inclined to hold that where it is admitted that roads have once been made, and have been used for years as public roads, on whatever consideration, that supersedes any further enquiry''.

See also: Marquis of Bute v McKirdy.