Duncan v Lees

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

Case Report: (1871) 9 M 855

Key points: Creation of right of way - seashore as terminus of right of way - nature of evidence required to establish a point on the seashore as a ‘public place’ - distinction between seashore generally and right of way terminus.

The facts: The fact of importance, in this case, was that Duncan, in order to succeed in an Action for Declarator of Right of Way, required to prove that a certain place on the coast (Kinkell Harbour on the Fife coast) was a ‘public place’ for right of way purposes.

Decision: The report deals with the evidence produced to establish that Kinkell Harbour was a ‘public place’ in the sense required to establish the terminus of a right of way. The Court remarked that Kinkell Harbour while not a ‘very public place’ did not have to be that or even a ‘place of great resort’, but it had to be a place to which the public resorted ‘for some definite and intelligible purpose’. Much evidence was considered, some conflicting, and the Court expressed the opinions that: (1) if the public resort to a place on the seashore for pleasure and recreation that may be sufficient to constitute the place ‘ a public place as a terminus to a footpath’, and (2) if there was a mooring place used sufficiently to create a difference between the creek in question and the coast generally and to establish a permanent use by the public of a particular part of the shore, then that place was a ‘public place’ for right of way purposes. The Court being satisfied with the evidence, Duncan obtained the Declarator sought.

Comments: This case follows on from Darrie v Drummond, above, and illustrates the kind of tests which the Court will apply in deciding whether a point on the seashore qualifies as a terminus for a public right of way.