Geils v Thomson

Obstruction of rights of way · https://scotways.com/ken/geils-v-thomson/

Case Report: (1872) 10 M 327

Key points: Interruption of public water supply - trespass in the course of taking remedial action - Interdict against public - apportioning of blame.

The facts: Geils, the proprietor of a stream which supplied a public well, diverted its course so as to deprive the well of the supply of water. A few months afterwards, some members of the public (Thomson and others) went upon the proprietor's land and removed the obstruction which was diverting the flow of the stream.

D**ecision:** On appeal from the Sheriff Court, it was held by the Court of Session that this removal was unlawful and that the proprietor was entitled to Interdict to prevent trespass by members of the public onto his land.

The Lord Justice Clerk, in granting Interdict, commented “…. but the respondents, whether Mr. Geils had the right to cut off the supply or not, had no right to do what they did. They went up the stream beyond the spot to which they had been in the custom of going and so trespassed on Mr. Geils’ land; and having done so they removed the obstruction which he had created. That was an illegal mode of asserting their right".

Comments: No cases were cited in support of this judgement, which appears to be somewhat at odds with the decision in Kirkpatrick v Murray where the illegal act of the proprietor was taken as justification for the subsequent illegal act on the part of members of the public. In this case, Geils' illegal action in cutting off the supply of water to a public well does not appear to have been taken into account.

There is no indication in the report as to how this matter was eventually settled.