Hamilton v Nairn

Public rights of way and ‘roads’ under the Roads (Scotland) Act 1984
Court ref: [2010] CSIH 77

This case was an appeal to the Inner House of the Court of Session and contains useful discussion about the legal status of the verges of roads, and the distinction between public roads and private roads/public rights of way.

Mr and Mrs Hamilton wished to carry out work to improve vehicular access to their property (as authorised by the local authority), including work on the verges of a public road over land owned by Mr Nairn. Mr Nairn claimed that there was no public right of passage for vehicles over the verge over which the Hamiltons wished to take access. He argued that the verge was only intended as a refuge for pedestrians, and the Hamiltons had no right to carry out work to improve access for vehicles.

The court said that a public road was maintainable by the local authority and the proprietor had no right to interfere with any work on the road, including its verges. This was different from a private road or public right of way where there may be a public right of passage, but maintenance remains in the control of the proprietor. Also, the public right of passage over the verges of public roads extended to all users.

The court, therefore, upheld the right of the Hamiltons to improve access over the disputed verge, on the basis that it was part of the ‘road’, and they also upheld an interdict against Mr Nairn to prevent him from interfering with the proposed work.