Hay v Earl of Morton’s Trustees

Obstruction of rights of way · https://scotways.com/ken/hay-v-earl-of-mortons-trustees/

Case Report: (1861) 24 D 116

Key points: Claim of right of way agreed - plan approved by both parties, showing gates - later request for removal of gates - effect of undue delay in pursuing case.

The facts: Hay raised an Action, on behalf of residents of Aberdour, against the landowner in respect of a path eastwards from Aberdour. A right of way was conceded and a plan drawn up and agreed. Five years later Hay and the other residents asked the Court to have the gates removed. It was held that, the gates having existed before the Action and having been shown on the judicially agreed plan, Hay was now too late to object to the gates.

Comments: The gates were not locked, but closed by a cleek and chain. They did not therefore prevent access, but did cause a certain measure of obstruction. It is difficult now to understand why Hay delayed his proceedings for such a length of time, but it is clear that, by doing so, he jeopardised his case.

Cases referred to: Blackwood v Mylne (1845) 8 D 313 (Not in Ken).