Jenkins v Murray

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

Case Report: (1856) 4 M 1046

Key points: Partial use of right of way - use of area as opposed to use of linear route - no evidence of end-to-end use - termini to be established as public places.

The facts: This was an Action for Declarator of a right of way through the estate of Polmaise, near Stirling. The public used part of this route for access to a considerable area called a common, where they used to stroll, especially on Sundays. Much of the evidence related to casual use and there was no substantial evidence of continued use by the public as a public right of way from one public place to another public place. Lord Curriehill stated: "A right of way - and particularly a right of footway - through a man's ground does not consist of a right of promenading within that ground, going in at a certain point and promenading indiscriminately over the ground and coming away again. The public must go through the ground from an entry at one place to an ish (exit) at another, and the two points where the ish (exit) and the entry are must be public places. It will not do for people to enter the ground of a proprietor and walk about in it as much as they choose and come out again where they started."

Comments: This is a case which repays study in questions arising from use of a route on a partial or limited basis. It stresses the importance of sufficient end-to-end use by the public as being essential for the constitution of a right of way in the present state of the law.