Lanarkshire Water Board v Gilchrist

Obstruction of rights of way · https://scotways.com/ken/lanarkshire-water-board-v-gilchrist/

Case Report: 1973 SLT 58

Key points: Servitude right of way over unfenced land - access to Water Board reservoir - bulls, other dangerous animals - animals ‘of uncertain temperament’.

The facts: The Water Board had a right of way to its reservoir over unfenced farmland, part of which was owned by Gilchrist, who allowed a bull to roam at will throughout the unfenced portions of his farm. The Water Board feared for the safety of its employees using the road on foot and of the families of its employees occupying houses at the reservoir. It sought Interdict against Gilchrist from keeping the bull at large on the unfenced land.

Decision: On appeal, the Sheriff Principal granted Interdict preventing Gilchrist from allowing a bull to be present on unfenced land adjacent to the right of way.

Legal arguments: Gilchrist had argued that he had not interfered with the Water Board's enjoyment of its right of access, if it was exercised in the way which caused the smallest possible inconvenience to the owner of the land. No explanation as to how this might be done was given in Gilchrist's pleadings but his solicitor suggested that persons wishing to walk along the road might telephone the farm to give advance notice of their intent or alternatively that the use of the road by pedestrians might be restricted to certain hours of the day. These suggestions were dismissed by the Sheriff Principal as impracticable and clearly restrictive of the full enjoyment of the right of access. Gilchrist also sought the opportunity of demonstrating that the bull in question was not a dangerous bull. The Sheriff Principal saw no value in allowing a proof as the present bull could be replaced at any time by another, possibly more dangerous one. He regarded as within judicial knowledge the fact that a bull is of uncertain temper and is liable at any time to become vicious and to cause injury to human beings.

Comments: The decision, in this case, is capable of being extended to cover dangerous animals (even such as red or roe deer) pastured in the vicinity of public rights of way. It would also appear to apply not only to rights of way running through unfenced land but also to rights of way through a fenced field in which a bull (with or without cows) or other dangerous animals are being allowed to graze. For instance, would a right of way running through a deer park be regarded as being

obstructed, it being traditionally recognised that at certain times of the year deer can become a danger to humans? The crucial point is that the owner of animals with dangerous characteristics (whether on the basis of species, breed, gender or age) can be prevented from allowing them to roam at large in the vicinity of public pedestrian rights of way.

Note that, in relation to a public right of way, the following offence applies under the Countryside (Scotland) Act 1967: 'Section 44 (1) No person shall, being the occupier of any field or enclosure through which there is a public right of way, permit any bull to be at large in such field or enclosure:

Provided that this section shall not apply to any bull which—
(a) does not exceed the age of 10 months; or
(b) is not of a recognised dairy breed and is at large in any field or enclosure in which cows or heifers are also at large.'

Cases referred to:
(1) Brock v Copeland (1794) 1 Esp 203 (Not in Ken).
(2) Henderson v John Stuart (Farms) Ltd 1963 SLT 22 (Not in Ken).
(3) Milligan v Henderson 1915 SC 1030 (Not in Ken).
(4) Harpers v Great N of Scotland Railway Co (1886) 13 R 139 (Not in Ken).