Lang v Kerr Anderson & Co.

Case Report: (1878) 5 R (HL) 65

The facts: The property of Kerr Anderson & Co. was bounded by a wall. There was a public footpath between this wall and the River Clyde. Kerr Anderson & Co. made no use of this footpath. Lang, the Master of Works of the City of Glasgow, considered that the bank of the river was dangerous and required the erection of a wooden fence by Kerr Anderson & Co., who appealed against that requirement.

Decision: The Master of Works was not entitled to call upon Kerr Anderson & Co. to erect a fence (in addition to the wall already bordering their ground) outwith the ground owned and used by them, for the protection of the public on the public footpath.

Comment: This case turns upon a speciality in a Local Act of Parliament, but the general principle is that a proprietor is not bound to fence a right of way which lies outwith his property and of which he makes no use.