Macfarlane v Morrison & Others (Robertson’s Trustees)

Case Report: (1865) 4 M 257

Key points: New road substituted for old - restricted use over part of old road - vehicular rights previously lost - whether use of new road similarly affected.

The facts: Broad Loan in Causewayhead, near Stirling, had been a public road until 1806 and used for all purposes (i.e. by all classes of traffic). In that year a new road was formed. It was claimed by Morrison, on behalf of Robertson's Trustees, that a part of the old road, including Broad Loan, had previously been closed by the Turnpike Road Trustees and restricted to foot passage only.

Decision: A jury found that the solum of Broad Loan had indeed been restricted to foot passage only, since 1806. Consequently, the public right of passage over the new road was now restricted to foot passage only.

Comments: Loss of use of a public right of way for horse or cart traffic does not necessarily deprive it of its status as a right of way for pedestrians. The user status of an old route passes unchanged to a new or substitute route.

Cases referred to:
(1) Forbes (1829) 7 S 441 (Not in Ken).
(2) Thomson v Murdoch (1862) 24 D 975
(3) Forbes v Morrison (1851) 14 D 134 (Not in Ken).