Macfie v Scottish Rights of Way and Recreation Society Limited

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Case Report: (1884) 11 R 1094

Key points: Right to initiate legal action in rights of way matters - Action to establish that lands were free of rights of way - right of limited company to sue on behalf of the public - findings binding on whole public.

The facts: John Blair raised an Action against Macfie of Dreghorn for Declarator of the existence of four rights of way in the Pentland Hills, near Edinburgh. This Action was abandoned, but Macfie in turn then raised an Action against John Blair and John Bartholomew for Declarator that his lands were free of servitudes of rights of way. The Scottish Rights of Way and Recreation Society Limited (the SRWRS) then asked the Court for permission to join in the Action as Defenders, in place of Blair and Bartholomew. This permission was granted, and Macfie appealed against this decision.

Decision: The decision of the Appeal Court was that the Company (the SRWRS) was entitled to enter the Court process as a party and that, as they would be representing the general public, any decision against the Company would be binding against the general public.

Comments: The report is brief, but the decision is important: it appears to have been based upon the established principle of law that any member of the public is entitled to litigate as Pursuer or Defender in a Court Action regarding public rights of way, and a limited company is accordingly in a like position. It was argued on behalf of the Company that any of the subscribers to the Memorandum of Association of the Company (i.e. members of the Society) could have chosen to raise proceedings as individuals, and this argument may have influenced the decision of the Court.

Cases referred to:

(1) Jenkins v Robertson (1869) 7 M 739 (Not in Ken).

(2) Duke of Atholl v Torrie (1849) 12 D 328, affirmed in 15 D (HL) 17