Midlothian District Council v MacKenzie

Obstruction of rights of way · https://scotways.com/ken/midlothian-district-council-v-mackenzie/

Case Report: 1985 SLT 36

Key points: Obstruction of public right of way - erection of fences by proprietor - consequent narrowing of route - obligation to demonstrate management need for changes.

The facts: Midlothian District Council raised an action against MacKenzie, who had erected a fence that restricted the width of an established pedestrian right of way from 15 feet to 2.5 feet.

Legal arguments: Mackenzie argued that his actions had not closed the right of way, as passage was still possible. The District Council argued that MacKenzie had not averred (i.e. claimed, as part of his argument) that his actions were necessary for the proper working of his land.

Decision: It was noted that the dictum in Lord Donington v Mair (above) that "...anything which covers up and prevents the unobstructed use of the ground....must be justified by the owner" is a correct statement of the law. MacKenzie ought, therefore, to have justified his narrowing of the right of way in terms of the requirements of estate management.

Comments: The outcome of the case was not stated, as the case reports only a discussion of the legal principles involved, i.e. the manner in which MacKenzie presented his case; however, the Court accepted the law as set down in Lord Donington v Mair.

Cases referred to:

(1) Lord Donington v Mair (1894) 21 R 829

(2) Rodgers v Harvie (1827) 7 S 287

(3) Hay v Earl of Morton (1861) 24 D 116

(4) Sutherland v Thomson (1876) 3 R 485