Milne v Inveresk Parish Council

Public and private rights of way – ancillary rights and burdens · https://scotways.com/ken/milne-v-inveresk-parish-council/

Case Report: (1899) 2 F 283

Key points: Common ground - ground subsequently divided and sold - public right of way over common ground - right of Council to erect seats beside right of way.

The facts: The Parish Council erected two seats on the Haugh of Inveresk, for public use. The Haugh had formerly been common ground, belonging to certain heritors of Inveresk. It had thereafter been divided in certain proportions leaving parts for public use and for public parks. Sir Archibald Milne raised an Action against the Council, asking for removal of the seats because he, as proprietor of parts of the former common ground, claimed still to have an interest in the remaining common ground and the paths.

Decision: It was held that the Parish Council were entitled to place seats on the road over the common ground as incidental to the reasonable enjoyment by the public of the walks and other facilities, and that this was not an encroachment on Sir Archibald's right of ownership.

Comments: This case turned on the very unusual state of the title to the common ground and cannot be relied upon as establishing a general principle of law.

Cases referred to:

(1) Breadalbane v McGregor (1848) 7 Bell's Appeals 43 (Not in Ken).

(2) Magistrates of Dundee v Hunter (1843) 6 D 12 (Not in Ken.

(3) Dice v Hay (1852) 1 MacQ 305 (Not in Ken).

(4) Henderson v Earl of Minto (1860) 22 D 1126 (Not in Ken).