Nairn v Speedie

Procedural issues · https://scotways.com/ken/nairn-v-speedie/

Case Report: (1899) 1 F 635

Key points: Right of way claimed - route splitting and re-uniting - route traversing several estates - whether Action competent against only one proprietor.

The facts: A footpath was claimed as a public right of way between Dysart and Kirkcaldy. It passed through Dysart House policies, at one point using a made-up path within the policies and at another point dividing into two paths. Between its two termini, the path also passed through the properties of other proprietors.

Decision: Because the Action involved only one of the proprietors affected by the claim, the case involved difficult legal questions which rendered it unsuitable for trial by jury and consequently required that it should be tried only by a judge.

Comments: This case deals with a point of legal procedure now obsolete, but it is nonetheless some authority for the legal proposition that, in an Action concerning a public right of way, it is not necessary for the proprietors of all the properties affected by the alleged right of way to be called. However, the background to this case is unusual and the decision cannot be treated as one of universal application.

Cases referred to:

(1) Napier’s Trustees v Morrison (1851) 13 D 1404 (Not in Ken).

(2) Mackintosh v Moir (1872) 10 M 517

(3) Blair v Macphie (1884) 11 R 515 (Not in Ken).

(3) Fraser-Tytler's Trustees v Milton (1890) 17 R 670 (Not in Ken).