Oban Town Council v Callander & Oban Railway

Rights of way – land owned by statutory undertakers or the Crown · https://scotways.com/ken/oban-town-council-v-callander-oban-railway/

Case Report: (1892) 19 R 912

Key points: Acquisition of ground under statutory powers - effect of such acquisition on right of way - position of statutory body in granting rights - terms of statute.

The facts: A railway company acquired land situated in the town of Oban from the Town Council under compulsory powers contained in their private Act of Parliament (The Callander & Oban Railway Act 1878). The Company was, in terms of their Act, ''bound to satisfy every claim competent to the Council for the loss of all rights of servitudes of which they should be deprived by the construction of the Company's works." The Council had hitherto enjoyed a servitude right of way over a strip of ground which formed part of the lands acquired by the Company. The Company duly completed the necessary railway works including the erection of a station, but they did not need the whole of the land acquired for the purposes of the necessary access and they laid out part of the ground in front of the station as garden ground. Some years after the railway works had been completed the Council raised a Court Action contending that the terms of the Company's Act were subject to the servitude right which they (the Council) had previously enjoyed, on the grounds that no works had actually been constructed on the strip of ground in question, which had the effect of depriving them of their rights unnecessarily.

Decision: The Council were unsuccessful in their action, the Court having decided that when land is taken by a railway company under their statutory powers, it is taken absolutely and free of all servitudes unless it is otherwise provided in the Act (See Ayr Harbour Trustees v Oswald, above, relating to harbour works).

Comments: This case is only briefly reported but it gives some authority for the proposition that acquisition by statutory power extinguishes rights of way; however, the case is based upon the construction of the particular statute quoted (i.e. a private Act of Parliament) and its relevance may, therefore, be limited.

Case referred to: Walker’s Trustees v Caledonian Railway Company (1881) 8 R 405 (Not in Ken).