Potter v Hamilton

Procedural issues · https://scotways.com/ken/potter-v-hamilton/

Case Report: (1870) 8 M 1064

Key points: Right of members of the public to sue in rights of way matters - effect of judgement on the public - social and financial status of parties suing - position of individuals bringing action on behalf of public.

The facts: This Action was raised by a small number of the inhabitants of Millheugh, Glengowan, Lanarkshire, after a public meeting called to discuss obstructions on a local claimed right of way. Potter and certain others were authorised by those attending the meeting to act for them and for the public generally. It was argued for Hamilton, the owner of the ground, that Potter & Co. were not men of financial substance and should be required to lodge caution (guarantees) for their expenses, should their case be unsuccessful.

Decision: The Court held that: (1) The Action had not been brought by the Pursuers simply as ‘men of straw’, i.e. as a shield for others and to avoid those others being liable for expenses, were the action to fail. (2) The Pursuers were not bankrupt or insolvent, although not men of any considerable means. (3) Accordingly, the Pursuers should not be required to find caution for expenses, nor was it necessary to introduce as parties to the Action all the persons present at the earlier meeting. (4) The decision in the Action would be binding on the public generally and not only on the parties. (5) The case was distinguishable from the case of Jenkins v Robertson.

Comments: This is a case that indicates that an Action by or against one or more members of the public can be binding upon the public generally. It also has a bearing on the title of individuals to raise or defend Actions involving rights of way and reinforces the authority of the Glen Tilt and Dreghorn cases.

Cases referred to: Jenkins v Robertson (1869) 7 M 739 (Not in Ken).