Preston’s Trustees v Preston

Public and private rights of way – ancillary rights and burdens · https://scotways.com/ken/prestons-trustees-v-preston/

Case Report: (1860) 22 D 366

Key points: Servitude right to water supply - right to enter property of burdened proprietor to maintain supply - right of access to maintain servitude - effect of division of estate.

The facts: The two Estates (A and B) represented by the two parties to the case had previously been in one ownership. Estate A had surplus water which was piped to Estate B. When the Estates were separated, the proprietor of Estate B wished to enter upon Estate A to repair the pipes. The proprietor of Estate A averred (i.e. claimed) that the supply had been personal to the former owner of the combined Estate. It was held that the servitude right to a water supply as enjoyed by Estate B had arisen by implication from the circumstances of the division and sale of the Estate, hence the proprietor of Estate B was entitled to enter upon Estate A for the purpose of maintaining the pipes.

Comments: The case is authoritative in respect of the right of parties entitled to exercise a servitude right (and this would include a right of way as well as a right to a water supply) over the property of another to enter upon that property to carry out repairs on the ground over which the servitude may be exercised.

Cases referred to: None relevant to rights of way matters.