Rodgers v Harvie

Obstruction of rights of way · https://scotways.com/ken/rodgers-v-harvie/

Case Report: (1829) 7 S 287

Key points: Claimed public right of way - removal of obstruction - obligation on land-owner to provide gates in fences - procedure for establishing line of right of way.

The facts: Rodgers claimed that a public right of way existed from Carmyle to Glasgow Green along the bank of the River Clyde. He succeeded in the Action for Declarator of a public right of way and Harvie, the owner of lands along the length of the route, was interdicted from shutting up or obstructing passage unless he left proper openings in his fences or provided wicket- gates. The Court instructed a Surveyor to “lay off (i.e. draw on a plan) the footpath or foot-road along the bank of the River Clyde, so far as it extended along the Defender's (i.e. Harvie’s) grounds, at the sight of the parties'' (i.e. the plan would require to be submitted to both parties before approval by the Court).

Comments: The case for the existence of a public right of way was held to have been proved, although the report does not give any details. As no plan of the right of way had been provided, the Court remitted the preparation of a plan to a Surveyor, but the public’s rights were not prejudiced or deferred while the plan was being prepared and being approved by the parties. In terms of modern practice, it is to be noted that a landowner - as in 1829 - is entitled to be made aware of the claimed route of a public right of way.