Soriani v Cluckie

Obstruction of rights of way · https://scotways.com/ken/soriani-v-cluckie/

Stranraer Sheriff Court, 13th July 2001. Case Report: 2001 GWD 28-1138

Facts: Soriani owned a business property with a rear garden and yard and had a servitude right of access over a pend owned by Cluckie, whilst Cluckie had a servitude right to reach his property through Soriani's yard. When Cluckie purchased his property he locked the existing gates which had previously been open during the day. His dog roamed Soriani's yard.
Soriani sought to interdict Cluckie from locking the gates and allowing the dog to roam in the yard. Cluckie argued that prescription barred Soriani's claim, and he was entitled to take the dog across the yard.

Decision: The Sheriff granted the interdict. The servitude by express grant had to be construed by reference to the grant and in the least burdensome way. Cluckie had a right to take his dog across the yard under control, but not to allow it to roam and defecate in the yard.

Comment. Servitudes, like public rights of way, must be used "civiliter" i.e. in the least burdensome way to the occupier. By contrast access rights under the Land Reform (Scotland) Act 2003, must be exercised responsibly, as to which guidance is given in the Scottish Outdoor Access Code. The 2003 Act did not extend the advice in the Code to rights of way.

See also:

Lord Advocate v Strathclyde Regional Council
Lord Advocate v Dumbarton District Council, 1988 SLT (SC) 546 and 1988 SLT (SC) 546.