Stewart, Pott & Co. v Brown Brothers & Co

Obstruction of rights of way · https://scotways.com/ken/stewart-pott-co-v-brown-brothers-co/

Case Report: (1878) 6 R 75

Key points: Servitude access to property - loading and unloading of goods in common pend - occasional obstruction of passage - qualified Interdict.

The facts: Brown Brothers & Co. owned a shop in a tenement in Glasgow fronting a public street and had, for around 40 years, been in the practice of loading and unloading goods in a passage forming a common access from the street to several back tenements and thereby obstructing the passage. Stewart Pott & Co., owners of a neighbouring shop, which could only be reached through the pend, raised an Action of Interdict against Brown Brothers & Co. to prevent them obstructing the common entrance.

Decision: The Court of Session (on appeal from the Sheriff Court) held that Brown Brothers & Co. had not acquired and never could acquire any right to block the passage. Interdict was therefore granted against Brown Brothers & Co., preventing them from interfering with the free and reasonable use of the passage by other proprietors and occupiers of the back tenement.

Comments: This case related to obstruction of a private road (or way) rather than a public right of way. However, in the leading opinion, the Lord Justice Clerk quite clearly stated that "No man can acquire a right to obstruct a public or servitude road by from time to time placing obstructions upon it".

Lord Ormidale concurred, but was not prepared to go so far as to grant Interdict against Brown Brothers & Co. ever loading or unloading lorries in the passage. The Interdict was therefore qualified to prevent them from ‘materially’ interrupting the free passage of vehicles across the covered court, and they were permitted to make occasional use of the passage for loading and unloading goods.