Torrie v Duke of Atholl

Procedural issues · https://scotways.com/ken/torrie-v-duke-of-atholl/

Court Report: (1849) 12 D 328, (1852) 1 MacQ 65 and 15 D (HL) 17;

Key points: Right to initiate legal action to vindicate public right of way - right of any member of the public to take action - right of bodies representing the public - right of public residing remote from site.

The facts: This is a classic case brought by three members of the public (not residents in the area) to have it declared that the route between Braemar and Blair Atholl (through Glen Tilt) was a public right of way. The Duke claimed that those members of the public, not being residents in the area, had no title to sue. The Court of Session held that they had. The Duke appealed to the House of Lords.

Decision: The House of Lords held that whoever had the right to use the road had the right to sue for Declarator of the existence of a right of way. The Duke had failed to show that the right to sue had previously been limited or ought to be limited (i.e. to those living locally).

Comments: This is the classic case on the right of the public to take legal action to vindicate a public right of way. The Court of Session case is reported at length and is required reading for anyone interested in the history of public access in Scotland. It established that local residence is not a prerequisite to enable a person to take action in Court to vindicate a public right of way, nor did any special interest in the road require to be proved, nor indeed that any obstruction had taken place.

Cases referred to:

(1) Earl of Cassilis v Magistrates of Wigton (1750) Morrison’s Dictionary of Decisions 16 122 (Not in Ken).

(2) Guild v Scott (1809) Faculty Collection (Not in Ken).

(3) Tait v Lauderdale (1827) 5 S&D 330 (Not in Ken).

(4) Marquis of Breadalbane v McGregor (1848) 7 Bell’s Appeals 43 (Not in Ken).