Wilson v Jamieson

Creation of public rights of way – use as of right by the public for the prescriptive period · https://scotways.com/ken/wilson-v-jamieson/

Case Report: (1827) 4 Murr 364

Key points: Public road - private road - distinction - right to effect repairs – use for the prescriptive period.

The facts: This case related to a road which connected various farms in Ayrshire. Wilson was the tenant of one of the farms and Jamieson was the Clerk to the Road Trustees in the District of Carrick in the County. Jamieson, as Clerk to the Road Trustees, presented a petition complaining of certain operations (not specified) carried out by Wilson on the said farm as being injurious to this road. Wilson maintained that the road was private and that he had a right to carry out these operations. The Court referred to the distinction between a road which was private, such as the approach to a house, and a servitude road common to one or more farms on another property which the landlords and tenants of these farms alone have the right to use. It was proved that there was no formed track in this instance and that there were gates on the road. Wilson had not brought evidence to show that use of the road was confined to the farms in question nor to show that it was not used by the public. On the other hand, the evidence was: (1) that the road was used by the public without anyone being stopped; (2) that it was a church road; and (3) that it was repaired at public expense.

Decision: The road was a public road because it had been proved that it had been used by the public, without interruption or question, for the relevant period of time.

Comments: This is a thinly-reported case, based upon a matter to be decided by a jury; although that procedure is now obsolete, the legal principle is still relevant, i.e. it must be shown that there has been use for a substantial period of time.