

WILSON
v.
JAMIESON.

AYR.

PRESENT,
LORD GILLIES.

1827.
Sept. 21.

WILSON v. JAMIESON.

Finding that a
road was a public
road falling un-
der the manage-
ment of certain
trustees.

THIS was an advocacy of a question, brought before the Justices of Peace for the county of Ayr, as to an encroachment by a fence on a road.

ISSUE.

“ It being admitted that the pursuer is tenant
“ of the farm of Taerlaw, in the district of Car-
“ rick, in the county of Ayr, and that the de-
“ fender is clerk to the road-trustees of the
“ said district of the said county, appointed by
“ the act 45 Geo. III. c.

“ It being also admitted, that, on the 29th
“ day of November 1820, the defender present-
“ ed a petition to the Justices of Peace for the
“ said county, complaining of certain operations
“ performed by the pursuer on the said farm,
“ as injurious to the road leading from Taerlaw
“ Bridge to Knockdon, in the said county, and

“ that the said operations were completed more
 “ than six months prior to the said 29th day of
 “ November.

“ Whether the said alleged road is not a pub-
 “ lic road, falling under the management of the
 “ said trustees ?”

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Wilson opened the case for the pursuer, and described the road in dispute, and said,—This must be held a private road, as it does not connect one public road with another.

Cockburn said, The defenders have only an interest for the public. The pursuer has failed to prove this private ; and having been used for a length of time by the public, it is a public road. Statute labour has been applied to it.

2. Hut. Just. p.
 469. Stair, B.
 2. T. 7, § 10.—
 45 Geo. III. c.

An objection was taken to the first witness called for the defenders, that she was sister to one of the petitioners in the original cause ; but the objection was repelled, it being ascertained that the question was truly between the road-trustees and the pursuer.

The sister of a nominal party in a cause admitted as a witness.

When one of the tenants who used the road was called, it was objected,—He is a party, and has an interest to prove this a public road, as statute labour will then be applied to it.

A tenant using road admitted a witness to prove it a public road.

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LORD GILLIES.—I do not think the objection good. If a road is useful to half a dozen tenants, and one of them shuts it up, are the others disqualified as witnesses? They may no doubt be interested, as every person is interested in a public road. I repel the objection.

Minutes of road trustees for one district of a county, held to be in the possession of the trustees for the county.

An objection was taken to the minutes of the trustees in the parish where the road was situate, that they had not been produced in time. To which it was answered, that they were not in the custody of the defenders, who were the trustees for the county.

LORD GILLIES.—I must hold this to have been in the custody of the defenders; for though the clerk may not be paid from the general funds, he is still under the general body of trustees.

Rutherford in reply,—The question is not that stated on the other side, as we admit that the road must be kept open for these farms; but the question is, whether it is a public road falling under the management of the trustees? They think that by proving the two ends of the road they prove the whole.

LORD GILLIES.—Our duty is to divest ourselves of the view taken of the case by counsel.

It is your duty to judge, and mine to assist you in considering the question in the issue ; and it has been truly said, that the second part of the issue depends on the first, whether this is a public road ? A road may be private, and the property of the landlord, such as the approach to a house ; or it may be a servitude road, common to one or more farms on another property, and in that case it is the landlord and tenants of these farms who alone have right to use it. The road in question is not said to be a private, but a servitude road, and one way to prove this is to show that it was only used by these farms ; but the pursuer has not brought the ordinary evidence to prove that the use was confined to these farms, and that it was not used by the public. The evidence he has brought is, that this was a bad road, and that the formed road ceased at a particular farm. When that is the case, a road may either cease entirely, or it may terminate in an open moor, where it is not marked by a track. The facts rested on are, that there is no formed track ; that it is not a communication from one town to another ; and that there are gates upon it ; but it is notorious, that, both in this country, and in others, there are roads which are interrupted by wastes, and that there are gates on many public roads.

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On the other side, the evidence is, that this road was used by the public without any one being stopped; that it was used as a church road; that it was repaired by the public; and, if this had been done at a remote period, it would have been conclusive. You will consider the evidence as to the repair of the road; and the person who made the statement being dead, it is my duty to tell you that the witness's report of what he said is evidence by the law of Scotland.

Verdict—For the defender.

Rutherford and Wilson, for the Pursuer.

Cockburn and Cowan, for the Defender.

(Agents, *William Mercer*, w. s., *Donaldson and Ramsay*, w. s.)

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AYR.

PRESENT,

LORD GILLIES.

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QUIGLEY v. REID.

1827.
Sept. 22.

One shilling damages found for using an irregular warrant.

AN action of damages for executing an irregular justice of peace warrant, and for using arrestment to an excessive amount.