

July 5, 1815.

PLEADING.—

COUNSEL.

Judgment.

Judgment—that the interlocutors in this incidental question be remitted for review.

Agent for Appellant, CAMPBELL.

Agent for Respondents, FRASER.

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SCOTLAND.

APPEAL FROM THE COURT OF SESSION (1st DIV.)

BURNET and another—*Appellants*.

KNOWLES—*Respondent*.

March 13,  
July 5, 1815.

ROAD  
TRUSTEES.

WHEN Road Trustees under an act of parliament do not follow the terms of the act in entering upon the grounds of individuals, they have no right to say that the compensation and damages shall be estimated by the jurisdiction created by the act, and the party injured has a right to insist upon having them ascertained by the ordinary tribunals.

And it seems that under such circumstances the trustees cannot insist upon the ground being estimated according to its value at the time of their wrongful entry, but that the estimate may be taken according to the improved value of the ground at the time when the valuation comes to be made, by the authority and under the direction of the ordinary tribunals, acting with the consent and at the suit of the injured individual; apparently on the principle that, as the trustees have not adopted the proper measures to acquire a right to the ground by force of the act, the right remains with the individual till the recompense or price is thus ascertained.

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WILLIAM KNOWLES, of Kirkton of Skene in 1788, purchased a small landed property in the neighbourhood of Aberdeen, which had belonged to

the city, and in 1789 obtained a charter from the Dean of Guild, in whose name it had been held, in which there were clauses reserving to the magistrates of Aberdeen the right to make a new road through the property, to be marked and laid out within seven years from October 7, 1788. The right to make this road therefore expired in 1795. In 1801, an act of parliament was obtained for making new roads in the county of Aberdeen; and the trustees, instead of following up the steps required by the act, by attempting to come to an agreement with Knowles, or in case no agreement could be made, by applying to the Sheriff to summon a jury to value the ground, &c. proceeded in another manner. The Dean of Guild presented a petition to the other trustees, who acted as judges in their character of Justices of the Peace and Commissioners of Supply, praying authority to lay out a road in terms of the above-mentioned reserved power which had expired, and that when made it might be considered as the King's highway. This was granted, and the Dean and trustees proceeded to make the road. Interdicts were obtained from the Sheriff, but were disregarded, and the road was completed. The matter was then brought before the Court of Session by bill of suspension of the sentence of the justices, and by summons of damages against the trustees.

Knowles agreed to accept of compensation and damages, and therefore the Court found it unnecessary to give an opinion as to his right to obstruct the road and hold the ground. The Lord Ordinary (Armadale) on February 12, 1805, pronounced an

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interlocutor, finding that the trustees had not proceeded according to the act, and that the compensation and damages must therefore be ascertained and determined by the Court, unless the parties consented to a remit to the Sheriff to summon a jury for that purpose. The parties agreed to the remit, and an order by consent to that effect was made by the Lord Ordinary. Knowles, however, afterwards insisted that this consent was given by him on the understanding that the verdict was to be reported to the Court, and the cause finally determined there; but the other parties insisted that the verdict of the jury must be final on the subject, and would not proceed with the remit on any other terms. The Lord Ordinary, therefore, recalled the consent order, and remitted to Dr. Coventry, professor of agriculture, to enquire and report upon the damages. The report found 708*l.* due to Knowles, and the trustees objected to it, chiefly because the value had been taken according to the improved state of the ground, as it stood in 1807, instead of its being taken according to the state of the ground in 1802, to which it was answered that the trustees had no right at all to the ground till Dr. Coventry examined it. The Lord Ordinary and the Court (first division) finally decerned in favour of Knowles for the sum reported due with interest, and the trustees appealed.

For the Appellants it was argued that the damages ought to have been ascertained by a jury in terms of the act, and that the damages were vindictive, inasmuch as the value was estimated according to the

improved state of the ground in 1807. Knowles had consented to their being ascertained by a jury, and ought not to be permitted to resile.

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For the Respondent it was contended that the power of having the damage ascertained by verdict of a jury, depended solely on the act; and as the trustees had not proceeded according to the act, the damages were to be ascertained by the Court in the ordinary manner as if the act had never been passed. As to the consent, it had not been sufficiently extensive to include the whole question; and as the parties differed about it, that came to nothing. As to the value being taken in 1807, the trustees, when they entered upon the ground in 1802, had acted without any legal authority, and had no right to the ground till 1807, which was therefore the proper time for estimating the value.

Judgment—that the appeal be dismissed, and the interlocutors complained of *affirmed*.

Agent for Appellant, MUNDSELL.

Agent for Respondent, CHALMER.