CAMPBELL, ... APPELLANT (*a*).
LANG AND OTHERS, . . RESPONDENTS.

1853. *3rd and 6th May.*

In dealing with a local or private act of Parliament, the Court will incline against any construction calculated to annihilate or disturb public rights.

Semble—In general a public right of way means a right to the public of passing from one public place to another public place. And in this respect the laws of England and Scotland appear to be substantially the same.

Semble—That the terminus of a public right of way need not itself be a public place, if it *lead* to a public place.

THE Court below had decided that the Respondents were entitled to an issue to try an alleged right of way.

Sir *Fitzroy Kelly*, and Mr. *Patton*, for the Appellant; the *Dean of Faculty* (*Inglis*), and Mr. *Rolt*, for the Respondents.

The LORD CHANCELLOR (*b*):

Lord Chancellor's opinion.

The Appellant is proprietor of a mansion and park, called Blythswood, which is bounded on the north by the Clyde, flowing westward, and on the west by the Cart, flowing northward; the north-western extremity of his park and grounds being at the confluence of those two rivers; while towards the east of this park is situate the town of Renfrew.

Being, I suppose, annoyed by what he conceived to be the unlawful intrusion of persons from Renfrew and its neighbourhood through his park, the Appellant has instituted this proceeding, which is an action of

(*a*) Reported Second Series, vol. xiii. p. 1179.
(*b*) Lord Cranworth.

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declarator, in order to have a decree by the Court of Session, that he is entitled to exclude the public from asserting a right of way.

The Court below has held that the Respondents are entitled to have an issue sent to a jury to try the question as to their alleged immemorial possession of this public right of way; but the Appellant objects upon two grounds principally.

In the first place, he says, that whatever right there ever was, has been extinguished by an Act of Parliament passed in 1835. And if the construction put on that act by the Appellant be correct, he makes out his proposition that there ought not to be any such issue.

But, secondly, he says that the granting of the issue was wrong, because there can be no such right of way as that here claimed, namely, a public right of way terminating at the confluence of two rivers.

Now, my Lords, for the purpose of seeing what the effect of the Act is, I must assume that, but for it, the Respondents would have had this right of way to the fullest extent they could possibly contend for. And here I must observe, it would be matter of deep regret if this House felt itself bound, or if any Court felt itself bound, to consider a local or private Act of Parliament (*a*) with such fatal strictness as is contended for by this Appellant. The object of the Act was to enable certain trustees to improve the navigation of the river Cart. It would, I think, be monstrous to contend that because a local or private Act of Parliament authorised the making a towing-path along the banks of a river—it should be construed by a side-wind to annihilate a public right enjoyed immemorially. I think such an interpretation would be an extremely forced one; and that this House and every Court of justice would be astute rather to avoid than to adopt it.

(*a*) The Act in question was a local and personal Act.

But I do not feel myself driven to this; for in my opinion, when we look at the nature of the Act, which was only to make improvements as between the trustees of a certain navigation and the owner of the lands to be affected by that navigation, we need not interpret or expound it in such a way as to destroy or affect rights which never came into contemplation.

It appears to me, therefore, that your Lordships may safely come to the conclusion, that this Act of Parliament meant to leave the rights of the public (if rights they had) over the grounds of Blythswood just as they were before.

That being so, we come to the point whether or not the right that is contended for by the Respondents is a right that can legally exist. The Appellant insists that there is no such right known to the law, because it is not described as a right of way from one public place to another public place, but a right of way from a public place to the confluence of two rivers—which may not necessarily be a public place.

Now, my Lords, on that point I do not imagine that there exists any difference between the law of Scotland and the law of this country.

I believe the Appellant is quite right in saying generally that a public right of way means a right to the public of passing from one public place to another public place. It was suggested that by the law of Scotland there might be a public right of way from a given public place, but neither terminating in a public place nor leading to a public place. I doubt whether that can be the law of Scotland any more than it is the law of England.

But, my Lords, the abstract question whether the confluence of two rivers can be a terminus *a quo*, or a terminus *ad quem*, of a public right of way, does not, in the present case, arise. The question here is as to

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a public right of way, up to and which may extend beyond the confluence,—a right to go further on, so as ultimately to reach a good terminus *ad quem*.

I apprehend the Court below has substantially arrived at a correct decision; and I therefore move your Lordships to affirm it (*a*).

(*a*) See the next case.

CONNELL & HOPE.