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“Merely a question of boundaries”

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The Society publishes a wide range of books and booklets on historic OS map series and its journal, *Sheetlines*, is recognised internationally for its specialist articles on Ordnance Survey-related topics.

Merely a question of boundaries

David EM Andrews¹

*Mereing: The act of surveying, ascertaining and agreeing on the ground the true boundary line at a basic scale, and describing the boundary in relation to the existing physical features, by measurement where necessary.*²

This article is the result of two quite specific incidents in my career. The first occurred shortly after I was posted to Leicester as Ordnance Survey Chief Surveyor, and the second was at the beginning of 2015. I had previously been one of a small number of OS employees trained by Bond Solon Training to represent OS in the civil and criminal courts as expert witnesses in cases where knowledge of OS specifications and practices were necessary to decide the case.

The first incident was a court action in which a dispute had arisen over the ownership of a ditch. The ditch ran parallel to a hedge. The hedge had a parish boundary mered to it as “1.22m RH”. This mereing indicated that the parish boundary ran parallel to the hedge 1.22 metres from the rootline. Investigation revealed that the parish boundary and the hedge were both shown on the first edition of the OS 1:2500 scale map published in the 1870s on which the mereing was shown as 4ft RH; (boundary mereings were converted to metric measure when the OS maps were metricated from 1969 onwards).

The second incident occurred when I was asked by a client for whom I had been an expert witness in the past to verify the legal boundaries of a property he had just purchased and was renovating prior to moving in. One boundary of his new property was shown on the title deeds and the Land Registry title plan as being a hedge, along which a boundary was mered “0.91m RH”. On the earliest OS 1:2500 scale maps the mereing was “3ft RH”.

I can recall being a young OS surveyor in East Yorkshire in the early 1970s and being tasked with the mereing of a new public (administrative), boundary. [Throughout this article I am accepting that the term ‘public’ boundary is synonymous with ‘administrative’ boundary]. The instruction at the time was to enquire with the landowners on both sides of the new boundary and ensure that the position of the public boundary coincided with the limits of ownership of the parcels of land on both sides of the boundary. Enquiries were made with both land owners, and if they agreed on the ownership of the hedge, fence, ditch etc then the public boundary was mered to follow the agreed property boundary line. These enquiries sometimes resulted in me asking the question:

“I know you own the fields on both sides of this hedge, but if you were ever to sell one or both of them, which field would end up owning the hedge, and how much land on the other side of the hedge?”

Sometimes the resulting comments were decidedly rustic!

So much for my own recollection of what I thought I knew. That was sufficient in the first case because the parties settled before the matter got to court

¹ Cartographic Survey & Mapping Consultant.

² *An Illustrated Guide to Boundary Making*, Ordnance Survey, 1986, paragraph 2.5.1.

and I was never required to substantiate my knowledge with hard documentary evidence, (*as fans of ITV's Judge Rinder will know, judges love paper!*).

However, with the second case possibly ending up in litigation I decided that I needed to find something more concrete than a forty-year old memory of what I thought I remembered about the mereing of new boundaries. No good asking OS, or looking at the current rules, as the procedure changed in the 1980s by which time rates and taxes on property were calculated on the value of the land and not on the areas of the parcels. Public boundaries were now mered to the centres of hedges, fences etc. although parcels on OS 1:2500 scale maps were still measured, as previously, to the public boundary where one existed parallel to the physical boundary of the parcel. Why no good asking OS you ask? Because when I asked them to confirm my knowledge at the time of the first case they had no one who could do so, or had even heard of the old system, and the OS rule book for surveyors that covered the procedure had been made obsolete by a new set of "Modules" in which the rules on the perambulation of new public boundaries no longer took account of private property rights.

It seemed that I had to track down a copy of the *Red Book*,³ the surveyors' instructions for detail survey and revision published in 1952 (hereafter RB52). No good looking for the 1963 replacement edition, as that would have been subject to regular updates and amendments up to the time it was replaced by the Modules in the 1990s, and any copy found would almost certainly have been amended to reflect the change of the mereing process to ignore private property rights.

A search on the National Archives at Kew revealed that Cambridge University Library held three copies of RB52, (in all probability in different states of updating). Anne Taylor helpfully found a copy with the paragraphs regarding boundary mereing intact and kindly supplied me with copies of the relevant pages.

I had also been seeking advice from Richard Oliver, who copied for me the pages of *Administrative Boundaries in Great Britain 1951* (ABGB51)⁴, as updated in 1956, covering the perambulation of new boundaries.

I already had copies of *Public Boundaries and Ordnance Survey 1840-1980* (Booth)⁵, *An Illustrated Guide to Boundary Making* (IGBM)⁶, *A History of the Ordnance Survey* (Seymour)⁷, *Ordnance Survey Maps – a descriptive manual* (Harley)⁸, *Instructions to Field Examiners* (IFE05)⁹ and *Instructions to Draftsmen & Plan Examiners* (IDPE06)¹⁰.

³ *Instructions for Detail Survey, Revision and Examination of Large Scale Plans (The Red Book)*, Ordnance Survey, 1952.

⁴ *Administrative Boundaries in Great Britain*, Ordnance Survey, 1951.

⁵ JRS Booth, *Public Boundaries and Ordnance Survey 1840-1980*, Ordnance Survey, 1980.

⁶ *An Illustrated Guide to Boundary Making*, Ordnance Survey, 1986.

⁷ WA Seymour (ed), *A History of the Ordnance Survey*; Folkestone: Wm Dawson & Sons, 1980.

⁸ JB Harley, *Ordnance Survey Maps – a descriptive manual*, Ordnance Survey, 1975.

⁹ Colonel Duncan A Johnston, *Instructions to Field Examiners*, Ordnance Survey, 1905.

¹⁰ Colonel RC Hellard, *Instructions to Draftsmen & Plan Examiners*, Ordnance Survey, 1906.

So what do we learn from RB52?

Section E, paragraphs 91 to 94 deal with the perambulation and mereing of boundaries, these paragraphs are reproduced here:

Section E.

91. 1/1,250 Procedure

All Boundary, Old and New, will be perambulated, and inserted on the Field Document in one operation at Finaling Stage. The B.P. Card is provided to furnish the data for perambulation and will be annotated and completed as a Record.

PROPERTY RIGHT

92. The O.S. does not concern itself with property right further than is necessary to obtain the mereing for a public boundary. It frequently happens that an administrative boundary follows a feature which defines the boundary between privately owned properties. Where this is the case, it is necessary to ascertain the "property rights" in order to position the public boundary.

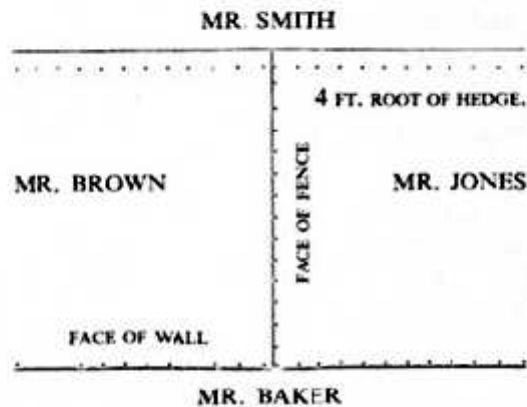


FIGURE I.

93. Figure I gives a simple example of what is meant by "property right". Messrs. Smith, Brown, Jones and Baker own properties of which the visible boundaries are a hedge, fence and wall. The property right is shown by dots. Mr. Baker owns and maintains the wall, and the boundary of the property is said to be the face of the wall as shown. Mr. Brown owns and repairs the fence, and the division of the property between him and Mr. Jones is said to be the face of fence on Mr. Jones' side. Mr. Smith owns the hedge and has a property right extending 4 feet beyond it.

94. These property rights are usually quite easily ascertained by the perambulator from enquiries made to the owners on both sides of the property division in question. Such an enquiry is only necessary when a public boundary is aligned to this type of detail. When the boundary follows for example the centre of a road or railway, then of course no property right is involved, and the boundary will be shown as the centre of the feature as it was at the operative date.

RB52 Section E, paragraphs 101 to 104 also deal with the mereing of new boundaries. To précis the relevant content;

"The perambulator's job is to walk along the line of the boundary as shown on the BP Card, with the aid of a Textual Description if any, and to ascertain the mereings."

"Where the detail is a feature such as a wall, hedge, fence, bank, etc. he will ascertain the property right. Where no property right can be ascertained the boundary will be mered to the "Centre of" the feature."

"A boundary will be mered "Def" when the detail to which it is related has disappeared. A boundary will be mered "Und" when it is not and never has

been related to any detail along that portion of its length. Care however is necessary in perambulating New boundary where the detail is found to have disappeared. Enquiries must then be made as to the date on which the detail was removed. If this date was after the operative date for the New boundary the latter will be mered Def; if before the operative dated, the mereing will be "Und". "

ABGB51 seems to reinforce RB52. Part III "Notes for the guidance of surveyors employed on boundary duties" contains the following; Chapter 19 "Boundary Perambulation" section (iv) "New Boundaries (Perambulation Ground Work)". The relevant text is;

"Where a new boundary has been laid down to follow definite features which still exist at the date of perambulation, the Boundary surveyor will ascertain to which parcel the feature belongs and whether any property right is claimed beyond the feature. This must be verified on both sides of the line when the ownership is different. The existence of property right may be inferred in agricultural land by the presence of a ditch, etc., but in urban areas this may not be easy to determine; for instance at one time the position of fence posts and wall buttresses was a good guide to ownership as they were almost invariably placed in ground belonging to the owner of the feature, but where modern large housing estates are concerned the allocation of the fences in the title deeds may be quite at variance with appearances on the ground so enquiry is necessary in all cases. Where boundaries follow fences through a council estate either "F.F." or "C.F." mereings may be adopted as the local authority wishes.

When these facts have been established, the boundary symbols will be inserted so as to include the whole of the property or parcel in the one local government area.

When the parcel to which the feature belongs cannot be established and neither of the adjoining owners claim exclusive rights, the boundary may be mered "Centre of" the feature.

When the feature is found to be entirely obliterated at the date of perambulation enquiry should be made as to the date of removal; and if this took place before the date of the Order establishing the boundary, it should be mered "Und" along the site, but if on the other hand, the feature was still in existence at the date of the Order, the mereings should be "Def". If the date of removal is difficult to obtain, the boundary should be mered "Def". "Und" or "Def" should not be used where a definite track can be observed. In such a case the mereing should be "track of" with due regard for property right where such, on local enquiry is found to exist."

ABGB51, Chapter 20 "Property Right" contains the following text;

"As a general rule O.S. does not concern itself with private property boundaries nor with the property rights which may be associated with them, except when, as is often the case, a public boundary is laid down to follow a private boundary.

The O.S. surveys the physical features visible on the ground such as field fences, roads, rivers, etc., and does not enquire into the relationship between these features and private boundaries; but when a public boundary is being perambulated this information is ascertained with a view to ensuring that properties are not placed unnecessarily in two local government areas and in order to record the mereings as an aid to maintaining accuracy during subsequent revisions. The following notes (which are not exhaustive) are intended to indicate the nature of the enquiries to be made. When the property on each side of the boundary is in different ownership the information must be verified by both parties.

Hedge, Bank, Fence or Wall (not associated with a ditch)

The feature may be jointly owned and repaired, in which case there is no property right and the boundary will be mered "Centre of"The feature may mark the boundary and belong to one owner who claims property right beyond it;.....

Hedge, Bank, etc. (associated with a ditch)

These form a common type of boundary and the principles relating to them are widely recognised as they have figured in many court actions. Most fields which are (or can be) used for arable purposes are ditched around the margins for drainage purposes. The custom of ditching is as follows. A farmer digging a ditch must dig it in his own property. He normally starts the ditch at the extremity of his land and throws up the earth as a bank, also on his own property, The bank may remain as a bank or a hedge may be planted upon it.....The width of the ditch may be governed by local customs or may be laid down in an inclosure award, etc. The local custom was ascertained from the parish meresmen at the original survey and the distance used for the mereings of existing boundaries is a guide to mereing new ones.....When the land on each side of the boundary is in different ownership both parties must agree to the mereing.....Whilst the recognition of property right in mereings is generally accepted by both property owners and local authorities there are exceptions to this rule. For instance by a Court of Appeal ruling in 1939 it was decided that where land is sold by reference to O.S. parcel numbers and acreages and there is no reference in the conveyance to the ownership of the hedges or ditches, then the boundary will run along the centres of the hedges in the same manner as O.S. acreages are calculated. This ruling applies only to the interior fences of an estate which is being sold in lots. If the conveyance makes reference to the maintenance of hedges but ignores the ditches, each hedge will be included in its appropriate parcel and the boundary mered "R.H." on the outside. If the maintenance of ditches is provided for, then mereing will take the normal course. When both parties are in agreement as to the mereing there is no need to enquire as to the terms of a conveyance. This is only necessary when a ditch is claimed by both the adjoining owners. Occasionally local authorities object to the insertion of

property rights to new boundaries fixed by reference to deposited maps (e.g. the boundary alterations under the London Government Act 1899, which were prepared on O.S. 1:1056 impressions and concerning which the Local Government Board ruled that the edge of the colouring defined the boundary) and such cases are reported through Region Office to Boundary Section for decision as to the course to be adopted.

Freeboards

These are described in the earlier editions of this text-book as follows:- "Freeboards (or Freebords) are usually open spaces by the side of boundary fences, varying in width from about 5 to 24 feet and were provided by ancient forest laws for the recovery of game and repair of fences"; and in reference to ditched boundaries "freeboards are sometimes ditched on the contrary side of the fence".

The correct application of property right is important, for example it may help to decide the ownership of hedgerow timber or assist in determining a case of disputed maintenance; as although Ordnance maps are not regarded as conclusive evidence they are generally accepted as good evidence."

Booth page 219 copies the diagram in RB52 Section E paragraph 92 with additional content showing how property rights affected the mereing of the boundaries. This page also contains the text "Property right as such is no concern of Ordnance Survey but, where a boundary is defined as the curtilage of a property, the limit of such property is the alignment of the public boundary". The diagram on this page, with its accompanying text, clearly shows that the public boundaries have been mered to coincide with the limits of the properties as described in the text, (as does the diagram and text in RB52 Section E paragraphs 91 to 94).

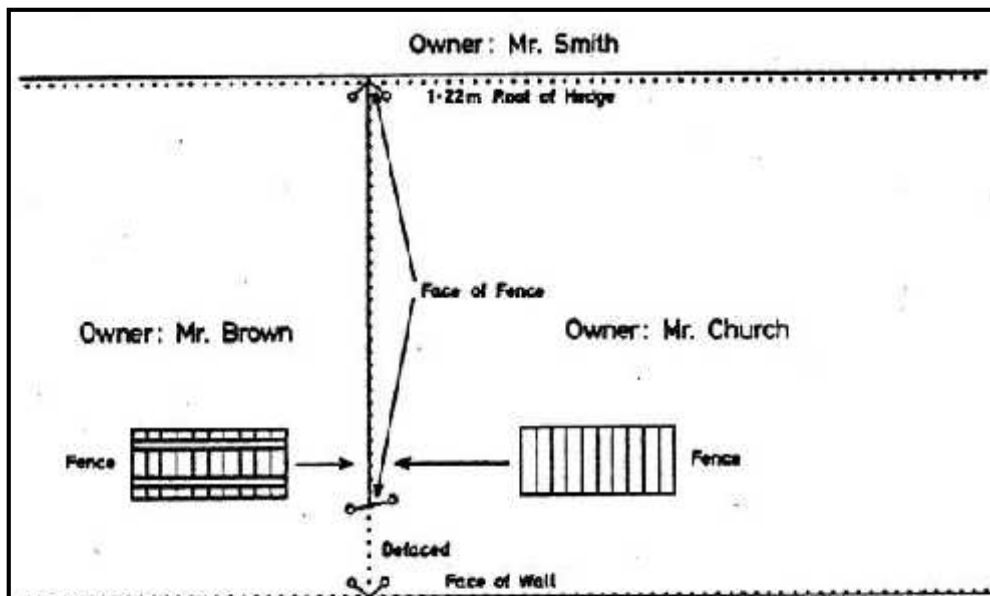


FIG. 12

The diagram represents the limits of the property of British Rail, which owns the wall; Mr Smith, who owns the hedge and land to the south of the hedge for 1.22 metres; Mr Brown, who owns the fence and has allowed that part of it (marked "defaced") to fall down and not replaced it; and Mr Church, who owns none of the boundary features (wall, hedge or fence).

Interestingly, on page 409 of Booth is the text;

“Public boundaries shown on OS maps are not evidence of the position of private property limits. The Ordnance Survey Act 1841 Section 12 clearly indicates that the Act is “not to affect any boundary or rights of property whatsoever”.

I have reproduced Section 12 of the Act here:

12. Act not to affect any boundaries or rights of property

This present Act, or any clause, matter, or thing herein contained, shall not extend, or be deemed or be construed to extend, to ascertain, define, alter, enlarge, increase or decrease, nor in any way to affect, any boundary or boundaries of any county, city, borough, town, parish, burghs royal, parliamentary burghs, burghs of regality and barony, extra-parochial and other places, districts, and divisions, by whatsoever denomination the same shall be respectively known or called, nor the boundary or boundaries of any land or property, with relation to any owner or owners, or claimant or claimants of any such land respectively, nor to affect the title of any such owner or owners, or claimant or claimants respectively, in or to or with respect to any such lands or property, but all right and title of any owner or claimant of any land or property whatever within any hundred, parish, or other division or place whatever, shall remain to all intents and purposes in like state and condition as if this Act had not been passed; any description of any such land, with reference to any such hundred, parish, or other division or place whatever, or otherwise, or anything in this Act contained, or any law, custom, or usage, to the contrary in anywise notwithstanding.

At some time in the past I have found and saved a copy of the Act with the following Notes printed below Section 12.

NOTES. The words omitted were repealed by the S.L.R. (No.2) Act 1888.

Ordnance survey maps as evidence. Ordnance survey maps are not evidence as to the boundaries of parishes or vils (*Bidder v. Bridges* (1885), 54 L.T. 529). nor as between private owners (*Coleman v. Kirkaldy*, [1882] W.N. 103), but may be used to show the position of a bridge or fence at the time the survey was taken (*A.-G. and Croydon Rural District Council v. Moorsom-Roberts* (1908), 72 J.P. 123; *Caton v. Hamilton* (1889).53 J.P. 504), or of some visible track (*A.-G. v. Antrobus*, [1905] 2 Ch. 188), or to prove the position of the *medium filum* of a river (*Great Torrington Commons Conservators v. Moore Stevens*, [1904] 1 Ch. 347). Maps are to be taken into consideration in determining the dedication of a highway; see the Highways Act 1959. s. 35, Vol. 15, title Highways.

It should be noted that the acreage stated on ordnance survey maps is measured from the stem of the hedge without regard to the ownership of the hedge or any ditch.

County. For meaning, see s. 15. *post*.

I think that Booth on page 409 has misinterpreted what the Act says. The Act is actually saying that the process of mereing a new boundary will not change any pre-existing private property boundaries. When the instructions in RB52 and ABGB51 are considered it is clear that, before the 1990s, new public boundaries must have been mered to coincide with property boundaries. The public boundary therefore actually is evidence of the position of the original private property boundary, and unless there is clear evidence that the limits of ownership have changed since the original mereing of the public boundary it must be presumed that the private property boundary still coincides with the public boundary.

The notes below Section 12 of the Act state, “*Ordnance survey maps are not evidence as to the boundariesbetween private owners (Coleman v. Kirkaldy, [1882] W.N. 103)*”

I have been unable to trace any record of *Coleman v. Kirkaldy*, but this judgement is surely a contradiction of the evidence of the rigorous way in which the Ordnance Survey surveyors were instructed to mere the boundaries to coincide with property boundaries.

I would welcome the input of any readers of this article with the relevant legal knowledge and experience on this point, especially if they can track down the record of the proceedings in *Coleman v. Kirkaldy*.

IGBM contains the following at paragraph 2.2.8:

“In no case should roads, etc carried on viaducts or running through tunnels be used for boundaries as they may divide property ownership”

Harley, at page 39 states;

“One result of Ordnance Survey’s legal commitment to show public boundaries is that proper care has to be exercised in their survey and delineation. Boundaries of private property are not surveyed or recorded as such. Public boundaries, however, are often defined by private property limits including the centres of streams.....Because boundaries are invisible and cannot be surveyed by direct methods, their precise location in relation to visible ground features is recorded by perambulating the boundary line and ‘mereing’ it to those features. This is done as part of the normal survey task for the resurvey or revision of a basic scale map. The term mereing has also been extended to apply to the written statement indicating the precise relationship of a boundary to the adjacent detail (for example, 4 ft RH = 4ft from root of hedge).....Since 1969, boundary mereing distances have been metricated and, on all new maps, are published to the nearest centimetre, i.e. a conversion of existing mereings to two decimal places of a metre.”

Concise guide (Oliver)¹¹ Chapter 4, pages 78-80, unsurprisingly, explains the mereing process in essentially the same terms as RB52 and ABGB51, though the

¹¹ Richard Oliver, *Ordnance Survey Maps – a concise guide for historians*, The Charles Close Society, 2013.

legal necessity for Ordnance Survey to be responsible for mapping public boundaries under the terms of The Ordnance Survey Act 1841 is questioned.

I can find nothing in NCSS,¹² IDPE06, IFE05 and Owen¹³ that sheds any more light on the central issue of this article, which is:

Can the line of a public boundary on a modern Ordnance Survey large scale map be presented as evidence of the position of the boundaries of the private properties on both sides of the boundary?

My own opinion is that when a public boundary is mered to a physical feature it is because the Ordnance Survey surveyor who conducted the original mereing process:

- must have made extensive enquiries with all landowners affected by the position of the boundary
- must have reached agreement with the landowners about the private property boundary between their properties
- and must have mered the public boundary to agree with the property boundary

Unless there is clear evidence that the position of the private property boundary has been changed since it was used to mere the public boundary, the position of the public boundary, as indicated by the mereings on the map, must still indicate the correct position of the private property boundary, despite the ruling in *Coleman v. Kirkaldy*.

This article is intended to provoke a discussion, and expressions of opinion are invited, especially from those with knowledge of the relevant laws, if more light can be shed on the topic.

I am indebted to Anne Taylor at Cambridge University Library for copying relevant parts of RB52 for me, Richard Oliver, formerly of Exeter University, for his advice on research sources, for copying the relevant parts of ABGB51 for me, and for proof reading and correcting this article before submission to Sheetlines and to Ordnance Survey for providing a copy of RB52 Section E paragraphs 91 to 94. Any errors remaining in this article are entirely my responsibility.

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To be included, please send an email to info@CharlesCloseSociety.org, with your membership number in the Subject line. No other text is necessary.

¹² JB Harley & CW Phillips, *The Historian's Guide to Ordnance Survey Maps*, Published for the Standing Conference for Local History by The National Council of Social Service, 1964.

¹³ Tim Owen and Elaine Pilbeam, *Ordnance Survey – Map Makers to Britain since 1791*, Ordnance Survey, 1992.