



# WHO OWNS THAT CORNISH HEDGE ?

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*Title deeds / whose hedge? / legal boundaries / ownerships, occupation & obligations / squatter's rights / hedges as party walls / rights of access to boundary hedges / hedges obstructing view and light / subsidence / floods / pipes under hedges.*

This paper attempts to describe some of the complications of the law about hedges as affecting the ordinary person. It is not a legal opinion, and the language has been simplified as far as possible. Some of the sections may not, at first sight, seem to be relevant, but each one shows that problems can arise from the ownership of a hedge. It is earnestly hoped that the reader gains the impression that boundary disputes may be more easily avoided than solved.

Where disputes are encountered, the issues suddenly become very real and are best solved amicably before tempers get frayed. Should this not be possible, the seeking of professional help at the outset is often the least expensive in the long term. Rather than taking up separate battle-lines, the joint appointment of an arbitrator to decide the issue may be worthwhile.

Where the difficulty is purely legal, most country solicitors can help. Where compensation or physical factors are involved, the advice of fully qualified agricultural valuers or land agents should be sought. Some of the content of this paper relies on the scholarly book by C. Sara, *Boundaries and Easements*, published by Sweet & Maxwell in 1996, price one hundred guineas (£105), and much of the rest is derived from a lifetime's experience of being consulted about boundary issues and disputes.

## TITLE DEEDS

Title deeds sometimes state the ownership of hedges, either in words in the text, or by means of a tee or asterisk on the plan, which is easy to identify as it is always drawn on the side of the hedge where the ownership is. Sometimes the deed may state that a hedge has to be built or erected by one of the parties to the deed, which means that that person, and his successors, own that hedge and the ground below it.

The starting point, in examining the legality of a boundary between two properties, is the first conveyance in which their ownership was divided. Although towns and villages have expanded in recent years, there are especially in Cornwall many older boundaries in both town and country which go back thousands of years. To find the original conveyance in which the land was divided is important, and an early opportunity should be sought for each party to compare their deeds and other records. It is best to see originals because photocopies sometimes omit a page, innocently or deliberately, or there may be other omissions without being evident. The relevant part of the deed is usually the section following the words "all that" and "together with". The words "messuage" and "curtilage" usually refer to the land around a building.

Ancient deeds may not be clear in the identification of the property, the description may only refer to it as belonging to a named person and the plan may be inaccurate. Where the land is listed or described on a plan by Ordnance Survey numbers, the date of the edition used should be established. The use, on a plan, of the words (or similar) "for the purpose of identification only" means that the written paper holds sway over the drawn plan. Judges have learnt over the years that plans, however neat and well-drawn, may be misleading and disagree with the facts as seen on the ground. This is especially so with the description of hedges where a solicitor's junior clerk may have copied a curved hedge line differently from what it really was. Here is where the memory of the neighbourhood's "oldest inhabitant" may be useful.

Where the position of the hedges is clearly described in the deed, and agrees with what is on the ground, the courts are unwilling to consider other points of identification; and they are usually keen to carry out the intentions of the parties as written in that original deed. Where there are later deeds, these will be used to assist in understanding the original conveyance. A contract for sale, proceeding the conveyance, sometimes makes it clearer. Sale particulars may be a help in interpreting other documents. Statutory declarations are useful but are thought not to add much more weight than do other signed statements.

A relic of the old days when maps were scarce and understood by few is described in the account by Richard Cornish of the bounds at St. Columb being beaten in 1817: "Two miles walk on the parish road brought us to the boundary separating St. Columb from Mawgan. Here, on the bough of a scrub oak growing out of the hedge, was suspended by a cord a loaf well plastered with treacle. The boy who could first bring the loaf to the ground was to get a reward from the bag of coppers." At Launceston, in 1806, the bounds were beaten by the Mayor, with his Town Mace Bearers and the town notables, "whipping various boys at the halting-places, each lad receiving half-a-crown [probably £10 today] as compensation for his pains." This "carrot-and-stick" treatment of the boys made sure that the location of the town boundaries was remembered by the community, and similar traditions were practised elsewhere.

## WHOSE HEDGE ?

The ownership of a Cornish hedge is often neither clear nor certain. There are three main factors to be considered:- physical features, current practices and historical evidence. These have to be set against a general legal obligation to confine one's animals to one's own land, but there are exceptions. Evidence of boundaries from the Ordnance Survey are generally regarded as authoritative but field areas are calculated, unless it says otherwise, from the centre of the hedge. So if the deed specifies a field by number, the inference is that the line showing the boundary of that field is along the centre of the hedges, giving the impression that half the hedge belongs to each owner. There are exceptions. If a line has a tie mark across it (looking a bit like the letter f ), it means that the line is not a boundary of the OS number, and that it includes the adjoining plot of land. Where the map is very detailed there is not always room for the tie mark, but its absence can be deduced from the relevant areas. Although not shown on Ordnance Survey plans, deed plans may show T marks to indicate that the whole hedge is owned by the owner in whose plot the T is marked. These are often put on Enclosure Award maps and are important early evidence of hedge ownership and liability.

Aerial photographs of land have been taken on numerous occasions during the past 50 years: some are in the public domain and available to enquirers. A photograph of a hedge, taken from the ground, is sometimes more useful than verbal evidence, especially when forming part of a series of photographs which more obviously give an accurate context. Video recordings may be useful. Careful examination of the actual site itself may show other features which help in clarifying ownership eg remains of linking hedges. Judges are suspicious of plans which have

been greatly enlarged, especially where they conflict with evidence on the ground, because the enlargement may go beyond showing the intention of the parties. They are also likely to be suspicious of photographs that may have been computer-enhanced or edited.

The law on hedges starts with the well-established assumption that where there is, or was, a ditch running alongside a hedge, the boundary of the land lies along the non-hedge side of the ditch. Where the title deeds are certain as to where the boundary is, there should be no argument. Where the deeds are silent and there is no other evidence, ownerships of the sides of the hedge and the ditch may be decided by finding out who used to trim the hedge on either side and who cleared out the ditch, the presumption being that the owner was the man who did the work. On the other hand, if there is any uncertain or conflicting evidence, the fact of trimming his side of a hedge or clearing out a ditch does not necessarily enable him to establish ownership. The situation is complicated where the ditch, once the boundary, has long since been filled in. Here the law is likely to take a common-sense view and, for instance, may say that today's boundary lies along the centre of the hedge as shown on the Ordnance Survey maps. Although the amount of land lost by one owner, and gained by the other, may seem tiny, it may be significant in subsequent development of the land. Lack of ownership proof might be more desirable where the liability of looking after the hedge would be a heavy burden.

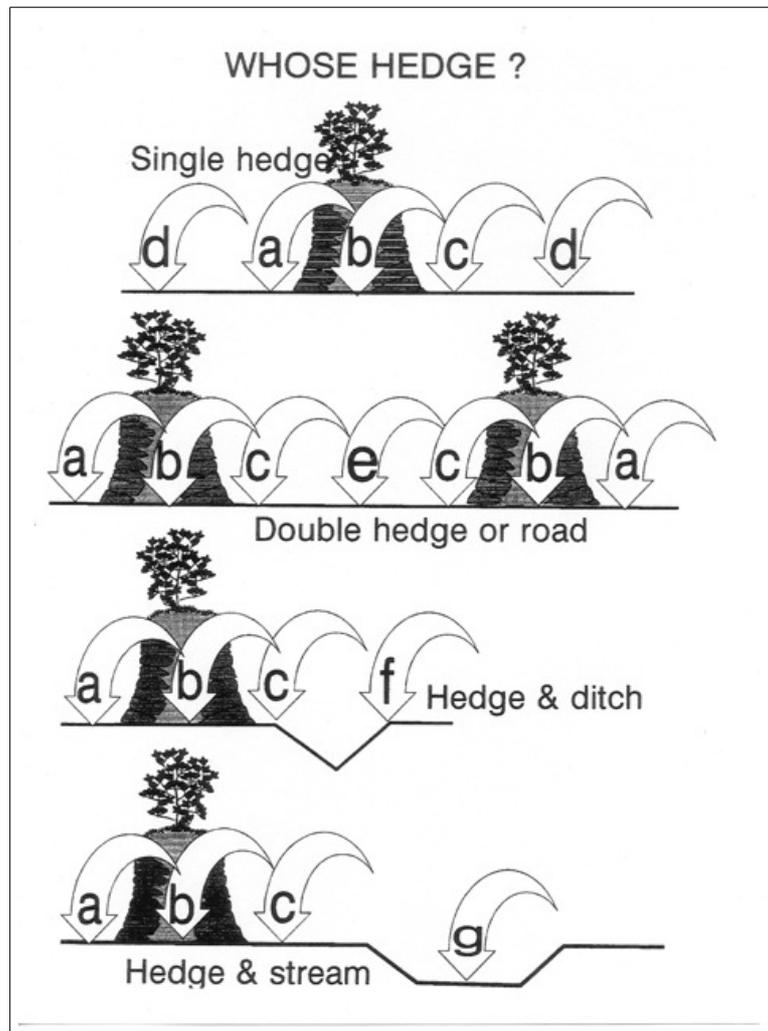
## LEGAL BOUNDARIES

The guidance in this section is necessarily brief and should be taken only as an indication of the potential difficulties there may be in deciding to whom a particular Cornish hedge belongs, or who is responsible for its maintenance. The difference between a Cornish hedge and an ordinary hedgerow or fence is that these latter do not have a legal width, whereas a Cornish hedge does.

**Single Cornish hedge.** The legal boundary may be at the base of the inside of the Cornish hedge (a), at the centre of the hedge (b) or on the outside (c). Unless indicated otherwise, the boundary of the Ordnance Survey field parcel is at the centre of the hedge (b). The deeds may state whether the boundary at the base of the hedge is on the inside (a) or on the outside (c), particularly if there is a T ("tee") attached to the boundary line on a relevant map. Often the builder of a new house in farmland has to build and maintain a stockproof hedge around the property, then the boundary is on the outside of the hedge (c), and the obligation is passed to later owners. This is likely to be mentioned in the deeds with the words (or similar) "henceforth make and for ever maintain" a hedge or fence bounding the property. Undisputed long-term maintenance of the outside of a hedge may establish ownership of the whole of the hedge (c). A dimensioned offset (d) is where the hedge is set inside the boundary leaving a measured strip of the owner's land for access to maintain the hedge.

**Double Cornish hedge or road.** The remarks for a single hedge also apply to each of the hedges, as shown by the arrows. In addition the ownership of the land between the hedges may belong to one or other of the owners of the land alongside, or to a third party. This is more common than generally realised because when manors, or other estates, were broken up, the roads were often retained with the idea of making profit if the land either side was developed. This strip of land may extend only to the base of the hedge (c), or to its centre (b), depending on what is indicated in the deeds. It usually includes the verges. For the boundary to be along the centre of the road (e) between the two hedges often requires a manorial origin, and some of our ancient packhorse tracks come into this category.

**Cornish hedge & ditch.** This is the classic situation, recognised by the courts, where it is envisaged that the landowner who dug the ditch piled up the spoil on his side of it to form the basis of the hedge. Thus his boundary lies on the outer edge of the ditch (f). But there are complications. The ditch may have been recently filled in, perhaps not long enough to establish squatter's rights, so the physical boundary of the field side of the ditch has been eradicated. Or the ditch was dug after the hedge was built, as was often the practice during land drainage works in the 20th century, when the boundary remains at the base or centre of the hedge (a, b or c). The presence of a stream, which usually differs from a ditch in that it contains flowing water for all or most of the year, may mean that the boundary lies along the centre of the stream (g). Often the hedge meanders from one side to the other of the stream, thus making sure that both sides have access to the water for livestock drinking. In these cases the boundary usually follows the hedge (a, b or c).



Note that the older Ordnance Survey 1:2500 maps indicate the exact position of parish boundaries by an abbreviated description of the actual boundary eg CS (centre of stream) where it does not run along the centre of the hedge. Other specific facts on hedges may be similarly shown on plans in title deeds or enclosure plans.

## OWNERSHIP, OCCUPATION AND OBLIGATIONS

The law on hedges starts with the well-established assumption that, where a hedge has a ditch on one side, both hedge and ditch belong to the land owner whose land borders the hedge., ie the boundary is along the outer edge of the ditch. In many parts of Britain the first boundary was made by the digging of a ditch, with the spoil naturally being dumped on the digger's side of the ditch. The dumped spoil was then shaped into a low bank and a thorn hedge planted on it. This theory is more relevant in the wetter areas where ditches are necessary for effective farming of the land, and are actively maintained for drainage. In drier areas, the physical evidence of a ditch may long since have disappeared; but its absence does not necessarily alter the legal position whereby the field-side edge of the vanished ditch is still the boundary. Conversely, the hedge may be older than the ditch, when the assumption would be that the spoil from the ditch would have remained in the field in which it was dug, and perhaps carted away or spread on the

land. This was not necessarily so in Cornwall because, where land is free-draining, hedges were usually built between two or more agreed points to form the boundary; and only sometimes was a ditch perhaps added by one owner later on. Where there is a ditch alongside a hedge, the neighbour may have a right to discharge water along it even if it is not on his land, perhaps without any obligation to keep it in good condition, this task remaining with the owner.

There may be a dip alongside the hedge, looking like a broad ditch on one side, with land of poorer quality on the lower side. This might be evidence of an old deer-park, common or waste. The practice for deer-parks is to have the hedge higher on the park side to keep the deer in, and lower on the outside so that deer that have escaped from the park can get back in; in this instance it is likely that, at the time of hedge-building, the land on both sides of the hedge was in the same ownership. The practice for commons and wastes has been, in the absence of contracted legal obligations otherwise, that the farmers brinking the common or waste have to hedge against it. The law regarding boundaries of common land is currently under review.

By the nature of the common or waste, the farm animals grazing on it are likely to be more thrifty and agile than that of the enclosed land, so the farmer's hedge is likely to be higher, perhaps with a coping, on the side of the common or waste, but would be built entirely on his land so that the whole hedge belongs to him.

A hedge enclosing a wood was often built by the occupier of the wood, and remained the property of subsequent owners of the wood. When a hedge adjoining a highway is separated from it by a verge, the ownership of the hedge is often influenced by the ownership of the land forming the road verge, that is the land underneath the highway, as the highway authority has rights only over the surface of the land. Where a field has been sold under its OS number, quite likely the roadside hedge will be half-owned by the farmer and half by the landowner of the roadside verge.

Where a building or other structure interrupts the line of hedge, being built across it so that the edge of the building was in line with the outside of the hedge, there would be an assumption that the hedge and building were within the same ownership.

## PUTTING A HEDGE ON SOMEONE ELSE'S LAND - SQUATTER'S RIGHTS

Boundaries are usually involved in squatter's rights and the legal term for squatter's rights is adverse possession. The pushing out by one person of his hedge into the land of his neighbour may, after 12 years allow a claim of adverse possession. This arises from the Limitation Act 1980, but is based on a much older assumption that all land in Cornwall originally belongs to the Duchy, and that if it is not being looked after and making a profit, then someone else ought to have it, make a profit and thereby be theoretically able to pay rent to the Duke of Cornwall.

The Land Registry's Practice Advice Leaflet 15, *Adverse Possession* explains that the Registry, before registering any title based on adverse possession, has to be confident that:

- The applicant has factual possession of the land,
- The applicant has the necessary intention to possess the land,
- The applicant's possession is adverse to the title of the owner,
- All the above have been true of the applicant and any predecessors for at least 12 years prior to the date of the application.

Although it is usually said that the squatter's occupation must be continuous, this depends to some extent on the use of the land. For instance, a scruffy plot of land on the outskirts of a town may seem to be totally abandoned, but the fact that the owner is holding it pending

building development may be enough of an owner's occupation to invalidate a squatter's claim. The adverse possession must be without the consent of the owner and must not have been disputed by him, or anyone else owning the land, during the 12 years. A disputing act by the owner must be significant, preferably he should either retake possession, or take the squatter to court for trespass. If the owner has no use for the land at the time, he should give the squatter written permission for occupation by tenancy or licence.

In the absence of any other factors, there is an assumption that whoever is maintaining a hedge has the right to do it, possession being nine points of the law. In other words, the burden of proof lies with others to disprove the possession. That it must be adverse possession is vital, by which is meant that the occupation must be obvious, unchallenged and without permission for the whole of the 12 years. Thus if a person had trimmed both sides of a hedge regularly for more than 12 years, he might have established a right to the whole of that hedge, and to the ground underneath it; but a legal challenge from the adjoining owner or occupier at any time during the 12 years would negate a claim for squatter's rights. Similarly if, at any time during that 12 years, he had had permission from the adjoining owner or occupier to trim their side of the hedge, he would be unlikely to establish squatter's rights to the hedge. Conversely, if an occupier had, for 12 years trimmed both sides of a hedge although he owned only half of it, he could not be forced to carry on trimming both sides; squatter's rights do not operate in reverse.

A Cornish incident in 1529 suggests that the plaintiff, Richard Langedon had only squatter's rights, and having been thrown out by the rightful owners, he was trying to establish his ownership. The statement of case runs: "Let it be enquired for the lord the king whether ever Richard Langedon, esquire, was legitimately and peaceably seised of one messuage, 60 acres of land arable, 20 acres pasture, and 60 acres of furze and heath with appurtenances in Netherex, within the parish of Jacobstowe, and whether he held them peacefully for a great while until Alexander Penvos, of Stratton, labourer, with many other evildoers and disturbers of the king's peace unknown, to the number of four persons, with force and arms, to wit, with sword, stick and dagger, on the Wednesday in Easter week, 21 Henry VIII, with violence forcibly entered upon the said messuage and disseised the same Richard of his peaceable seisin and possession thereof and expelled him, and have from that day kept him and still keep him out of the same, to the great damage of the said Richard, and contrary to the peace of the lord the king; and moreover contrary to the form of divers statutes in that case made and provided." Note that his only claim was that he had been in possession for a long time.

In a recent case *Markfield v. Evans*, in 2001, in the Court of Appeal about the ownership of the house called *Riverside Weir*, at *Restronguet* near *Falmouth*, the circumstances in which adverse possession would be effectively countered were summarised by the judges thus:-

- If the squatter vacates the property.
- If the squatter gives a written acknowledgement of the true owner's title.
- If the owner grants a licence or tenancy to the squatter.
- If the true owner physically enters the land.

If the squatter has deliberately tried to stop the owner from regaining the land, this may be taken as meaning that the squatter has acknowledged the owner's rights. In a 1987 case, *BP Properties Ltd v. Buckler*, a licence that had been given by the owner to a squatter was held to be valid, even if it was not formally accepted by him. If the owner is the Church of England, the Crown, Duchy of Cornwall and of Lancaster or the land is government property, the rules are different and the squatter's task more difficult.

The traditional way in the countryside of finding out who owned a piece of land was to crop it or to fence it and put farm livestock there, or simply to tether a grazing animal on it. Usually the landowner soon made himself evident. Before barbed wire fencing was invented, a

squatter used to quietly start to hedge around the land, and wait to see if he was stopped before he finished the hedge. The author knows of an example where a private householder at Hayle, over his long lifetime, rebuilt his Cornish hedge at the end of his garden three times, each time a little further away from his house, and thus successfully quadrupled the size of his garden.

There is a verbal tradition in parts of Cornwall, also in other areas of Britain, that where a man could build a cottage and hedge round an area of land within the hours of darkness, he acquired the ownership of that land. Sometimes smoke had to be issuing from a chimney as well. Of course, the squatter had all his materials ready, and was helped by as many relatives and friends as he could muster. This is interesting as obviously he could not prepare without the neighbourhood knowing, and the work had to be carried out without interference from the local community. So why had the work to be done overnight? One suspects a divided community, not uncommon in Cornwall, with the action being just the latest move in a running family feud. So the victim would be the owner of the land? One suspects that although the landowner was, in these earlier times, too powerful to be defeated over this issue, he perhaps fully appreciated that he would be ordering his servants to be knocking on the cottager's door for an addition to his rents. Thus perhaps the only person to suffer would be the main tenant of the land, who lost a small area of his farm. There are several jibes with their root in this custom. Gotham men used to say of Gerran men, in the next parish, that they would "build a hedge to keep in the moonlight" or to "build a hedge to keep in the *guckaw* (cuckoo)". Both actions were to be during the night. The cuckoo story is told in other parishes, and was the reply to inquisitive enquirers during the act of enclosure.

Squatting can also make a piece of land into a village common. Under the Common Registration Act 1965, land can be registered as a village green if:-

- There had been substantial use of the land for informal recreation for 20 years by a significant part of the community, rather than by individuals.
- Those who used the land walked from houses in the village approaching the land over a gate or stile.
- There were no signs prohibiting use of the land.
- No permission had been sought to use the land and no objections had been made as to its use.

## HEDGES AS PARTY WALLS

A party wall is a boundary structure that may be partly owned by the person each side. Title deeds often make no distinction between fences, walls, Cornish hedges and thorn hedges. The legal term "party wall" clearly applies to Cornish hedges, but probably not to walls or fences which cannot be said to have two halves, nor to thorn hedges where there is no hedgebank. The extent to which each owner has a responsibility to provide a support for the other half of the party wall is not certain, but common sense is likely to prevail. In case law, eg *Jones v. Price* in 1965, there may be a difference between the loss of support by neglect, as opposed to a deliberate tearing-down of the hedge or removal of stone from one side of it.

In Cornwall, the tradition is that where a Cornish hedge is jointly owned, each side has a right of support from the other, but should one owner wish to raise his side of the hedge by adding one or more courses of stone, he cannot ordinarily expect his neighbour to raise his side. Conversely an owner cannot reduce or allow his side of the hedge to get lower. This right of support of someone's hedge by his neighbour is called an easement. An easement is a limited right of use by a neighbour over the land belonging to another, and is different from a profit á

prendre which involves a right to take something from the profits of the land. For example, a right of way by walking over the land is an easement, a right of common by having animals eating herbage is a profit à prendre.

## RIGHTS OF ACCESS TO BOUNDARY HEDGES

An easement occurs where both halves of a boundary Cornish hedge are owned by the same person, and he is likely to have the right to go on to his neighbour's land to repair this hedge. The right only exists because, and while, he owns the hedge. If his hedge, on the neighbour's side, needs casting up with earth, stones and turf from his neighbour's field, this right to take materials may be a profit à prendre. This is different from an easement in that here he has had to take something, the turf, from his neighbour's property with which to do the casting up, whereas for the easement, he only had to use the land as a right of way for getting to the hedge. The reason why this right exists is that when the hedge was originally built, the hedger would have worked on the neighbour's land for that side of the hedge, and it would have been obvious to everybody at the time that entry on to the neighbour's land was always going to be necessary for the hedge to be maintained on both sides by its owner. The advantage to the non-hedge-owning neighbour in allowing use of his turf and earth is that the hedge is maintained on his side without effort from him.

In 1748, Arthur and Francis Champernown of Tolgallow Manor, St Day let to Martyn Skynner, a tinner, "Liberty to mend and repair the Hedge of the Long Slip and Little Garden, but not to cut turf or take any other materials for the same more than Nine Feet from the same Hedge." Note that this would include the taking of hedging stone from the soil, but this would be likely to be subject to the land being restored as much as was practicable after the work was done. Here is an example where the actual land, on the other side of the hedge, is owned, albeit perhaps common land, in the description, in 1727, of the church lands of Ludgvan parish being "divided by a glebe hedge with 3 ft beyond for its ditch. ... marked by a glebe hedge and 3 ft ditch but where it joins a waste plot called Leddra it extends 9ft beyond the hedge". Staines in 1990 wrote of Devon: "If the hedge was a boundary between two farms, a man doing up both sides of the hedge was allowed to use 6ft of the turf on his neighbour's field for this purpose." Reported today from Devon is the custom of a right of a hedge owner to be able to set snares for a distance of one landyard, 18ft (5.5m), out from his hedge in his neighbour's field.

One of the most difficult problems encountered with profits à prendre is the extent of the obligation on the neighbour to maintain the land over which the hedge is accessed. It is possible that where the neighbour builds houses on the land, or, more questionably, used a grass-less arable rotation, there might be an infringement of the hedge-owner's right to take turf for hedging on his neighbour's side. But this right to take turf might have been extinguished if the hedge-owner, or any earlier owner, had acquiesced to the changes.

Contrast this with the question of overhanging trees growing from a person's half of a hedge. These trees would have grown from small saplings and there was no actual need for their owner to let the trees grow so big that he could not manage them from his side of the hedge. So if he wants to trim them from his neighbour's side, he needs permission. If this is not given by the neighbour, then the latter cannot complain about the trees overhanging his land. The neighbour is entitled to cut off the offending branches and roots of trees at the point where they enter his property, but he must remember that the severed branches and roots do not belong to him, and must be made available to their owner, although they do not have to be returned if the owner does not want them. What the neighbour must not do is to heave them over the hedge,

damaging the owner's property in the process. If the overhanging trees are threatening to cause damage, and the owner has been told of the problem by his neighbour, they may then be a legal nuisance, and the owner must do what is reasonable to remove the nuisance. Householders must remember that they are likely to be liable for damage to a neighbour's house by a tree that is on their property. This applies to damage above ground, and to problems underground, especially settlement on clay soils. This can be very expensive especially in city areas. In the recent case of *Delaware Mansions v. Westminster CC*, the initial cost of removing the offending tree would have been £14,000. By the time the House of Lords had dealt with the case, this had risen to £<sup>1</sup>/<sub>2</sub> million as underpinning was now involved, with another £<sup>1</sup>/<sub>2</sub> million legal costs.

If a physical action, such as trimming a hedge, has been done for 20 years, an easement may be created without there being anything in writing. Similar action may be taken under the Prescription Act 1832, or at common law, and this is where evidence given by the oldest inhabitants comes into its own.

An award under the Enclosure Acts may create the right or obligation for an owner to erect a hedge, and if written in the award, to maintain the whole of it, both sides, for ever.

Lord Parker in *Pwllbach Colliery v. Woodman* (1915) said that "The law will readily imply the grant or reservation of such easements as may be necessary to give effect to the common intention of the parties to a grant of real property, with reference to the manner or purposes in and for which the land granted or some land retained by the grantor is to be used." In *Re Webb's Lease*, the judge ruled that: "the circumstance for any particular case may be such as to raise a necessary inference that the common intention of the parties must have been to reserve some easement to the grantor or such as to preclude the grantee from denying the right consistently with good faith." A novel argument arose in a Cornish case in the Court of Appeal in *Tehidy Minerals v. Norman* (1971) in which Buckley I.J. concluded "In our judgement *Angus & Co. v. Dalton* decides that, where there has been upwards of 20 years' uninterrupted enjoyment of an easement, such enjoyment having the necessary qualities to fulfil the requirements of prescription, then ... the law will adopt a legal fiction that such a grant was made, in spite of any direct evidence that no such grant was in fact made. If this legal fiction is not to be displaced by direct evidence that no grant was made, it would be strange if it could be displaced by circumstantial evidence leading to the same conclusion, and in our judgement it must follow that circumstantial evidence tending to negative the existence of a grant (other than evidence establishing impossibility) should not be permitted to displace the fiction."

Although the following case dealt with grazing, the principle of continuity is the same. In *White v. Taylor* (no. 2) Buckley J. said "the user must be shown to have been of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and a right of the measure of the right claimed." But even if the use has been continuous, if it has been too intermittent the case fails as in *Hollins v. Verney* [1884], where an access way was used for removing wood which was cut only every few years. The Court of Appeal felt that so discontinuous a use could not amount to uninterrupted enjoyment, though Lindley L.J. suggested that use at least once every year for the full period [of 20 years] would have been enough.

If, in going on to his neighbour's land to maintain his hedge, he is stopped, this does not necessarily mean that his right is nullified, although his case may be prejudiced if he continues to maintain his hedge by force. If his neighbour has been asked for and gives his permission, then there is no right. On the other hand, if the neighbour tolerates the hedge maintenance on his land, then a right may be created. Whether the neighbour knew of what was going on might be problematical if, for instance, he were living upcountry, but if he had had reasonable opportunity, then it is assumed that he should have known.

If the hedge-owner and his neighbour want to make an agreement this can be done

simply, and should be in writing and registered with the Land Registry.

The Courts may say that an easement no longer exists through non-use. In *Gotobed v. Pridmore* (1971), Cunnning Bruce L.J. said: "To establish abandonment of an easement the conduct of the dominant owner must, in our judgement, have been such as to make it clear that he had at the relevant time a firm intention that neither he nor any successor in title of his should thereafter make use of the easement. Abandonment is not, we think, to be lightly inferred. Owners of property do not normally wish to divest themselves of it unless it is to their advantage to do so, notwithstanding that they may have no present use of it." So long-term neglect of the right to use a neighbour's land might rebound on the owner.

An interesting quirk of the law, but sensible, is that if the land on each side of the hedge comes to be owned by the same person, the right vanishes and is not automatically revived if the ownership of the land is broken up again.

## HEDGES OBSTRUCTING VIEW AND LIGHT

The right to a view is easily dealt with - there is none, as Lord Denning in *Phipps v. Pears* (1965) said: "Take this simple instance. Suppose you have a fine view from your house. You have enjoyed the view for many years. It adds greatly to the value of your house. But if your neighbour chooses to despoil it by building up and blocking it, you have no redress." This does not hold for a public view in the diversion of a registered footpath, when the Inspector will often refuse to authorise a diversion where the public view from the new route will be markedly poorer than from the original route. In highway law, the concept of sight-lines is a type of view which has legal significance which has relevance to roadside hedges and verges.

The right to receive light, which is another easement, applies only to buildings. There must have been a succession of buildings on the land for the prescriptive 20 year period, whether actually occupied all the time or not. Nothing can be done about an over-grown hedge belonging to a neighbour which shades out much of the garden but not the house. The establishment of a right to light can be legally obstructed in writing under the Rights of Light Act 1959, which avoids the need to erect a physical obstruction. Although a written obstruction lasts for only one year, it effectively breaks the 20 year period, which has then to start again. Consideration of the amount of light depends on technical calculations of quantities of daylight available, through notional window sizes within the building under standardised conditions, and on the circumstances of the case. The procedures for rights of light may seem complicated but are actually much easier than some other aspects of the law dealing with hedges.

## SUBSIDENCE

Where a neighbour has caused or allowed his hedge to subside, he may be liable for the damage caused by his actions, or their consequences. The law says that reasonable steps must be taken to avoid this happening. Obviously if a neighbour excavated below the hedge, and it slips into the hole created, then the neighbour is liable for putting the hedge back. Similarly, with a jointly owned hedge, the right of support by a neighbour of his half does not include the liability for him to keep it in good repair, only that his half should adequately support the other. The owner of a disused tin mine, or of the land occupied by the mine workings, may for ever be responsible for supporting a hedge which is on the surface above the mine.

## FLOODS

The building and maintenance of hedges alongside rivers and in tidal waters which affect flooding is a complicated area of the law. The owner of the bank may not be the same as the owner of the river bed or foreshore. Building hedges along the foreshore in Cornwall is complicated by its ownership by the Duchy, and by those to whom it has been rented by the Duchy. Any proposal to alter the water flow is likely to attract the attention of one or more government departments responsible for rivers, and there are recent Acts which restrict the freedom of land owners where water is concerned.

## PIPES UNDER HEDGES

Pipes often run under hedges, sometimes owned by statutory bodies where Acts of Parliament may be relevant, and sometimes by private people where there may be evidence in title deeds. The pipes themselves are still owned by the people who put them in, probably with an easement allowing them through the land. Where they go under a hedge, the hedge-owner is entitled to have any damage to the hedge put right, unless there is anything written otherwise. The landowner has no right to use the pipe for his own purposes, unless there is a special agreement. Many pipes that are put across land, under hedges, are authorised by an Act, or regulations made under an Act. Similarly electric wires under hedges are accompanied by restrictions concerning what may be done with the land overlying the wires.

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