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The relationship between public and private rights of way examined.

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The interrelationship of public and private rights of way is a little explored and little understood corner of property law. But with the growth of interest in public rights of way, fostered by organisations dedicated to exploiting them, it is an area which is attracting more attention. This article addresses several specific questions on which landowners need to be advised with increasing frequency. When can they claim a greater right than the public, such as a right of passage for vehicles, over a minor highway; and can they ever lawfully maintain such a highway to a standard appropriate for their private vehicular use? What happens to their private right if the public right is terminated?

Two abbreviations will be used: "HA 1980" for the Highways Act 1980, and "LHA" for Local Highway Authority. Special categories of public way (eg RUPPs and BOATs) will be left out of account.

I. Claiming greater right than public

Let us take the case of an unmetalled way leading to a private house owned by C, the claimant (who does not own the way). The way is wide enough for vehicles, and C is accustomed to drive his car along it, but he has no documentary title to a vehicular right of way. The way is recorded on the definitive map as a footpath or a bridleway, so that the established public rights fall short of vehicular rights. In what circumstances can C establish a private vehicular right? This question can be posed in more pointed fashion. Under s.34(1)(b) of the Road Traffic Act 1988 it is an offence for a person "without lawful authority" to drive a motor vehicle "on any road being a footpath or bridleway". If C is prosecuted under this section, what must he prove to make out a defence to the charge? Let us take this question in steps.

Relevance of the definitive map

The standing of the entry in the definitive map must be understood. It is given conclusive status by s.56(1) of the Wildlife and Countryside Act 1981, but only in respect of the minimum rights carried by the category described, and without prejudice to the possibility that the public may in fact have other rights as well. Thus, for example, the description "footpath" determines

conclusively that the public has a right of way on foot, but leaves open the possibility that the public may also have rights of way on horseback or with vehicles.¹ But in the Road Traffic Act 1988 the terms "footpath" and "bridleway" denote ways over which there are no such additional public rights.² Two things follow. First, the mere production of the definitive map does not prove the offence (although it may provide a case to answer, when coupled with a description of the way as narrow, unmetalled, leading only to a single house etc.). Secondly, it is a defence for C to prove that there is a public vehicular right of way. Even with the aid of the statutory presumption³ this is likely to be a greater burden than C will wish to assume, and may often be inappropriate to the topography. Nevertheless proof of a public right will controvert one of the fundamental ingredients of the offence, and is the first logical possibility to consider.

"Lawful authority" and the sequence of events

The next step is to turn to the defence of "lawful authority". How can C establish that he has lawful authority to drive a vehicle along the way? Is it any use for C to prove that as against the owner of the way he is entitled to a private vehicular right? In principle the answer is yes, in certain circumstances. It is clear that a private right of way can co-exist with a public right over the same way.⁴ It is even clear that a private vehicular right is not necessarily incompatible with a public pedestrian right.⁵ In principle, therefore, C can defend himself by proving he is entitled to a private vehicular right. But in what circumstances can such a right co-exist with the lesser public right? Here the sequence of events becomes all important: it is essential to determine which came first, the private or the public right.

Acquisition of earlier private right by prescription

The statement accompanying the definitive map is required to give particulars of the public right, including "the relevant date". This will be the date from which the map speaks conclusively, and may be taken as the date of origin of the public right, unless some earlier origin is positively proved. *Prima facie* it is the date for C to concentrate on.⁶ The critical question then is whether C can claim a private right with an earlier origin. If he can, it is well established that his prior right does not merge in the

¹ S.56(1)(a)

² S.192(1)

³ HA 1980 s.31

⁴ *Allen v. Ormond* (1806) 8 East 4, *R. v. Chorley* (1848) 12 QB 515, *Walsh v. Oates* [1953] 1 QB 578

⁵ *R. v. Chorley* (1848) 12 QB 515, *Pullen v. Deffell* (1891) 64 LT 134, *A-G v. Esher Linoleum Co. Ltd.* [1901] 2 Ch 647

⁶ It must, however, be understood that this date is no more than a starting point, and the true origin of the public right may well be earlier. Often evidence will be available of much earlier public user. But at least C will know that anyone who asserts an earlier origin for the public right will have to prove it by adducing evidence other than the definitive map.

supervening public right, and remains available to him, to be relied on at need.⁷ This is because the way was already burdened by the private right at the time of dedication, and the owner could not give the public any right greater than he had at the time. To adapt the words of Lord Denman C.J.:

"... assuming C's to have been the prior right, his was the dominant tenement, the lane was the servient tenement: the owner of this last, then, could not dedicate absolutely to the public so long as it remained subject to the prior right; he could give nothing but what he himself had, a right of user not inconsistent with C's easement".⁸

How is C to prove the earlier origin of his right? If he has a documentary title containing an express grant, or from which an implied grant can be spelled out, this is a simple question of comparing dates. But we are assuming he has not. This means he must rely on prescription, i.e. vehicular user as of right by himself and his predecessors in title for at least 20 years. If he can show such a period of user before the origin of the public right, he can set up his claim by reliance on the doctrine of lost modern grant.⁹ But user since the origin of the public right may not count for prescription, for the reason given below in the section dealing with prescription and illegality.

Possibility of later private right?

What is the position if C's right is later in origin than the public right? This is an area which, for lack of authority, is beset by doubts and difficulties. *Ex hypothesi* the owner of the way has dedicated it for limited purposes (i.e. foot or horseback). The question arises whether he has retained any power to make a later private grant for wider purposes. In principle the answer depends on the intention of the owner at the time of dedication (i.e. did he intend to reserve such power to himself?), but in practice much seems to depend on the nature of the terrain, and whether the private right is capable of being exercised without substantially interfering with the prior public right. In *R. v. Chorley*,¹⁰ where the public right was pedestrian and the private right vehicular, Lord Denman C.J. also said:

"It must be taken, we think, that the jury did not give credit to the evidence of the Crown of very early public user before the commencement of the private user was shown: for if it had been believed, it is obvious that no private right could have

been acquired which was in derogation of it, except in some mode not pretended in the case before us".¹¹

Those words were spoken in the context of a way so narrow that there was insufficient room for pedestrians to pass on either side of a carriage "nor indeed could one pass, conveniently and without apprehension of danger, on one side", so that a later vehicular grant could not have failed to derogate from a prior pedestrian right. But the words italicised allow the possibility of a later private grant, provided it does not derogate from the prior public right, and other hints can be found which point to this as the correct analysis. In one case the simultaneous grant (in an inclosure award) of a public pedestrian right and a private vehicular right over a way 15 ft wide was not considered anomalous.¹² And in *A-G v. Esher Linoleum Co Ltd.*,¹³ where the site was some 50 ft wide, and therefore amply capable of accommodating both pedestrian and vehicular rights, Romer J. expressly presumed that the public pedestrian right had come into existence before the private vehicular right.¹⁴ It therefore appears that the earlier origin of the public right is not necessarily incompatible with a later private grant for wider purposes: where the site is sufficiently commodious, the inference may be drawn that the dedication was intended to be qualified by the possibility of private vehicular use. Upon this analysis C will not be defeated merely because his right is later in origin than the public right; if the way is large enough to enable him to exercise his right without disturbing the public right, he may succeed.

Prescription and illegality

But that does not dispose of C's difficulties in this context. There is the further question whether his vehicular user (which we will assume to have continued for over 20 years) is capable of giving rise to a prescriptive right. It is a principle of the law of prescription (at any rate where private rights are concerned) that user which is illegal cannot be prescriptive,¹⁵ and C's user has been contrary to s.34(1) of the Road Traffic Act 1988.¹⁶ How then can he set up a prescriptive right as an answer to that section? There is circularity in the logic here: C has a defence under the section if he can show lawful authority, but his normal way of showing authority is undermined by the section itself. Since there are many kinds of

⁷ *Allen v. Ormond* (1806)

8 East 4, *Duncan v. Louch* (1845) 6 QB 904

⁸ *R. v. Chorley* (1848) 12 QB 515, at pp. 519/20

⁹ For technical reasons, which need not be elaborated here, the other two modes of prescription are unlikely to be available. On prescription see, generally, Megarry and Wade's *Law of Real Property*, 6th edn. ch 13

¹⁰ Supra note 8, at p.517

¹¹ Italics added

¹² *Pullin v. Deffell* (1891) 64 LT 134

¹³ [1901] 2 Ch 647

¹⁴ At p.649

¹⁵ *Cargill v. Gotts* [1981] 1 WLR 441 (extracting water without a licence), *Neaverson v. Peterborough RDC* [1902] 1 Ch 557, *Hulley v. Silversprings Bleaching & Dyeing Co.* [1922] 2 Ch 268

¹⁶ And its statutory predecessors, RTA 1930 s.14 and RTA 1972 s.36(1)

illegality, and the kind which defeats prescription has never been closely analysed, and since the theory of prescription is based on a presumed grant by the owner of the soil, it may be arguable that prescription alone can provide C with a defence. But the argument leads to the conclusion, which is not easy to accept, that while C was committing a criminal offence for the first 19 years and 364 days, the same act has lost its criminality once the magic 20 year period is completed.¹⁷

Summary

The fact that a way is recorded as a public footpath or bridleway does not mean that it cannot also be subject to a private vehicular right. To establish such a private right it is necessary to examine the position at the date of the origin of the public right, and to consider whether C has the benefit of a grant (express or implied), or claims only by prescription. The possibilities may then be listed as follows.

Grant

(i) If the grant is earlier than the origin of the public right, C succeeds: the dedication was subject to his right.

(ii) If the grant is later, it is probable that C may succeed if the topography is such as to enable his private right to be exercised without any substantial interference with the public right.

Prescription

(i) If the 20 year period has run before the origin of the public right, C can rely on the doctrine of lost modern grant, and (subject to the technicalities of the law of prescription) should succeed.

(ii) If the 20 year period falls wholly or partly after the origin of the public right, C can succeed only by winning the (now highly suspect) argument over illegality.

II. Maintaining to higher standard

Let us now suppose that C can prove his entitlement to a vehicular right prior to the public right. The way is unmetalled, and in poor repair: although it is passable for pedestrians and perhaps horses, it is unsuitable for vehicles in wet weather. C wants the way to be maintained to a higher standard, and may be willing to do the work himself. But the LHA refuses either to do the work or to allow C to do it. Can C insist on doing it himself?

Ancillary rights

At common law the grantee of a private right of way has certain reasonably well defined ancillary rights. The grantor is not usually under any obligation either to create the way or to maintain it, but if he does not, the grantee will have the right to do these things, even though the land belongs to the grantor. The grantee is entitled to enter on the land and make up the way for the first time to a suitable standard;¹⁸ thereafter he can maintain and renew it from time to time,¹⁹ and can even improve it,²⁰ or alter it to meet changed circumstances,²¹ provided his user does not exceed the scope of the grant. On the other hand, if the right is only prescriptive in origin, there is no ancillary right to improve the way: the nature of the right is defined by the nature of the way which has been used, and to cross the (ill-defined) boundary between repair and improvement is a trespass.²²

Highways maintainable at public expense

But the intervention of the public right complicates matters. Most highways are maintainable at public expense, and (with irrelevant exceptions) all highways which are so maintainable are subject to a statutory provision²³ which vests the surface of the way in the LHA. In such cases the LHA may claim that for C to interfere with the surface by making it up to a higher standard will involve trespassing upon the LHA's surface.²⁴ As a first step here, therefore, it is necessary to digress and consider what public footpaths and bridleways are maintainable at public expense (and therefore vested in the LHA). This question has a complex history.

(a) At common law all highways were maintainable by the inhabitants at large of the parish, unless some other person could be shown to be liable by reason of tenure, inclosure or prescription.²⁵

(b) This presumption was changed by s.23 of the Highway Act 1835, which provided that future highways should not be maintainable by the inhabitants of the parish unless a procedure corresponding to the modern adoption was carried out. This section, however, did not apply to footpaths²⁶ or bridleways (except bridleways which had been set out under an Inclosure Act), so that new highways in these categories continued to be maintainable by the inhabitants at large.

(c) This anomaly was removed by the National Parks and Access to the Countryside Act 1949,

¹⁷ The latest authority, not fully reported at the time of going to press, has held that vehicular user over a common, contrary to the Law of Property Act 1925 s.193(4), is not capable of giving rise to a private prescriptive right (see *Hanning v. Top Deck Travel Group Ltd.*, Times 6/5/1993)

¹⁸ *Newcomen v. Coulson* (1877) 5 Ch D 133

¹⁹ *Hoare v. Metropolitan Board of Works* (1874) LR 9 QB 296

²⁰ *Newcomen v. Coulson*, supra note 18

²¹ *Finlinson v. Porter* (1875) LR 10 QB 188

²² *Mills v. Silver* [1991] 1 All ER 449

²³ HA 1980 s.263(1)

²⁴ C can convincingly reply that the exercise of his ancillary right is no more a trespass against the LHA than it would be against the grantor, but he will wish to know whether the point arises.

²⁵ See Sauvain's *Highway Law* at p.67

²⁶ *Robinson v. Richmond (Surrey) BC* [1955] 1 QB 401

which subsumed public footpaths and bridleways under the expression "public paths".²⁷ This Act set up a new machinery for the adoption of public paths,²⁸ and provided that s.23 of the 1835 Act should apply to any public path dedicated after the commencement of the Act,²⁹ unless the new machinery was used.³⁰ Thus public paths created after that date could not become maintainable by the public at large except by operation of one of the formal statutory procedures.³¹

(d) The Highways Act 1959 consolidated the law affecting all highways including public paths.³² It abolished the maintenance duties of the inhabitants at large,³³ and substituted the concept of maintenance "at the public expense".³⁴ All existing highways which were subject to the old duty became subject to the new concept.³⁵ It repealed the National Parks and Access to the Countryside Act 1949, but re-enacted similar provisions. Public footpaths and bridleways could still be created by formal procedures such as adoption,³⁶ and only if those formal procedures were followed would they be maintainable at public expense.³⁷

(e) The modern consolidating statute is HA 1980, which again re-enacts similar provisions. There are formal procedures for the creation of public footpaths and bridleways,³⁸ and unless they are followed a newly created public way will not be maintainable at public expense.

(f) The result of this digression is to enable C to determine whether the way is maintainable at public expense. The first question is whether it was created formally, by operation of the contemporary statutory procedures, or informally, by public use coupled with the statutory presumption.³⁹ If it was created formally, it will be maintainable at public expense. If not, the second question (*prima facie* to be answered by the date in the definitive map)⁴⁰ is when the informal creation is to be taken to have occurred: if the creation date is before 16 December 1949, the way will (subject to the common law exceptions)⁴¹ be maintainable at public expense: if later, it will not.

Ancillary rights and the criminal law

Let us suppose, then, that C can show that the way is not maintainable at public expense, and that therefore no part of it is vested in the LHA.⁴² Let us also suppose that C's private vehicular right derives from a

general grant (not mere prescription) which antedates the origin of the public rights. At common law C's ancillary rights of maintenance and repair entitle him, as against the owner of the way, to maintain and even improve the way to a standard appropriate to his right.⁴³ The LHA has no property right which stands in the way. Is that the end of the matter? Not quite.

There is still the criminal law to be reckoned with (including the law of public nuisance). To conduct the operation of providing a way with a metalled surface for the first time is bound to involve obstructing the use of the way for more than a fleeting period of time. *Prima facie* it will therefore constitute a number of criminal offences. The basic offence is the common law one of public nuisance, which includes any appreciable obstruction of the highway of unreasonable extent or duration.⁴⁴ If there is a substantial obstruction it is no defence that it will lead to the benefit of the public.⁴⁵ Furthermore the common law is supplemented by a series of statutory offences to be found in Part IX of HA 1980. For example the following are offences unless sanctioned by lawful authority or excuse:

- removing any soil or turf from any part of a highway, except for the purpose of improving the highway and with the consent of the LHA (s.131(1)(b));
- in any way wilfully obstructing the free passage along a highway (s.137(1));
- depositing anything whatsoever on a highway to the interruption of any user of the highway (s.148(c));
- depositing anything whatsoever on a highway in consequence of which a user of the highway is injured or endangered (s.161(1)).

Possible responses by the claimant

C therefore is hedged round with a whole battery of legal restraints, which is the LHA's statutory duty to enforce in the public interest.⁴⁶ It will clearly require considerable determination on C's part to insist on his right to improve the way in the teeth of opposition by the LHA, but is there any firm legal ground on which he can stand?

(a) At common law an obstruction may be so slight and temporary as not to amount to a nuisance. Metalling the whole surface, however, could clearly not come within this category.

²⁷ S.27(6)

²⁸ By "public path agreements": s.39

²⁹ 16 December 1949

³⁰ S.49

³¹ The different analysis in Riddall & Trevelyan's *Rights of Way* at p.221 appears to be based on s.47 of the 1949 Act alone, without regard to the overriding effect of s.49.

³² This useful but short-lived term disappeared from the statute-book, except as part of larger terms such as "public path creation agreement/order".

³³ S.38(1)

³⁴ S.38(2)

³⁵ S.38(2)(a)

³⁶ S.27

³⁷ S.38(2)(e)

³⁸ Ss.25, 26

³⁹ Under HA 1980 s.31

⁴⁰ See above, page 1

⁴¹ See (a) above

⁴² See above, *Highways maintainable at public expense*

⁴³ See above, *Ancillary rights*

⁴⁴ *Dymond v. Pearce* [1972] 1 QB 496; *Trevett v. Lee* [1955] 1 WLR 113

⁴⁵ *A-G v. Wilcox* [1938] Ch 934

⁴⁶ HA 1980 s.130(1),(2), (3)

⁴⁷ *Harper v. G.N. Haden & Sons Ltd.* [1933] Ch 298

⁴⁸ *R. v. Clark (No 2)* [1964] 2 QB 315, *Nagy v. Weston* [1965] 1 WLR 280

⁴⁹ *Redbridge LBC v. Jaques* [1970] 1 WLR 1604, *Cambridge & Ely C.C. v. Rust* [1972] 2 QB 426

⁵⁰ See above, page 2

⁵¹ *Mercer v. Woodgate* (1869) LR 5 QB 26, *Arnold v. Blaker* (1871) LR 6 QB 433

⁵² There is now a statutory right to plough under certain conditions: HA 1980 s.134. But the section acknowledges the independent existence of similar rights: see s.134(11).

⁵³ As in *Harper v. G.N. Haden & Sons Ltd.*, supra note 47

⁵⁴ *Mercer v. Woodgate*, supra

⁵⁵ General Development Order 1988 Art.1, Public Health Act 1936 s.343(1)

⁵⁶ SI 1988 No. 1813 Art.3, 2nd Sched.Pt.9. It may also be possible to rely on *ibid.* Pt.6 Class A but there are a number of complex definitions and conditions to be applied.

⁵⁷ Town and Country Planning Act 1990 s.55(2)(b), General Development Order 1988 2nd Sched. Pt.13

⁵⁸ Or he is prepared to support a *later* grant as suggested above

⁵⁹ Or he is prepared to argue that the LHA's ownership does not stand in his way: see note 24.

(b) There is special indulgence at common law for frontagers, i.e. the owners of houses adjoining the highway. They can cause vehicles to stop for the purpose of unloading passengers or goods without committing a public nuisance. They can even obstruct the highway by scaffolding and hoardings for the purpose of doing work on their adjoining property, provided the obstruction is no greater in degree nor longer in duration than necessity demands.⁴⁷ This is a line of authority which C might pray in aid, but there is no precedent for applying it to the case of the owner of a private easement (who is not a frontager) obstructing the highway in order to improve it.

(c) S.137(1) of HA 1980 says nothing about unreasonableness, but these common law indulgences have been smuggled into it by holding that the prosecution must prove that the defendant's use of the highway was unreasonable.⁴⁸ Whether the same applies under ss.131(1) and 148(c) may be doubted.

(d) The statutory offences, however, all offer the defence of "lawful authority or excuse". Is this available to C? It would be useless to rely on an *ad hoc* permission by the LHA, since the LHA has no power to authorise an unlawful act, except under an express statutory power.⁴⁹ And by the same token an *ad hoc* permission from the owner of the soil must be useless: once he has dedicated the way, he has no power to grant any further private right in derogation of the public right.⁵⁰ But a more fruitful line for C is provided by the concept of qualified dedication. It is well established that a footway across agricultural land may be dedicated subject to a right reserved to the owner of the soil to plough it up seasonally,⁵¹ and there are other recognised rights which may be reserved at the time of dedication, which will surely give the owner "lawful authority and excuse" to obstruct the way after dedication.⁵² We are supposing that C claims under an express grant prior to dedication, and that the grant carries an implied ancillary right to maintain and improve. It must surely follow that the dedication is qualified not only to the extent of allowing C to exercise his vehicular right, but also to the further extent of allowing him to obstruct the way so far as necessary (no more and no longer than necessary for the effecting of works reasonably required)⁵³ in exercise of his ancillary right. A weakness of this argument may be that the normal way of proving a qualification upon dedication

is to prove consistent user from time immemorial.⁵⁴ But an express prior grant with an express right to maintain and improve must prove the point beyond argument, and in principle an implied right to maintain and improve is just as good, since the decisive consideration must be the true construction and effect of the grant.

Planning permission

If C is undaunted by the risk of criminal liability, there is still one further control to be considered: planning law. Will C need planning permission to improve the way? Provided he does not go outside the existing boundaries of the way, he will not, since the carrying out on land within the boundaries of an unadopted street or private way (and both these expressions include the way we are assuming)⁵⁵ of works required for the maintenance or improvement of the street or way is permitted development within the General Development Order 1988.⁵⁶ It will be otherwise if the way is maintainable at public expense, or the work needs to extend beyond the boundaries of the way, in which case only the LHA can carry it out without planning permission.⁵⁷

Summary

C should not embark on an attempt to improve the way against the opposition of the LHA unless:

- (i) his private right is based on a grant rather than prescription;
- (ii) the grant is earlier than the origin of the public right;⁵⁸
- (iii) he can show that the surface of the way is not vested in the LHA;⁵⁹
- (iv) he is prepared to rely on the following arguments to escape the criminal offences which he risks:
 - (a) that the dedication was subject to his ancillary right to improve, which therefore constituted lawful authority for the purpose of the statutory offences;
 - (b) that the obstruction was reasonable in extent and duration;
- (v) he has, or does not need, planning permission.

III. Position of freeholder

So far we have been assuming that C is handicapped by not owning the way, and

only claiming a right of way over it. But what about O, the owner of the way? In passing we may notice that the public right cannot have come into existence⁶⁰ without an actual or presumed intention on the part of O or his predecessors to dedicate the way to public use. It may be that few landowners actually entertain such an intention, especially if the public use may conflict with their own vehicular use of their own way. But it is certain that even fewer make use of the statutory procedures open to them for registering an intention not to dedicate.⁶¹ Be that as it may, how different is O's position in respect of the two questions we have been discussing?

Claiming greater right

Prima facie O does not have to prove that he is entitled to a vehicular right by grant or prescription. What he has to establish is that the original dedication was qualified by the reservation to himself of a right to continue using the way with vehicles as before. To do this he must prove regular vehicular use before (and after) dedication. If he can prove such use only after dedication, the necessary qualification may be found (as with C) if the way is large enough to accommodate the vehicular right as well as the public right: O cannot derogate from the dedication by using the way in any manner which substantially interferes with the public right.⁶² In this context O will be better off if the surface of the way is vested in him rather than the LHA,⁶³ since if it is not he will be in no better position than C claiming by prescription after dedication.⁶⁴

Maintaining to higher standard

Here again the principal difference for O lies in the difference between proving grant or prescription and proving qualified dedication.

Of the requirements listed above in the summary to section II, the proof of qualified dedication will take the place of (i), and (ii) will then be inherent in (i), but the others will remain.

IV. Termination of public right

We have seen that private and public rights can co-exist over the same way. What then becomes of the private right if the public right is determined? This is a subject which does not require elaborate treatment.

Position of claimant

So far as C is concerned two points may be made.

(i) While the two rights co-exist there is no merger of the lesser (private) right in the greater (public) right, so that C can in principle enforce his private right in the ordinary way.⁶⁵

(ii) The rule "once a highway, always a highway" means that the public right cannot determine except by the operation of some statutory provision. The statute will extinguish the public right, and essentially its effect on the private right depends on the true construction of the statute in question. It would, however, require clear words for a provision directed to the public right to affect the unmerged private right, and the authorities have unanimously held that the private right survives.⁶⁶

Position of the owner

So far as O is concerned, the extinguishing of the public right leaves him free to use his land as he sees fit, so far as he is not restricted by private rights. If the surface was vested in the LHA, its interest was a determinable fee⁶⁷ which determines with the public right.

⁶⁰ Apart from compulsory creation under statute (in which case O will have had an opportunity to object).

⁶¹ By erecting notices, or depositing maps and statements: see HA 1980 s.31(3)-(10).

⁶² *R. v. Chorley* supra note 8

⁶³ See above, *Highways maintainable at public expense*

⁶⁴ See above, *Prescription and illegality*

⁶⁵ *Allen v. Ormond* (1806) 8 East 4, *Duncan v. Louch* (1845) 6 QB 904

⁶⁶ *Walsh v. Oates* [1953] 1 QB 578, *Wells v. Tilbury & Southend Rly. Co.* (1877) 5 Ch D 126

⁶⁷ *Tithe Redemption Commissioners v. Runcorn UDC* [1954] Ch 383