

the measurements were taken to the centre of a living hedge around the common. "Our common," say the conservators, "extends to the middle of the hedge." The defendant, however, taking a different view, placed certain iron fences on the common side of the hedge at an average distance of 4 feet, alleging that he was entitled to a ditch width. In an action brought against him for trespass it was held by a court of first instance that the action failed because the award map was conclusive; and no custom or usage giving the defendant a ditch width being proved, that the plaintiffs were entitled to judgment. The Court of Appeal, however, has reversed this decision.

In taking this course, the Court of Appeal did what appears to be reasonable enough. They assumed that it is a reasonable custom for a man to claim a ditch width outside his hedge, although all trace of the original ditch may through lapse of time have disappeared. The law is thus stated in Halsbury's Laws of England, vol. 3, paragraph 247:

"No man making a ditch may cut into his neighbour's soil, but usually he makes it at the very extremity of his own land, forming a bank on his own side with the soil which he excavates from the ditch, on the top of which bank a hedge is usually planted. Therefore, where two fields are separated by a hedge or bank and an artificial ditch, the hedge or bank and ditch *prima facie* belong to the owner of the field in which the ditch is not. This being the origin of the presumption, it is very doubtful whether it is applicable when it is not known that the ditch is artificial.

Acts of ownership such as trimming and pollarding a fence and cleaning a ditch even though continued for many (*e.g.*, fifty) years by an adjoining owner, do not rebut the presumption that the ditch and fence belong to the adjoining owner on whose side the ditch is not at any rate if the acts were done without knowledge on the part of the latter."

From *Voules v. Millar* (a case cited in support of the above statement of the law), it appears that in some districts the owners of a bank and ditch are entitled to four feet of width for the base of the bank and four feet of width for the ditch, but, apart from any local custom, there is no rule to this effect. In *Collis v. Amphlett* the Court in effect found that the local custom was