The case of Gyle-Thompson and Others v Wall Street (Properties) Ltd (1974) is an extract from:

The Party Wall Casebook

Paul Chynoweth
BSc, LLB, Solicitor

Foreword by
The Earl of Lytton

Blackwell
Publishing

ISBN 1-4051-0022-2

GYLE-THOMPSON AND OTHERS v WALL STREET (PROPERTIES) LTD (1974)

Chancery Division

In brief

- **Issues:** 1939 Act – reduction in height of party fence wall – service of notices – appointment of surveyors – delivery of award – challenge to invalid award after expiry of 14-day appeal period.
- **Facts:** Wall Street wished to reduce the height of a party fence wall which separated their land from the plaintiffs' land. Party structure notices were served on a surveyor who had been retained to advise the plaintiffs. This surveyor later joined in the selection of a third surveyor. An award was signed jointly by the third surveyor and Wall Street's surveyor which authorised the works. This was posted to the plaintiffs' retained surveyor and Wall Street then started the works.
- **Decision:** There was no right to reduce the height of a party wall or party fence wall under the 1939 Act. The surveyors therefore had no jurisdiction to make an award which purported to authorise this. The award was further invalidated by procedural irregularities. The plaintiffs' surveyor had no authority to accept service of the notices or of the award so service of both documents was ineffective. Furthermore, this surveyor had never been formally appointed and therefore had no authority to join in the selection of the third surveyor. Consequently the third surveyor had no jurisdiction to join in the making of an award. The award was therefore invalid and the plaintiffs were entitled to challenge this, notwithstanding the expiry of the statutory 14-day appeal period. The court therefore granted an interlocutory injunction to restrain the works.
- **Notes:** (1) See also: *Burlington Property Co Ltd v Odeon Theatres Ltd* (1938); *Re Stone and Hastie* (1903); *Riley Gowler Ltd v National Heart Hospital Board of Governors* (1969). (2) Contrast with: *Whitefleet Properties Ltd v St Pancras Building Society* (1956). (3) Section 2(2)(m) of the 1996 Act now grants an express right to reduce the height of a party wall/party fence wall.

The facts

Wall Street (Properties) Ltd owned an old four-storey warehouse at 57–63 Old Church Street, Chelsea, London SW3. The western wall of the warehouse also formed the rear garden walls of some houses at 43–53

Paulton's Square. Gyle-Thompson and the two other plaintiffs in the case were the owners of three of these houses.

Wall Street planned to redevelop their property by demolishing the existing warehouse building and erecting houses, flats and an office building on the site. They intended to reduce the height of the western wall to 15 ft and for this to be retained as the boundary wall between the new development and the gardens of the houses in Paulton's Square.

The warehouse was substantially demolished, apart from the western wall. However, before this could be reduced in height, a plaque was discovered which indicated that it had been constructed astride the boundary line. Under the 1939 Act[1] the wall had therefore been a party wall and, following the demolition of the rest of the building, was now a party fence wall.

Appointment of surveyors and interim award

In December 1971 Wall Street formally appointed a surveyor (surveyor A) to act for them under the 1939 Act. Surveyor A then opened negotiations with the adjoining owners in Paulton's Square. In January 1972 three of them (the plaintiffs in this case) retained another surveyor (surveyor B), to represent their interests (although, at this stage, they did not formally appoint him under the Act).

On 22 February 1972 surveyor A served a party structure notice on all the owners of numbers 43–53 Paulton's Square in his capacity as Wall Street's agent. This notified them of Wall Street's intention to reduce the height of the western wall and to connect it to the new premises to be built on the site of the warehouse.

Surveyor B responded to the notices on behalf of his three clients. He refused to consent to the wall being reduced in height or to sign any award which would sanction the work. He maintained that the 1939 Act provided no such right and that the work would therefore be a trespass on his clients' property.

Nevertheless, as there was now a risk that the unsupported wall would collapse, the two surveyors signed an interim award on 20 June 1972. This permitted Wall Street to shore the wall but was expressed to be without prejudice to any future negotiations about the possibility of reducing its height.

The award also recorded the selection of a third surveyor and required Wall Street to pay the fees of surveyor B. Between July and September 1972 each of the three plaintiffs then signed a formal surveyor's

[1] The situation would have been the same under the 1996 Act. See the definitions of "party wall" and "party fence wall" in section 20 of that Act.

appointment under the 1939 Act in favour of surveyor B. This was intended to regularise the paperwork prior to payment of surveyors' fees under the award.

Role of third surveyor

It proved impossible to reach agreement regarding the reduction in the height of the wall so, in December 1972, surveyor A referred the matter to the third surveyor. The third surveyor advised the two surveyors that they no longer had any power to act under the notice. More than six months had elapsed since the date of service of the notice and this had therefore now expired[2].

By this stage Wall Street's architect had designed what he regarded as a compromise solution for the wall. This involved reducing the height of the wall to 19 ft rather than 15 ft and incorporating obscure glazing in its top half to maintain the level of illumination to the new development. Surveyor A therefore prepared new party structure notices on the basis of these revised proposals.

These were posted to surveyor B on 20 December 1972. He again refused to consent to the proposals or to sign any award which would authorise the work. His clients opposed any reduction in the height of the wall and he continued to maintain that the Act contained no right to reduce the height of a party wall.

Surveyor A therefore again referred the matter to the third surveyor. Surveyor A and the third surveyor then together published an award[3] which sanctioned the reduction in height of the wall on the basis of the revised proposals. This was posted to surveyor B on 2 March 1973.

On the morning of Saturday 17 March 1973 (as soon as the statutory 14-day appeal period had expired) Wall Street started demolishing the wall. The plaintiffs intervened personally and, with the help of the police, stopped the work progressing.

---

[2] 1939 Act, section 47(3). A similar provision now appears in section 3(2) of the 1996 Act although the six-month period has been extended to 12 months. The rewording of the new section has also unfortunately changed the sense of the provision. According to a strict reading of the new section both a 12-month delay and a failure to prosecute with due diligence are required before the notice becomes ineffective. It seems likely this is an error of draughtsmanship and that a failure to prosecute with due diligence, even where works have begun within the 12 months, will amount to the notice ceasing to have effect.

[3] Any of the three surveyors have jurisdiction to publish an award: 1939 Act, section 55(i); 1996 Act, section 10(10). However, the third surveyor should only join with one of the other surveyors to publish an award in the absence of disagreement between the two party appointed surveyors (for example, where matters have already been agreed but where one of the surveyors is unavailable to sign the final document). Where, as in the present case, there is disagreement between the two surveyors, the third surveyor alone should make the award: 1939 Act, section 55(j); 1996 Act, section 10(11).

On the following Monday the plaintiffs commenced proceedings for trespass and applied for an interlocutory injunction to restrain the work, pending a final hearing of the matter. The court considered the following issues in determining the application for interlocutory relief.

A right to reduce the height of a party (fence) wall?[4]

The plaintiffs based their application for relief on the ground that Wall Street had no right to reduce the height of a wall which they partly owned. Wall Street's proposals involved the demolition of the old western wall and its rebuilding to a reduced height (in effect, a reduction in the height of the wall).

Wall Street maintained that they had a right to do the work under the 1939 Act. Although there was no express right to reduce the height of a party wall or party fence wall, they argued that there was an implied right. This right was implicit in sections 46(1)(a) and (k)[5] which granted building owners various rights to demolish and rebuild party structures and party fence walls and to raise party fence walls and use them as party walls.

The court did not agree and concluded that in the absence of any express right within the legislation to reduce the height of a party fence wall the rights "to demolish and rebuild" required the wall to be reconstructed to the same height as previously. This decision was based on two considerations.

Firstly, the Court of Appeal decision in *Burlington Property Co Ltd v Odeon Theatres Ltd* (1938) supported this interpretation. In that case the surveyors' award had provided for a party wall to be demolished and rebuilt with enlarged openings, in place of windows, so as to facilitate access. The Court of Appeal held that the building owner had no right, in exercising the various rights under the legislation[6], to change the form of the party wall.

Secondly, this decision was simply an example of the general principle of statutory interpretation that, in the absence of a clear indication to the contrary, statutes are presumed not to expropriate private property.

---

[4] Section 2(2)(m) of the 1996 Act now includes an express right to reduce the height of a party wall or a party fence wall and this right to demolish and rebuild to a reduced height.
[5] See sections 2(2)(b) and (1) of the 1996 Act for equivalent provisions.
[6] In this case the right was being claimed under section 114(7) of the London Building Act 1930 which then appeared in substantially the same form as section 46(1)(f) of the 1939 Act and now, section 2(2)(e) of the 1996 Act.

> Brightman J: "In my judgment the submission of counsel for the plaintiffs on this issue is correct. In the absence of an express right to lower a party fence wall it seems to me that the right to demolish and rebuild requires reconstruction to the same height. I think that this interpretation is in conformity with the decision in the *Burlington Property* case.
>
> Further, if the building owner has the right to reduce the height of a wall which belongs to him and his neighbour without his neighbour's consent, such a right would be, in effect, a right for the building owner to expropriate the property of his neighbour. I would expect any such right of expropriation in an Act of Parliament to be conferred in clear terms, if it is conferred at all."

Brightman J also considered whether surveyors had a more general power to confer rights to undertake particular works, for example to reduce the height of a party wall, on a building owner. In this context he questioned the meaning of section 55(k)[7] which provided that the surveyors' award "may determine the right to execute … any work".

He was of the opinion that it did not confer a discretionary power on surveyors to confer rights which had not been anticipated by the Act. Rather it was a power to determine whether a particular fact or set of circumstances existed which were conditions precedent for the existence of various conditional rights conferred by the legislation:

> "If it is asked what 'right' is within the contemplation of section 55(k) as appropriate to be determined by an award, an example applicable to section 46(1)(a)[8] would be the determination by the surveyors of the 'necessity' of the intended work on account of defect or want of repair; in the absence of such necessity the 'right' under that paragraph (for example) to underpin would not exist. In fact many of the 'rights' conferred by section 46(1) are conditional rights which are only exercisable on proof of some fact appropriate to be determined by the surveyors in their award. That, in my judgment, is the context in which section 55(k) enacts that the award may determine the 'right' to execute works."

There was therefore no right within the 1939 Act for a building owner to reduce the height of a party wall or party fence wall or to demolish one and rebuild it to a reduced height. The surveyors therefore had no power to make an award which purported to grant such a right.

---

[7] This provision now appears in substantially the same form in section 10(12) of the 1996 Act.

[8] The same provision is substantially repeated as section 2(2)(b) of the 1996 Act.

Challenges to awards after 14 days?

Wall Street argued that the award could no longer be challenged as the plaintiffs had failed to appeal to the county court within the statutory 14-day appeal period[9]. Section 55(m) provided that, apart from this right of appeal, surveyors' awards were conclusive and could not be challenged in any court[10]. The present challenge to the award in the High Court should therefore be rejected on this basis.

The court rejected this argument in situations where there was some legal impediment to the validity of the award:

> Brightman J: "In my judgement this submission is not correct in relation to an award which is ultra vires and therefore not a valid award. In the present case the defendants claimed a right which, in my judgement, they did not have, namely, a right to reduce the height of a party fence wall, and the two surveyors made an award which, in my judgement, they had no power to make. In my view the plaintiffs are entitled, in those circumstances, to come to this court to prevent a wrongful interference with their property."

Re Stone and Hastie (1903) was cited as authority for this view. In that case the surveyors awarded the adjoining owner a sum of money as payment for the building owner's extra use of the party wall. When the adjoining owner brought proceedings for the recovery of this sum the building owner asserted in defence that the relevant part of the award was ultra vires and therefore void. The adjoining owner submitted that it was not open to the building owner to raise this point as he had made no appeal to the county court within the 14-day period and that the award was therefore now conclusive and beyond challenge by the courts. The Court of Appeal rejected this submission and held that this part of the award was indeed void.

The significance of this decision was summarised by Brightman J in the following terms:

> "There are points of distinction between *Re Stone and Hastie* and the present case, but I do not think they are significant. The important point is that the building owner was not required to resort to the county court in order to free himself from an obligation imposed by the surveyors in excess of their jurisdiction."

[9] Under section 55(n) of the 1996 Act. The same right of appeal now appears in section 10(17) of the 1996 Act.
[10] The same provisions now appears as section 10(16) of the 1996 Act.

Effect of procedural irregularities?

The two issues considered above were sufficient to dispose of the case. However, the plaintiffs had also raised a number of procedural objections about the circumstances surrounding the making of the award. Whilst a court would not generally be sympathetic to procedural objections they should be taken more seriously in cases under this legislation because of its effect on property rights:

> Brightman J: "Section 46 *et seq* of the 1939 Act give a building owner a statutory right to interfere with the proprietary rights of the adjoining owner without his consent and despite his protests.
>
> The position of the adjoining owner, whose proprietary rights are being compulsorily affected, is intended to be safeguarded by the surveyors appointed pursuant to the procedure laid down by the Act. Those surveyors are in a quasi-judicial position with statutory powers and responsibilities. It therefore seems to me important that the steps laid down by the Act should be scrupulously followed throughout, and short cuts are not desirable.
>
> Having regard to the functions of surveyors under section 55 and their power to impose solutions of building problems on non-assenting parties, the approach of surveyors to those requirements ought not to be casual."

The following three procedural objections were identified. This meant that (irrespective of the award's substantial invalidity referred to above) the resulting award was procedurally invalid and Wall Street could not therefore rely on it.

Service of notices

Firstly, the party structure notices, which underpinned the surveyors' jurisdiction to make the award, had not been validly served. On 20 December 1972 these had been served on surveyor B rather than on the individual owners. According to the evidence he had no authority to accept service. The resulting award was therefore invalid.

Appointment of surveyors

Secondly, surveyor B had never been validly appointed under the Act. Section 55(h)[11] provided that all appointments must be in writing. Apart from the retrospective appointments during July and September 1972 in

[11] This requirement now appears in section 10(2) of the 1996 Act.

relation to the notices served on 23 February 1972 no such appointments had been made. These appointments were not effective in relation to the second set of notices purportedly served on 20 December 1972:

> Brightman J: "The validity of his appointment was vital to the validity of the award. If he were not validly appointed, he had no statutory authority to concur in the selection of . . . the third surveyor. If [the third surveyor] were not validly selected . . . then the award must be void."

The award was therefore invalid on this ground also.

Brightman J had the following advice for surveyors at the time of their original appointment:

> "It would be a wise precaution for the surveyor of the building owner and the surveyor of the adjoining owner to inspect each other's written appointment before they perform their statutory functions. Neither of them has power to concur in an award unless both of them have been duly appointed . . .
>
> . . . It would be a wise precaution for the third surveyor, on accepting office, to inspect the written appointments of those selecting him; unless they have been duly appointed, they have no power to select a third surveyor; if the third surveyor has not been validly selected in writing, he has no power to concur in an award."

Delivery of award

Thirdly, even had the award been valid, Wall Street would have had no authority to commence work on 17 March 1973, as the award had not, at that stage, been delivered to the plaintiffs[12].

Again, Brightman J's judgment contains some practical advice for surveyors:

> "It seems to me highly desirable that surveyors, who are performing their statutory duties under section 55, should bear in mind that important matters may turn on the date of the delivery of their award and I think they should take practical steps to ensure that there is no doubt what is the date of such delivery, and that the date is the same for the building owner as for the adjoining owner.

[12] The 1939 Act contained no clear requirements regarding delivery of the award. However, as the plaintiffs had neither received the award, nor been made aware of its existence before the work started, the court had no difficulty in deciding that the works had been started without authority. Once the award has been made, section 10(14) of the 1996 Act now requires the surveyors to serve it forthwith on the parties.

The problems which can arise if such practical steps are neglected are exemplified in *Riley Gowler Ltd v National Heart Hospital Board of Governors* (1969), to which I was referred in argument."

The decision

For the reasons discussed above, the surveyors' award was substantively and procedurally invalid. Wall Street therefore had no right to undertake the work which it purported to authorise. The court therefore granted the interlocutory injunction restraining them from continuing with the work.

London Building Acts (Amendment) Act 1939

PART VI: RIGHTS ETC. OF BUILDING AND ADJOINING OWNERS

RIGHTS ETC. OF OWNERS

46. Rights of owners of adjoining lands where junction line built on

(1) Where lands of different owners adjoin and at the line of junction the said lands are built on or a boundary wall being a party fence wall or the external wall of a building has been erected the building owner shall have the following rights:

(a) A right to make good underpin thicken or repair or demolish and rebuild a party structure or party fence wall in any case where such work is necessary on account of defect or want of repair of the party structure or party fence wall.

(k) A right to raise a party fence wall to raise and use as a party wall a fence wall or to demolish a party fence wall and rebuild it as a party fence wall or as a party wall.

47. Party structure notices

(3) A party structure notice shall not be effective unless the work to which the notice relates is begun within six months after the notice has been served and is prosecuted with due diligence.

DIFFERENCES BETWEEN OWNERS

55. Settlement of differences

Where a difference arises or is deemed to have arisen between a building owner and an adjoining owner in respect of any matter connected with any work to which this Part of this Act relates the following provisions shall have effect:

(a) Either:

(i) both parties shall concur in the appointment of one surveyor (in this section referred to as an "agreed surveyor"); or
(ii) each party shall appoint a surveyor and the two surveyors so appointed shall select a third surveyor (all of whom are in this section together referred to as "the three surveyors");

(h) All appointments and selections made under this section shall be in writing;

(i) The agreed surveyor or as the case may be the three surveyors or any two of them shall settle by award any matter which before the commencement of any work to which a notice under this Part of this Act relates or from time to time during the continuance of such work may be in dispute between the building owner and the adjoining owner;

(j) If no two of the three surveyors are in agreement the third surveyor selected in pursuance of this section shall make the award within 14 days after he is called upon to do so;

(k) The award may determine the right to execute and the time and manner of executing and work and generally any other matter arising out of or incidental to the difference;

(m) The award shall be conclusive and shall not except as provided by this section be questioned in any court;

(n) Either of the parties to the difference may within 14 days after the delivery of an award made under this section appeal to the county court against the award and the following provisions shall have effect:

(i) Subject as hereafter in this paragraph provided the county court may rescind the award or modify it in such manner and make such order as to costs as it thinks fit.

The case of Woodhouse v Consolidated Property Corporation Ltd (1993)
is an extract from:

The Party Wall Casebook

Paul Chynoweth
BSc, LLB, Solicitor

Foreword by
The Earl of Lytton

Blackwell
Publishing

ISBN 1-4051-0022-2

WOODHOUSE v CONSOLIDATED PROPERTY CORPORATION LTD (1993)

Court of Appeal

In brief

- **Issues:** 1939 Act – validity of surveyor's award – meaning of surveyors' jurisdiction to settle "any matter which … may be in dispute" – meaning of surveyors' power to determine "any other matter arising out of or incidental to the difference" – surveyors' authority to adjudicate on matters arising prior to their appointment.
- **Facts:** Consolidated Property commenced works to their building. They subsequently served a party structure notice on Woodhouse in respect of works which would affect the party wall between their two properties. Before surveyors could be appointed the party wall collapsed, causing damage to Woodhouse's property. Surveyors were subsequently appointed and the third surveyor made an award. This found that Consolidated were to blame for the collapse and required them to pay compensation for the damage.
- **Decision:** The third surveyor's award was invalid. The apparent breadth of the words in the Act had to be read in the context of the surveyors' primary role under the legislation. This was to adjudicate on the circumstances under which the building owner was entitled to undertake work under the Act. Surveyors had no authority to adjudicate on other disputes between the parties. The dispute about the collapse of the party wall had arisen prior to the surveyors' appointment and the surveyors therefore had no authority to settle it.
- **Notes:** (1) See also *Leadbetter v Marylebone Corporation [No.1]* (1904). (2) Some minor changes have been made to the wording of the relevant sections in the 1996 Act[1]. As the primary role of the appointed surveyors remains unchanged, it seems unlikely that this case would have been decided any differently if it had arisen under this Act.

The facts

Consolidated Property owned 68a Neal Street, London WC2. This was a former mission hall comprising ground floor, first floor and basement. The basement floor was some 2.3 metres below the external ground level

[1] Sections 10(10) and 10(12).

and the rear wall of the basement acted as a retaining wall for land owned by Woodhouse (Figure 30).

Woodhouse's property comprised a timber yard at 61 Endell Street. A timber storage shed on his land adjoined Consolidated's mission hall building. The shed consisted of three brick pillars which were in contact with the mission hall wall (a party wall) and two further brick pillars on its far side. The pillars supported a monopitch roof.

Consolidated planned to undertake extensive works to their property. These included the demolition and rebuilding of the upper sections of the party wall and the lowering of the basement floor. The excavation of the basement floor would also require the underpinning and reinforcing of the lower sections of the party wall so that it could continue to act as a retaining wall for the excavated basement.

Damage to adjoining property

In the autumn of 1990 Consolidated started their construction operations, including some work in the basement. In January 1991 they served a party structure notice on Woodhouse, under the 1939 Act, in respect of the work to the party wall. At the time they claimed that this had not yet started. However, before the 14-day notice period had expired, the party wall collapsed and seriously damaged the shed.

Once the notice period had expired, surveyors were appointed and a third surveyor was selected. The two surveyors failed to agree on the responsibility for the collapse and therefore referred the matter to the third surveyor. He made an award. This provided that the collapse had been caused by Consolidated's work and required them to pay for the damage to the shed.

Consolidated failed to pay this so Woodhouse issued proceedings against them in nuisance, trespass and negligence. He sought damages for the cost of rebuilding the shed, and for loss of profits caused by the damage to his property.

In interlocutory proceedings he later sought to rely on the third surveyor's finding of fact about the cause of the damage. He claimed that Consolidated were estopped from denying that they were responsible for this due to the statement to this effect in the third surveyor's award. The matter was referred to the Court of Appeal (together with a number of other issues which are not considered here).

Surveyors' jurisdiction

Consolidated submitted that the third surveyor had no jurisdiction to make the award concerning the damage to the shed. The basis for their

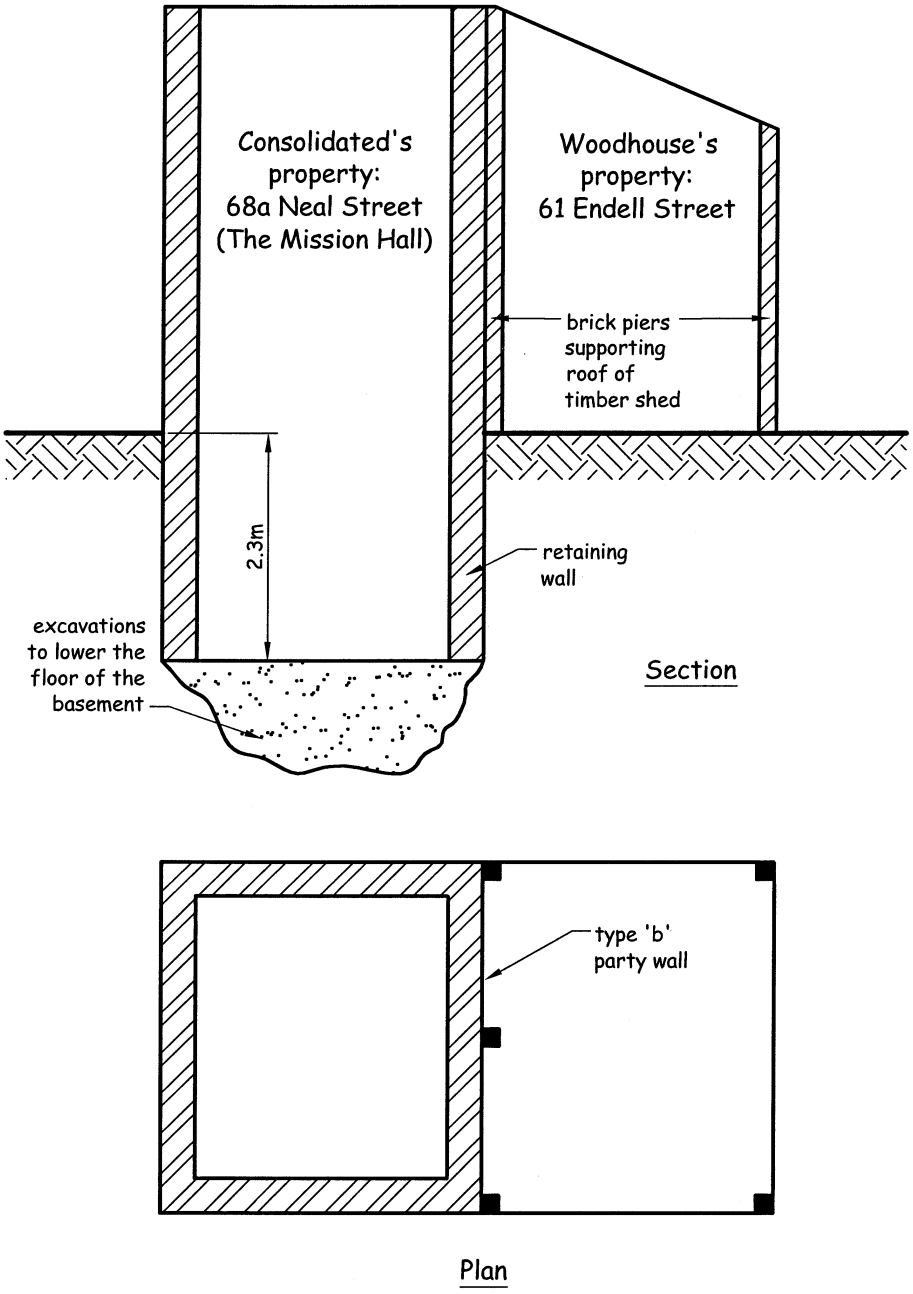

Figure 30: Woodhouse v Consolidated Property Corporation Ltd

submission is not set out in the published law report but presumably relied on the fact that the damage predated the appointment of the surveyors and was therefore an entirely different matter from the difference which was actually referred to them. If the surveyors had no authority then the award must be invalid. If the award was invalid then it could not estop Consolidated in any way.

The court considered the statutory basis for the surveyors' authority in section 55 of the Act. Although the words of subsection 55(i) (which defined the surveyors' jurisdiction) appeared quite wide, these should be read in their proper context. Subsection 55(k) (which defined the surveyors' powers) made it clear that their primary role was to determine the

London Building Acts (Amendment) Act 1939

PART VI: RIGHTS &c. OF BUILDING AND ADJOINING OWNERS

DIFFERENCES BETWEEN OWNERS

55. Settlement of differences

Where a difference arises or is deemed to have arisen between a building owner and an adjoining owner in respect of any matter connected with any work to which this Part of this Act relates the following provisions shall have effect:

(a) Either:

(i) both parties shall concur in the appointment of one surveyor (in this section referred to as an "agreed surveyor"; or

(ii) each party shall appoint a surveyor and the two surveyors so appointed shall select a third surveyor (all of whom are in this section together referred to as "the three surveyors").

(i) The agreed surveyor or as the case may be the three surveyors or any two of them shall settle by award any matter which before the commencement of any work to which a notice under this Part of this Act relates or from time to time during the continuance of such work may be in dispute between the building owner and the adjoining owner.

(k) The award may determine the right to execute and the time and manner of executing any work and generally any other matter arising out of or incidental to the difference

building owner's right to undertake the proposed work and the time and manner of its execution.

Their further power, in this subsection, to determine "any other matter arising out of or incidental to the difference" was concerned with further issues arising out of the terms on which the building owner was authorised to undertake the work. For example (although this was not expressly stated in the judgment) if work was authorised subject to the condition that damage to an adjoining owner's property be made good, the surveyors would also have power to adjudicate on this issue.

This was the limit of the surveyors' authority. Specifically, they did not have a general jurisdiction to determine other disputes between the parties which had not been referred to them under the Act. Glidewell LJ explained the court's decision in the following terms:

> Glidewell LJ: "Although section 55(i) requires the surveyor to settle by his award 'any matter which . . . from time to time during the continuance of such work may be in dispute . . .', this must, in my view, be read in its context. The context in particular includes the provisions of section 55(k), which commences: 'the award may determine the right to execute and the time and manner of executing any work . . .'
>
> In my judgment, the provisions of section 55 relate only to the resolution of differences between adjoining owners as to whether one of them shall be permitted under the Act to carry out works, the subject of a section 47 notice, and if so, the terms and conditions under which he is permitted to carry out such works.
>
> A matter which arises during the carrying out of the works, about which there is a dispute, must therefore be a matter which relates to the consent for the works to be carried out, e.g. whether the building owner is complying with a particular requirement in the consent.
>
> Section 55 does not permit or authorise the surveyor appointed under this part of the 1939 Act to determine other disputes arising between the parties. It follows, in my judgment, that under the 1939 Act [the third surveyor] had no jurisdiction to make the award which he purported to make. [The third surveyor's] award in this action is evidence, but no more."

The decision

The third surveyor's award addressed a dispute which was separate from the difference which had been referred to the surveyors under the Act. He had no jurisdiction to make the award, which was therefore invalid. His findings provided evidence about the cause of the damage but no more. Consolidated were not estopped from denying the truth of these findings.