Uncertain Boundaries in a Canterbury Rural Section of the 1850s

Helen M. Leach
Brent R. George

In the 21st century, sophisticated instruments in the hands of trained surveyors allow property owners to establish the precise boundaries of their blocks of land—that is, if they want to or need to. But despite the advent of the electronic theodolite or GPS, many occupiers still treat existing fence lines or hedges as the markers of their domain. Only when a surveyor is engaged is an error sometimes revealed. While we have all heard of examples of garages, sheds or fences built outside or across boundaries, errors don’t usually involve the construction of a house on land not owned by the freeholder. Yet in the case of the cottage at No.5 Sawmill Road, Robinson’s Bay, this is what may have occurred. This cottage is claimed by the Pavitt descendants as one of four homesteads built by the Pavitt family in Robinson’s Bay in the 1850s. Unfortunately it is located not on Rural Section [RS] 579 occupied by one or more Pavitts from about 1854 to 1874, but on the adjacent block, RS 1763, allocated to Richard Jackson Hughes in 1859 as payment for public works (Map 1).

Map 1: Robinson's Bay as shown by Google Earth with the original Rural Sections superimposed. In the mid-1850s the Pavitts purchased the block that would soon be numbered RS 579, and Michael le Fleming acquired RS 255. By January 1861 Thomas Jackson Hughes owned RS 1763 and 1764, and by 1862 he had added RS 1248 to his holdings.

On January 23, 1861 he sold this block, along with RS 1764, to his father Thomas Jackson Hughes, who established the second sawmill in Robinson’s Bay in 1860–1. Just how likely was a mistake of such magnitude that the cottage, now known as the Pavitt or Mill Cottage, was constructed 34.5 metres (at the closest point) beyond the Pavitt’s boundary? It wouldn’t happen today, but could it have occurred in the 1850s?
First we must review the evidence that the Pavitts built Mill Cottage. After the first Pavitt homestead burned to the ground on October 25, 1856, the family had to rebuild quickly in order to accommodate their growing numbers. In the electoral roll of October 12, 1857, three Pavitts were listed as householders: John (the father, listed as a farmer), Henry (timber merchant and farmer), and Francis (farmer). John’s wife, Elizabeth, and their unmarried children Alfred, Thomas, Edward, Augustus Reid, Elizabeth Ellen, and Spencer were presumably all members of John’s household. Henry had married Elizabeth Cuff in November 1855, and they had one daughter, Evelyn, born in 1856. Francis had married Elizabeth’s sister Annette Cuff in October 1855, and they had one son, Earnest, also born in 1856.

We know that when the Pavitts advertised their property in December 1860 (Lyttelton Times December 1, 1860) and in January 1861 in anticipation of the dissolution of the Pavitt Brothers partnership, they were in no doubt that the sawmill was on their land, in addition to three dwellings. The largest house was probably occupied by Frederick who had returned from England with his wife Mary Ann on December 22, 1857, and by John Pavitt’s dependents—this house, called Woodlands after the original homestead burnt in 1856, was described in 1865 as having ten rooms (Press April 19, 1865) and again in 1897 (Timaru Herald November 27, 1897). It was on the site where Henry Tizzard built the third Woodlands homestead about 1902 (currently on Diane Carson’s land, 2010) (Map 2).

Map 2: The Pavitt’s main homestead was known as Woodlands. After the first Woodlands was burnt, somewhere in the vicinity of their mill, the homestead was rebuilt in 1857 in the middle of RS 579, surviving to the early 1900s. Francis Pavitt built his house on the north-western corner of the block, while the dwelling known today as the Pavitt or Mill Cottage was erected just beyond the Pavitt’s north-eastern boundary.
A second dwelling mentioned in the 1860 advertisement was probably that of Francis and Annette. With later additions this survived to 1990, and it stood on the elevated northwest corner of RS 579 overlooking the bay (Mould 1991:19). The third dwelling was presumably that occupied by Henry and his family. Given that he was the partner listed in the electoral roll as timber merchant, it is reasonable to propose that he lived beside the mill in the mill cottage. Note that it is also known that Thomas Pavitt owned RS 958 from 1857 to 1862. This rectangular parcel of 20 acres adjoins RS 579 on the north-western side.

In the opinion of Jack Tregear, a descendant of Thomas Jackson Hughes, the Pavitt mill was further down the valley from the Sawmill Road location marked by the New Zealand Historic Places Trust notice board. He claims to have identified its diversion channel and water wheel foundation, on the section now owned by Stella Haylock (née Duxbury). To us, the channel looks more like an old section of riverbed, while the stonework on both sides of the stream appears to be the remains of a bridge foundation (Figure 1). Jack Tregear has suggested that Henry's cottage was built from white pine and the reason why it is not shown in the Williams' painting of Robinson's Bay c. 1870 is that it had rotted away. A life span of 13 years is excessively short, even for white pine. And why would a timber merchant allow his house to be built of such unsuitable material? Nevertheless Jack Tregear has posed a legitimate question: why would anyone build a house on land they did not own? The Pavitt descendants' response is that the Pavitt Brothers partners held a mistaken view about the position of their north-eastern boundary. It is our purpose here to assess the likelihood of such a drastic mistake in the 1850s and review some evidence that this occurred.

![Figure 1: Photograph of possible bridge foundations on both sides of Robinson's Bay stream, taken by Mary Browne on the original Duxbury block (access courtesy of Stella Haylock).](image-url)
The Pavitt's section was first owned by C. B. Robinson and W. W. Wood in 1842, but its serial number relates to the Rural Section scheme set up by the Canterbury Association in 1850 and subsequently operated by the Provincial Government on behalf of the Crown. The section number RS 579 may not have been applied to this block until late 1856 or 1857 (see Map 3, an enlargement from Edward Stanford’s map of 1856 showing the un-numbered Pavitt block, next to Michael Le Fleming's RS 255).

Map 3: Enlargement of Akaroa Harbour, showing Canterbury Association Rural Section numbers c.1855, from Edward Stanford’s map (1856). The full map can be viewed at http://www.nla.gov.au/apps/cdview?pi=nla.map-nk6701-sd

When the first four Canterbury Association ships arrived in December 1850, the passengers included intending land owners, or their agents, who on July 1, 1850 before leaving England had paid their deposits and drawn lots for the order of selection of town and rural sections, once the sites had been inspected. The Land Office opened its doors in Christchurch on February 17,
1851. Applicants were required to bring a letter marked on the outside with the number they had drawn, and containing

“as accurate a description as possible of the land applied for.... This description should, whenever possible, state the number of the nearest Trigonometrical Station, and the distance from it; the frontage fixed on, whether Road, River, &c., together with any other natural feature of the country, which may assist in accurately describing the boundaries of the land applied for.” (Lyttelton Times February 25, 1851, p.8)

The rules concerning frontage were of prime importance to the Wakefield emigration schemes, which prided themselves on promoting free trade, equality and justice for all. Given the economic benefits of owning frontage land, it was essential that no-one should be able to take land in “narrow stripes”, especially along roads, rivers or coastlines, “because speculators might at small expense acquire properties on the borders of other properties, with the effect of cutting off the holders... from a desirable extension of their land” (Wakefield 1849:41). Felix Wakefield wanted to see the minimum size of blocks set at 100 acres, and the sides of land with frontages extending at least 54 chains 78 links from the frontage, in other words with sides three times the width of the frontage. But the terms of purchase adopted by the Canterbury Association after September 1850 modified these requirements (Lyttelton Times February 22, 1851). They allowed a minimum rural section size of 50 acres, and required that “every allotment fronting upon a river, road, lake, lagoon, or coast, must be of a depth from the front of at least half a mile” (i.e. 40 chains). RS 579 satisfied this requirement with a depth of 42.5 chains.

Felix Wakefield hoped that proper surveying would take place before land allocation began. He did not mean what he termed “dividing and marking into sections”, but trigonometrical survey. In his experience, suffering and loss resulted “in the form of uncertainty and litigation about the boundaries of a property not accurately surveyed before appropriation” (Wakefield 1849:50). In relation to boundary pegs, he warned that “the greater part of those sectional marks are sure to be obliterated from the ground” and would have to be re-established every two or three years. But if a make-shift process had to be adopted then “all sections must have a distinct and indelible natural feature as a boundary” (Wakefield 1849:80). His warning was well-founded. As early as July 1851, as a result of removal or destruction of “many of the boundary marks and pegs of the Town and Country sections”, the Land Office was offering a reward of £5 for information leading to the conviction of “parties removing, obliterating, or destroying Trigonometrical Stations, Boundary Pegs of Sections, or any other marks connected with the surveys” (Lyttelton Times July 26, 1851, p.1).

When the first 50 purchasers presented their applications to the Land Office on February 17, 1851, four surveyors were in attendance to assist purchasers with the accurate description of their sections. As explained later by the Lyttelton Times, “The descriptions are, we understand, those given by the Surveyors, at
the time the choices were made; when the land is measured out to each individual, this description is to be adhered to as closely as possible” (Lyttelton Times March 1, 1851, p.6). The surveyors, Messrs Cass, Torlesse, Jollie and Boys had already carried out the survey “of that part of the country which is open to selection”. Town sections presented no problem because they were already numbered on the chief surveyor's map. It was expected that there would be difficulty describing “tracts of land in a wild unoccupied country”. However, the newspaper continued,

“The frontage of a road or river, the distance from the neighbouring town lands, or from the nearest trigonometrical Station, served, in almost all cases, to fix the locality of a section. The number of chains frontage, and the lengths of the other sides of the section, according to the terms of purchase, were soon calculated and marked off by the surveyors, determining the form and dimensions of the block.” (Lyttelton Times February 22, 1851, p.5)

We should note that the calculations as to the lengths of the sides, as distinct from the frontage, were performed not on the ground, but on the chief surveyor's map on the table in the Christchurch Land Office.

From March 1 to May 3, 1851, the Lyttelton Times published extracts from the official list of rural sections chosen, covering RS 1–157. Of the 157 rural sections described, those around the edges of the town of Christchurch were mostly tied to numbered trig stations (Nos. 1, 3, 4, 6C, 9, 10, 11, 12, and 14 are mentioned), or to roads, or the town boundaries of Lyttelton or Christchurch. As more and more selections were made, the descriptions referred to other sections previously selected. As an example, the Rev. E. H. Kittoe (an English clergyman who never emigrated, and whose sister was married to Henry Sewell, his likely agent) procured the following:

“No. 27. Rev. E. H. Kittoe. 100 acres in the Christchurch district, commencing at half a chain along the Lyttelton and Christchurch road, north-west of Section 15; frontage on the said road 35 chains, back in north-east direction 40 chains, south-east 25 chains, and back to starting point 40 chains, and numbered 27 on the chief surveyor's map.” (Lyttelton Times March 8, 1851)

The accuracy of its boundaries depended on those of Section 15 (Lord Wharncliffe’s 100 acres), which in turn were tied to trigonometrical station No. 14 and the surveyed road round the Heathcote estuary.

The township of Akaroa was surveyed by Cass and Hewlings in 1851 (Ogilvie 2007:35). The rural sections selected around Akaroa Harbour (Map 3), however, were far less securely described than those closer to Christchurch. The first to be listed was

“No. 61. Daniel Watkins. 50 acres in Akaroa Harbour, on the French Creek; frontage on the harbour, and numbered 61 on the chief surveyor's map.” (Lyttelton Times March 22, 1851)
This lack of detail similarly afflicted the description of another harbour-front section:

“No. 63. T. Rowley, Jun.  50 acres in the harbour of Akaroa, in a bay marked ‘Kai’ on the French chart; sea frontage, and numbered 63 on the chief surveyor’s map.” (Lyttelton Times March 22, 1851)

The bay now known as Duvauchelles was marked ‘Kaitouna’ on Commander Owen Stanley’s map of the Akaroa Harbour in 1840 (Auckland City Libraries Maps Online 5646). However Ogilvie (2007:183) locates Rowley’s section in Barry’s Bay.

In French Farm, the first selection was

“No. 100. J. Dicken.  100 acres in the harbour of Akaroa, the part commonly known as the French farm, sea frontage, and numbered 100 on the chief surveyor’s map.” (Lyttelton Times March 29, 1851)

Sections in Port Levy, Decanter Bay, and the Oxford district were equally vague in description. As each was selected it was marked on the chief surveyor’s map, but in the absence of local fixed reference points, it is a valid question to ask how each purchaser was to identify his boundaries on the ground.

Rural Section 579 was allocated retrospectively to Charles Barrington Robinson and William Watkins Wood. According to Ogilvie (2007:167), the original section of land had been purchased by these two men from the Nanto-Bordelaise Company in June 1842. Wood sold his share to Robinson on June 5, 1854, who subsequently sold the property to the Pavitt Brothers. The Pavitts had their mill running by February 1855, judging from the comment by Henry Sewell in his journal that “a man and his seven sons, stalwart youths are earning according to their own account £100 per Month”. On February 26, 1855 Sewell reported that he had “Walked to Robinson’s Bay to look over the Saw Mills I mentioned” (McIntyre 1980 II:132). At this time the term ‘mill’ was applied to the saws as well as the site; so one mill building might house more than one mill. In 1860 Hughes purchased two mills in Otago and installed them on the mill site in Robinson’s Bay.

An early description of what was later numbered RS 579 was prepared for the Land Order allocation to Robinson and Wood (January 5, 1854). It was repeated in several subsequent legal documents, such as that dated April 20, 1856:

“situate and being in Robinsons Bay on the north east side of the Harbour of Akaroa in Banks Peninsula and Province of Canterbury in New Zealand the boundaries whereof commence at a point seven and a half chains from the north west side of the main Stream and running southward along the road reserved (100 feet in width) from High Water Mark for a distance of twenty four chains and fifty links bounded on the South-Eastern side by a line bearing N21°30’E and forty two chains fifty links in length and on the North-Eastern by a
line drawn at right angles to the South-East boundary and twenty-four chains in length. The North-Western and South-Eastern boundaries being parallel containing one hundred acres…”

The Crown Grant diagram depicting the RS 579 parcel is recorded in the Deeds Index Records (3D/132 Record 824) and is shown as Map 4 following. The record is dated 20 April 1856 – a delayed recording within the Deeds Record book of the Crown Grant transaction.

Map 4: Crown Grant diagram of RS 579 – Crown to Robinson/Wood (Deeds Index 3D/132 Record 824)

While the wording of this description is more detailed than that of Dicken’s, in that it set out the lengths of two of the straight sides (north-east, and south-east), this rural section was not fixed to any permanent feature of the landscape, any more than Dicken’s. Nor was it linked to any surveying station whose latitude and longitude had been astronomically determined (Byrnes 2001:34). Streams change their courses, as is obvious from the plan of RS 579—what the description referred to as the “main Stream” is now a wetland and the main stream today flows into the bay at least 18 chains (362 metres) from RS 579’s starting point. Beaches can change as dramatically, especially if a large quantity of sediment is brought down from a valley undergoing deforestation. Whereas today’s beach sediments are predominantly mud and sand, a photo of Robinson’s Bay taken by the Burton Brothers (late 1860s?) shows a rocky substrate.¹ Without a geomorphological assessment of the

foreshore area it would be difficult to say where the High Water Mark was in the mid-1850s. A further obstacle apparent on the plan that accompanies the description is that the boundary on the sea frontage was not a straight line and so its given length may not correspond to the actual boundary as measured on the ground.

From the viewpoint of the Pavitts who purchased RS 579 from Robinson, there would have been no way of re-determining on site the exact corners of the section if the original pegs were missing. Given that the block had been established in 1842, the chance that any pegs had survived along the irregular foreshore boundary would be low. These pegs defined the frontage, and the crucial north-eastern boundary of RS 579 was positioned 42 chains 50 links from the southern corner of this frontage. Any mistake in locating the southern corner would affect the inland boundary and ultimately the milling activities that took place near it, including the construction of the mill cottage.

We have shown that section descriptions and the accompanying plans were drawn up in the Land Office. It was the intention of the Provincial Government that as soon as possible after payment

“the land shall be laid off by a Surveyor appointed by the Government as nearly as may be in accordance with the description set forth in the application. But should the section when laid off by the Surveyor prove to differ in any respect from that described in the application, the Government will not, under any circumstances, be responsible for any loss or inconvenience which the purchaser may experience, nor will the purchase money be returned.” (Lyttelton Times March 4, 1854)

There is no evidence that Robinson’s block was laid off by a surveyor before the Crown Grant was issued, belatedly, in 1856. Nor was it surveyed for the Pavitt purchase (recorded in October 1856), since the wording of the section description in the conveyance document is nearly the same. However, the starting point in the purchase document is stated to be 7½ chains from the northwest side “of the stream there”, not 7½ chains from “the main stream”. The Pavitt’s understanding of the location of their inner boundary was probably based on Robinson’s assurances alone. We need to remember that when the documents were drawn up in 1856 the Pavitt’s mill had been running for about two years. The degree of disturbance created by milling and pioneering farming was more than enough to obliterate any boundary markers surviving from Robinson’s period of ownership—if indeed any were placed. In the 1850s Canterbury had few surveyors and most of those were engaged on government work. When the Provincial Council examined Cass on the state of the surveys on April 27, 1855, he observed that Banks Peninsula was one of the areas of Canterbury where lands could be selected from the maps, but he estimated that laying out groups of sections on the Peninsula before sale (as in the case of Christchurch town) would cost 1/10d per acre compared to 10d per acre on the Plains (Lyttelton Times May 5, 1855). After spending the summer of 1857–1858 surveying road lines on Banks Peninsula, Richard Harman told
the Lyttelton Times (January 23, 1858) that he believed that the opening of roads would cause extensive applications for both timber licences and land. Since the bridle track from Akaroa Harbour to Okain’s Bay ran up the side of Robinson’s Bay, it is likely that the first surveyor to take out his theodolite on RS 579 did so as part of this roading objective.

A land transaction dated to July 12, 1858 in which the Pavitt Brothers dedicated a road reserve across the northern corner of RS 579, a total area of 2 acres, is recorded in the Deeds Index Records (11D/749 Record 4807) (Map 2). This would have joined the Okain’s Bay track and the bridle track that ran along the hillside on the northwestern side of the Pavitt’s block. However no road appears to have been made along this reserve, probably because of the steep terrain. Even if this road reserve had been subject to a survey in 1858, there would have been no reason to resurvey the entire rural section.

There is, however, direct evidence of the definition of a much more substantial road reserve conducted in 1861. When Thomas Jackson Hughes brought his two sawmills (i.e. the machinery) to Robinson’s Bay in late April, 1860, he expected the Provincial Government to provide road access from the sawmill site to the beach. Hughes’ mills began work on May 21, 1861 and he began a long and frustrating campaign to have a public road created through the Pavitt block. At first the Pavitts refused to sell a corridor of their land for road—it did not help that they were approached by Hughes himself, acting on behalf of the Provincial Government. Then the Pavitts named a price for the road reserve that was so high that it required the approving authority of the Provincial Council. However on October 2, 1861, Hughes reported that “Mr Townsend has cut a line through” the Pavitt’s land, though he criticized the route selected. Townsend was a surveyor working for the Provincial Government and his survey was conducted between January (when the Pavitts were advertising their property for sale) and October 1861 (when Hughes reported to Maude, the Provincial Secretary).

The roadway is described in the Deed of Conveyance (16D/111 Record 6007), dated 22 January 1862, as

“commencing at a point on the south west boundary of the said section [RS 579] 16 links from the north west corner thereof and extending thence north east in a curved line a distance of 46 chains 50 links to a point on the north east boundary of the said section 5 chains 10 links from the north east corner thereof thence south east along the set north east boundary 1 chain”.

This description of the roadway is fully defined and depicted on a later survey plan A8198 being a plan depicting Part RS 579 for Canterbury College in February 1898, bringing the land under the provisions of the Land Transfer Act 1885. This plan by George McIntyre is therefore the first full survey definition of the RS 579 parcel, and it demarcates all road and peripheral boundaries of the section.
Note that the roadway length was recorded in the 1862 Deeds record as being 46 chains and 50 links in length, whereas the surveyed plan A8198 lays out and pegs the roadway with a total boundary dimension of 44 chains 25 links—a difference of 225 links or 45.3 metres. The 1862 Deed dimension would seemingly place the north-eastern boundary of RS 579 further up the valley (Map 5).

Map 5: When Townsend was surveying the public road reserve in early 1861, his total road length measurement of 46.5 chains (extent marked by the pink line) suggests that he was under the impression that the Pavitt block included the Pavitt Cottage.

A potential explanation for the extended Deed record measurement is that Townsend had measured the distance of the required roadway using the occupation on the land at the time. In other words, he measured the extent of the proposed road alignment from the existing coastal road up to the Pavitts mill site to a point judged to be the Pavitt boundary by the evidence of the improvements they had made. If Townsend had cut his lines before the Hughes family moved to Robinson’s Bay at the end of March 1861, he would only have received the Pavitt’s version of their boundaries. Unfortunately no details of Townsend’s road survey have been located in the historical field books or plan records. It is likely that his survey of the roadway was completed and recorded as a diagram within the deeds records (as so described), and it was not until later that the roadline was recorded on the survey plan by McIntyre in 1898.

Based on these historical facts, the presumed discrepancy with the RS 579 boundary location may well have been discovered early in 1861, and may have been responsible for the withdrawal of the sale notice in the Lyttelton Times.
after January 16, 1861. On top of the death of Henry Pavitt less than a year before, and the locking up of land around their block by competitors, the Pavitts had suffered a significant set-back. The subsequent treatment of Hughes, which took the form of high charges for all loads of timber transported through the Pavitt block, may be interpreted as an attempt to recoup some of their losses.

REFERENCES


Wakefield, Felix 1849 Colonial Surveying with a View to the Disposal of Waste Land. London: John W. Parker

DOCUMENT DATE: 10 November 2010