Looking at Dunlop, why it is wrong, and why private roads set out in Inclosure Awards are multi-user routes set out by legal event

Our workshop on white roads briefly discussed this issue, and I go in to further detail :

I travelled to London today by train, which has been privatised, not private use but private owned.

Section 232 of 1980 Highway Act says *"to be a private street, and thereupon the land is to be deemed to have been dedicated to the use of the public as a highway and to be a private street"*, clearly not private use, but as used throughout the act, private maintained.

Inclosure Awards are predominately pre 1835, when legislation limited public maintenance to roads leading to Market Towns, only extended to all highways in the 1835 Highway Act, so Inclosure Awards distinguish between those parish was liable to publicly maintain, i.e., those whose maintenance could be enforced, and those that that it may be maintaining there being no one else to do so, but whose maintenance could not be enforced, using the word public and private as used today in 1980 Highway Act.

Some awards say "Private road and public footpath", with examination of before and after maps showing this was when a private maintained highway was set out over a public right of use path.

Some awards say "Private road for the use and benefit of named individuals." This does not change the meaning of private maintained road to private use, but identifies those who have the power to enforce maintenance. Reference *The King against J. Richards and Five Others*, *1800*, where a private road was out of repair. The road was used by all persons willing to pass and repass at their free will and pleasure, but the case failed as it was not brought by those for whose use and benefit the road was for, and this case may have well have influenced the drafting of awards made after 1800. However the fact remains that private roads were set out and made, with the public entitled to use and enjoy, but without having any power under the Inclosure Act to enforce their repair.

It was not until section LXVIII of the 1845 Inclosure Act empowered the setting out of occupation roads, that power was made available to set out private use roads.

So looking at Dunlop v The Secretary of State for the Environment and Cambridgeshire County Council in March 1995 we find that the Secretary of State reasoned that the meaning of private road was for private carriages, as in our Royal Parks, or of low status, as a private in the armed forces, or some other unknown meaning, with this meaning creating a nominal difference between public and private without a legal difference so consequently the Secretary of State failed, yet had it been reasoned that the meaning is private maintained as used today in 1980 Highway Act with whether or not maintenance could be enforced being a significant legal difference one could have expected the Secretary of State to have won.

With these roads being multi-user routes set out by legal event I submit that it is time that this case be reviewed.

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