

# New Boundaries: Baron Lionel, photography and the United Kingdom Electric Telegraph Company<sup>1</sup>

Anthony Hamber finds a surprising Rothschild place in the history of photography



'A post under the railway bridge at Acton' (BL8753.dd.10: photo 'No.1')

At the Buckinghamshire Lent Assizes held in Aylesbury in 1861, a court case brought by Baron Lionel Nathan de Rothschild (1808–79) against the United Kingdom Electric Telegraph Company (UKETC) and the Commissioners of the Metropolis Turnpike Roads north of the Thames was heard. The Bill of Complaint was filed on 25th May, 1861. The charge against the UKETC was the nuisance and obstruction being caused by the company's erection of telegraph poles along the verge of the public highway. In addition the Commissioners of the Metropolis Turnpike Roads north of the Thames were accused of exceeding their powers in giving permission to the UKETC to carry out this work, whereas in fact the commissioners should have been acting to stop the nuisance and obstruction. The 'true Bill' for this case was found in December 1861 and it thus went to trial at Aylesbury Crown Court in Spring 1862.

This case was to be significant in a number of respects. Firstly the case and its judgement formed an important piece of case law that is still actively cited today<sup>2</sup>, and, secondly, it included one of the earliest uses of photography as a piece of evidence. *Halsbury's Laws of England*, quotes this case of Regina v United Kingdom Electric Telegraph Company in 1862 as the earliest date for



**'A post under  
the railway  
bridge at Acton'  
(BL8753.dd.10:  
photo 'B')**

the use of photographs being 'admissible to prove ... the configuration of land as it existed at a particular moment'<sup>3</sup> However, the case report for this does not give an indication that the use of photographs was in any way out of the ordinary.<sup>4</sup> This article examines the context of the case and the album of photographs now in the British Library that accompanied it and highlights an intersection between a number of business and personal interests of the Rothschilds.

The British Library holds a single bound volume containing two 'sets' of Albumen print photographs together with a copy of the printed Bill of Complaint. The contents of this volume were presented to the Library and accessioned in 1863, a year after the case had been tried at Aylesbury Crown Court. Unfortunately, the Library's records do not mention the source of this acquisition.<sup>5</sup> However, the top right hand corner of the first fly page to the volume has an ink stamp of Wilson, Bristows & Carpmael and it would seem that this firm of solicitors, which acted on behalf of Lionel de Rothschild in this case, donated the volume. Research carried out in the surviving Bristows archive gives no further clues to its origins.<sup>6</sup>

The contemporary accounts of the court case are significant since Lionel de Rothschild does not seem to have been alone in using photography. Foster & Finlason *Nisi Prius Reports 1858-1867* states that "Photographic views of all the posts complained of were produced by both sides, and referred to by the Court and jury, in explanation of the evidence on the examination and cross-examination of the witnesses for the prosecution." Evidence was taken from a number of workmen who had erected the posts and a surveyor who was perhaps recorded in a number of Rothschild's photographs.<sup>7</sup> This information, coupled with an examination of the photographs, has enabled the two separate sets used by the protagonists to be identified. It reveals a significant degree of sophistication in the manner in which photography was exploited to prove or disprove the claims of Lionel de Rothschild.

There are fifty-five Albumen prints sequentially numbered '1' to '55' each pasted to individual sheets of card with printed sequential numbers and captions.<sup>8</sup> Each image measures around 29.2 cm high and 22.9 cm wide. Together they cover a route from Acton, on the western

edge of London, to Long Itchington, five miles east of Royal Leamington Spa in Warwickshire, and cover a distance of around 135 miles. These are the photographs used by the plaintiff, Lionel de Rothschild.

There is a further set of twenty-four Albumen prints, with hand-written lettering A to X and accompanying manuscript captions. These images, measuring approximately 17.7cm high by 20.3 cm wide, are pasted to individual sheets of card, and have handwritten labels. This set of images covers the same route, though it starts in Shepherds Bush, West London and ends at the Harp Inn near Southam. This is the set of photographs used by the defence, the UKETC.

A number of the photographs in the Rothschild set are annotated on the mount in red pencil with the letter of the corresponding UKETC image of the same location. This may have been to aid Rothschild's barristers in preparation for the case and in court itself. Some additional annotations seem to indicate that a post or prop has been removed, perhaps between the photographs being taken and the case being heard in court. However these annotations are difficult to decipher.

The creation of these sets of photographs was a sizeable photographic commission and required a not inconsiderable piece of organisation to travel along many miles of public highways documenting appropriate views to prove or disprove the legal point regarding the 'public nuisance' caused by the alleged obstruction by telegraph poles. One may presume that the photographers documented the then current state of the UKETC's telegraph and that by the time the case was heard in court changes may have occurred. Whether more photographs were taken but not used as part of the legal evidence has yet to be deduced. Both sets of photographs are anonymous and ultimately the search to identify the photographers may prove to be a fruitless task. A photograph album in The Rothschild Archive linked to Charlotte de Rothschild (1819-1884), Lionel's German first cousin whom he married in 1836, includes five photographs of the Rothschild house at Gunnersbury.<sup>9</sup> One exterior view in the album, of the Orangery at Gunnersbury, probably dating to around 1860, has an enigmatic detail of the head and shoulders portrait of a man. The image has an annotation 'O.G. Rejlander and his head on a tree'. This man is allegedly the photographer Oscar Rejlander (1817-1875). To date there is no evidence that Rejlander took the photographs of Gunnersbury in this Rothschild album. However, if he did, and these images date to around 1861, then there is a possible – but yet to be substantiated - link to the photographs used by Lionel de Rothschild in the court case against the UKETC.

Of more significance is the fact that the two photographers frequently documented the very same site but – as will be discussed below - in different styles that would aid their clients' cause.

The origins of this case lie both in the great threat that telegraph technology was seen to pose to the Rothschild business and a more personal dimension. During the 1850s, following the 1851 United Kingdom Electric Telegraph Company's Act, Baron James de Rothschild (1792-1868) persistently stated that the telegraph was 'ruining our business'. As Niall Ferguson has pointed out 'it made it much easier to do what the Rothschilds had managed so ingeniously before, namely to conduct financial business between affiliated house over long distances.'<sup>10</sup>

The UKETC was proposed in 1850 by Thomas Allam. though it did not become operational until 1860 when the necessary capital had been raised. The company was formed with the expressed intention of developing telegraph communication in Britain over public highways and it came to an agreement with the Grand Junction and other canal companies to use their towpaths for its telegraph lines. The core of its network was to be a telegraph between London, Birmingham,



'Posts, with men at work, in Banbury' (BL8753.dd.10: photo 'No.39')

and Liverpool. The company went fully operational in 1863.<sup>11</sup> The UKETC posed a specific threat to the Rothschild business since it was also the first telegraph company to introduce a fixed uniform charging rate over major trunk routes and in November 1861 announced that it would charge a fixed rate of 1s. for up to twenty words transmitted.<sup>12</sup> This simplified charging structure was popular with business users and was to be extensively used by banking interests in the City but it required that UKETC costs were kept low. The legal action taken by Lionel de Rothschild highlighted the attempts of the UKETC to reduce significantly its costs in constructing the telegraph network, digging trenches and laying cables being far more expensive to install and maintain than over-ground telegraph poles.

Lionel de Rothschild's claim was that the works being carried out by UKETC were extensive and would affect hundreds of miles of public roads, with the likelihood of permanent nuisance and obstruction in their construction and maintenance, and permanent effects upon the rights of users and owners. In November 1860 the UKETC had attempted to bring a bill to Parliament to confirm its powers to use telegraph poles rather than lay telegraph wires in trenches, but this failed.<sup>13</sup> The Bill of Complaint paints a picture of the contractors working so fast that it had been difficult to prevent their actions. The contractors had been aggressive and threatened violence against those attempting to prevent the works. Thus, due to the 'supineness, connivance or indifference' of the Commissioners of the Metropolis Turnpike Roads north of the Thames, Rothschild, as the plaintiff, had had to go to court.<sup>14</sup>

However, Lionel de Rothschild had another specific personal reason for taking offence at the UKETC building a telegraph line on the verge of the road from Acton since it passed along the Uxbridge Road across the frontage of his property at Gunnersbury and had caused considerable annoyance and disruption.

The application of photography within legal cases relating to land boundary disputes dates to the very earliest years of the medium's existence, and this includes important international border disputes. Edward Anthony (1818-1888) a civil engineer turned photographer opened his Daguerreotype gallery in New York in 1842. He was employed by Professor James Renwick (1790-1863) of Columbia, New York to accompany him on a US Government mission to survey the northeast boundary of the United States with Canada. In 1838 Renwick had been appointed by the United States government as one of the commissioners for the exploration of the northeast boundary-line between the United States and New Brunswick. The specific area documented by Anthony was the border between the state of Maine and Canada. The Daguerreotypes taken by Anthony were submitted to the joint boundary commission of the US and British governments led by Secretary of State Daniel Webster (1782-1852) and the British Foreign Secretary Alexander Baring, 1st Baron Ashburton (1774-1848) and the photographic images are reported to have influenced the final decision that led to the signing of the Webster-Ashburton Treaty on 9th August 1842.<sup>15</sup>

A British precursor of the case brought by Rothschild can be found in the prosecution of the Pendleton Alum Works in Salford, on the western suburbs of Manchester in Lancashire. The owner of this factory, Peter Spence, had been brought to court on the charge of 'conducting an unacceptable nuisance at Pendleton'. Spence manufactured alum for the printing and dyeing industries but the factory had been emitting toxic waste products such as hydrogen sulphide and sulphuric acid. In the summer of 1857, the Manchester photographers James Mudd (1821-1906) and his brother Robert were commissioned to take eleven photographs as evidence for the Pendleton Alum Works indictment. A number of these photographs are dated 28th and 29th July 1857 though there are no records as to who actually commissioned them. The case was heard in the Summer Assizes of the Northern Circuit in Liverpool and commenced in August 1857. Although the court was certainly using a model as part of the evidence submitted, there is no indication of how the photographs were used.

The Mudd photographs, now in the Salford Local History Library, vividly show the stark outline of trees stripped of their foliage. A number of emotive images show the effects of the pollution in the foreground while the chimneys of the Alum works lurk in the background. The jury returned a verdict of guilty on the charge of the Pendleton Alum Works causing a nuisance, but declared as not proven the charge that the nuisance was injurious to health. The Pendleton works were closed down, and the business removed to Newton Heath, about half way between Manchester and Oldham.<sup>16</sup>

As pointed out above, the origins of Lionel de Rothschild's legal action probably lie in the fact that the UKETC, formed in July 1860, had constructed a new telegraph line along the boundary and across the entrance to the Rothschild residence on the Uxbridge Road in Gunnersbury. This was part of the UKETC project to establish an electric telegraph between London, Birmingham, Liverpool and other parts of its network. Nathan Mayer Rothschild (1777-1836) had acquired the Gunnersbury estate and its Regency mansion in 1835 as the Rothschilds' first country house and the family bought adjoining land in the 1840s and again in the 1860s. Gunnersbury was used as a venue for the Rothschilds' lavish entertaining and was to become the first Rothschild garden of significance in England and one of the most prominent in its day.



James Mudd. View  
of Pendleton Alum  
Works, July 1857  
(Salford Local  
History Library)

The Bill of Complaint stated that the UKETC had been digging a trench in front of Lionel de Rothschild's fence, and this soil belonged to him, although it was under the care and management of the Commissioners of the Metropolis Turnpike Roads north of the Thames. Trenches had gone under access roads to Lionel de Rothschild's property, rendering them dangerous and inconvenient and, for carriages, impassable. Furthermore, when the works were completed it would make it impossible for any new access roads to be built to the Rothschild property.<sup>17</sup>

The photographs used by the defence included a view – image 'C' – of the entrance to the Gunnersbury estate. The caption reads 'A part of Baron Rothschild's property at Acton which fronts the Uxbridge Road shewing the strip of land next to the palings under which the wires of the Electric Telegraph Company are fixed.' This image shows that the UKETC put the telegraph wires in a trench along the verge between the fence of Gunnersbury Park and the public highway. This was presumably to show that there was 'no obstruction' by telegraph poles on the land adjoining the front of Lionel de Rothschild's property. However, this ploy – perhaps undertaken once Lionel de Rothschild had made his initial complaint – had not prevented the court case and it may be significant that there is no Rothschild photograph of the damage to the access roads to his Gunnersbury estate.

Other photographs are also revealing. The photographer employed on behalf of Lionel de Rothschild adopted a photographic style that underlined the 'obstructive' nature of the telegraph poles. Frequently the shots are closely cropped so that a telegraph pole dominates the foreground. Conversely, the photographer for the UKETC took views with a wider perspective at an angle that tended to 'flatten' the telegraph poles against the background of the scene and thereby make them less obtrusive. A comparison of photographs 'B' and 'No.1' of the railway bridge at Acton (see p46) is a particularly stark example. In a number of instances the Rothschild photographer placed a figure or figures in direct juxtaposition with a telegraph pole to show the level of obstruction. In some instances the UKETC photographer took views that showed a figure walking 'unobstructed' along pathways beside the highway. A number of images are less explicit, such as the Rothschild image

'A post in the middle of the footpath just beyond Uxbridge' (BL8753.dd.10: photo 'No.9')



'No.39' that is captioned 'Posts, with men at work, in Banbury' and shows a group of children gathered around the workmen installing the telegraph poles (see p51). This image reveals that the photographer had to make long camera exposures, because a number of children are blurred – having moved during the taking of the photograph. While it would have been quite possible for the photographer to have captured the children with a much shorter camera exposure the probable reason was that in order to give a sufficient depth of focus to the scene depicted the lens was closed down to its smallest aperture and that necessitated the long exposure times.

'A part of Baron Rothschild's property at Acton which fronts the Uxbridge Road showing the strip of land next to the palings under which the wires of The Electric Telegraph Company are fixed' (BL8735.dd.10: photo 'C')



The key to the conclusion of this case emanates from the decision of the judge at Aylesbury Crown Court to direct the jury on a point of law, namely that if telegraph posts were within the fences of a road they constituted an obstruction whether they were on metalled road or grass verge or anywhere. This would make all defence on position of the post irrelevant. Counsel for the company took this point of law to the court of the Queens Bench as he could not therefore win at Aylesbury but the Queens Bench upheld the Judge's ruling. The UKETC had lost the case, a significant one for UK case law since the 'hedge to hedge' presumption at the heart of this case has been much discussed and quoted in subsequent roadway disputes. As attested by the case heard by Wiltshire County Council in 2001 'From the middle of the 19th century, there is a

consistent line of cases where the Courts hold that there is a presumption that a fence near to the highway has been erected by reference to the highway and that unless the presumption can be rebutted, everything between the fences, however irregular in width the verges are, is part of the highway. Most of these cases look back to *Regina v United Kingdom Electric Telegraph Company Limited*, heard at Buckinghamshire Lent Assizes in 1861.<sup>18</sup> Lionel de Rothschild won his case against the UKETC and in so doing scored a victory against a threat to his commercial and private interests. Nevertheless, the Rothschild business subsequently adopted and adapted the use of telegraphy to further its cause. In both respects, new boundaries had been set.

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Baron Lionel de Rothschild (1808-1879), probably from a photograph

#### NOTES

1. I thank Melanie Aspey and Caroline Shaw of The Rothschild Archive, John Falconer of the British Library and Diana Connolly of Findtech for their help with the research into this 'album' of photographs in the British Library (BL shelfmark 8753.dd.10.).
2. The origins of this article are to be found in a search of the online British Library Public Catalogue and a subsequent search by the author of the Web that located *Burbage: Footpath 3 - objections to modification order, Wiltshire County Council, Environmental Services Sub-Committee, 5th September, 2001 Agenda Item No.14*. a case that cites *R. v United Kingdom Electric Telegraph Company* as well known case law.
3. *Halsbury's Laws of England, Volume 17*
4. I thank Roger Taylor for pointing out this case to me and Jenny Wetton of the Museum of Science & Industry in Manchester for pointing out this reference in Halsbury's and sharing her research findings in an unpublished writing on James Mudd.
5. BL shelfmark 8753.dd.10.accessioned '9MA 63'.
6. Diana Connolly of Findtech kindly examined the Bristow archives but found no records relating to this case.
7. Foster & Finlason Nisi Prius Reports 1858-1867 3 F & F 73
8. A full list of the images is available for inspection at The Rothschild Archive.
9. Rothschild Archive, 000/924. The album contains the bookplate of Leopold de Rothschild, son of Charlotte and Lionel de Rothschild.
10. Niall Ferguson, *The World's Banker: The History of the House of Rothschild*, Weidenfeld & Nicholson, London 1998 pp.573-574.
11. K. Beauchamp, *History of Telegraphy*, The Institution of Electrical Engineers, London, 2001 pp.78-79 and p.74. When the telegraph companies were nationalised to produce the Post Office in 1868 (Telegraph Acts (Great Britain) 1868-69) the UKETC was the third largest telegraph company in Great Britain.
12. *The Times*, Tuesday 19th November, 1861 p.7.
13. Bill of Complaint para 27 p.12 cites the details put before Parliament on 12th November 1860 in which it is stated that the UKETC would be given permission to 'erect, lay down, and maintain upon, over or under any street, road, or other highway, land, house or other building, posts, wires, pipes and other apparatus for the support and conveyance of telegraph wires.'
14. Bill of Complaint para 42 p.17.
15. Robert Taft, *Photography and the American Scene. A Social History, 1839-1889*, Macmillan Publishing, New York, 1938 p.52. I thank Alex Sweetman for pointing out this reference to me.
16. I thank Roger Taylor for pointing out this case to me.
17. Bill of Complaint, Para 19 p.9
18. opt cit., note 2