Neutral Citation Number: [2023] EWHC 598 (Ch)

Case No: PT-2021-BRS-000054
Case No: PT-2021-BRS-000059
Case No: PT-2021-BRS-000060

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 27 March 2023

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

MAURICE EDWARD HENWOOD — **Claimant**

- and –

(1) PETER THOMAS GALTON COPELAND
(2) JANET THORNHILL COPELAND — **Defendants to claim 000054**

- and –

(1) ALAN MICHAEL MOORE MCGAW
(2) SUSAN JANET MCGAW
Defendants to claims 000059 and 000060

- -

Simon Williams (instructed by **Direct Access**) for the **Claimant**
Jay Jagasia (instructed by **Ashfords LLP**) for the **Defendants**

Hearing dates: 18 – 26 October 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

……

This judgment will be handed down by the Judge remotely by circulation to the parties or representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 12 noon on 27 March 2023

HHJ Paul Matthews :

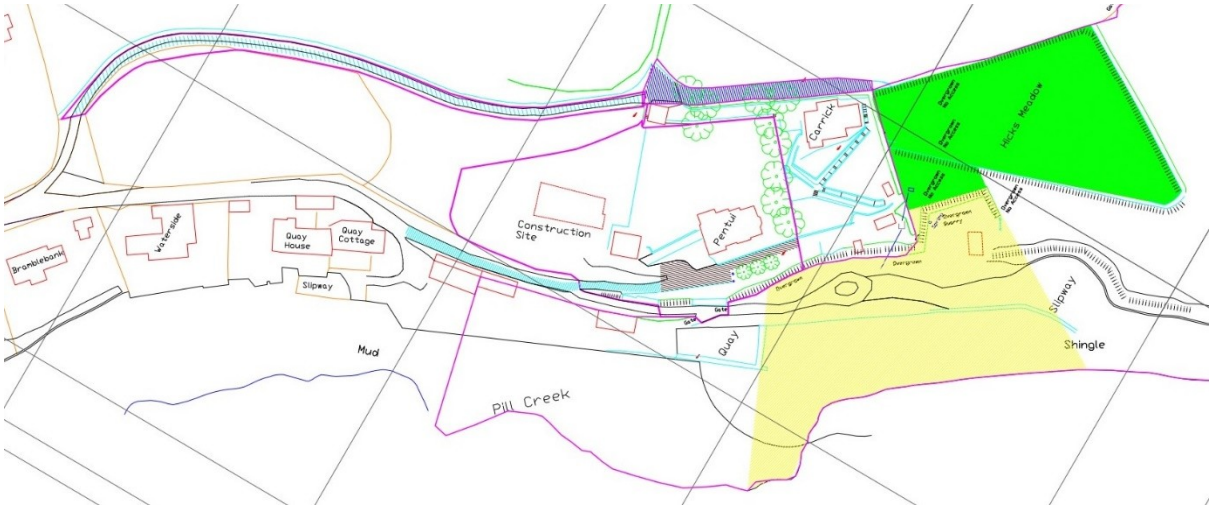
INTRODUCTION

1. This is my judgment on the trial of three claims concerning the extent of, and rights pertaining to, a residential property known as Carrick, built by the side of Pill Creek at Feock, south of Truro in Cornwall. The events with which we are concerned go back many years, but the property became registered land only on 2 October 2013. The claimant in each of the three claims is the owner of Carrick, Mr Maurice Edward ('Ted') Henwood. He and his late first wife bought the (unregistered) title in 1984. Each of the three claims relates to separate parcels of land claimed by Mr Henwood to form part of Carrick, but whose owners, on paper at least, are the several defendants. Originally the defendants in claim 000060 were two cousins by the name of Edward ffrench-Constant and Charles ffrench-Constant. However, they sold and transferred their interest in the land concerned to the defendants in claim 000059, Mr Alan and Dr Susan McGaw, who live next door to Carrick in a property called Pentui. The result is that the McGaws are now defendants in both claim 000059 and claim 000060. The defendants in claim 000054 are Mr Peter and Mrs Janet Copeland, who live not far away. (From now on, for convenience I shall refer simply to claims 54, 59 and 60.)

The land in dispute

2. The plan below (plan 1), drawn by the joint expert Mr Fassam from his recent survey, shows the various parcels in dispute. The top of the plan faces north-east, and the bottom south-west. Carrick lies to the right of the centre of the plan, above the land coloured yellow and to the left of the land coloured green. The extent of the *registered* title for Carrick (CL301145) is shown in a later plan. What is depicted on the plan with red boundary lines is what is currently found on the ground. It consists of a large rectangular shape with a "dog-leg" extension at one corner. The property called Pentui lies to the left of Carrick, at the centre of the plan. Title to it was first registered (under title number CL187464) on 7 October 2002. Again, the *registered* plan is shown later. Next, there is the land coloured two shades of blue, at the top of the plan, in two distinct parts. The long thin strip on the left, running (almost) from the public highway at the very left of the plan to the turning circle outside Carrick's modern garage, is referred to as "the Driveway". The garage is built largely on the "dog-leg" extension to Carrick, but it encroaches on to land forming the extension of the Driveway. This is known as the Strip, and on the plan it is hatched (slightly darker) blue. The level of the land falls sharply away between the Strip and Pill Creek below.

   PLAN 1



3. At the bottom of the plan is Pill Creek, where boats are moored, with the sea out to the right. Further up the plan, where the water meets the land, there is a concrete structure marked "Quay" on the plan, and known as the Upper Quay. That is not in contention. Further down the waterline there is land, including foreshore, with a further landing area, marked "Slipway", and known as the Lower Quay, or "Land south of Carrick" (though I use the former expression). There is a gated but unmetalled track ("the Lower Track") which runs from the Lower Quay, up past the Upper Quay, until it joins the metalled track (light blue) that runs from higher up to the public highway, Pill Lane. That metalled track ("the Upper Track") runs across the bottom of both Pentui and Carrick to an old garage close to the registered boundary of Carrick. The area around the Lower Quay is coloured yellow. The land coloured green, which is contiguous at one edge with the yellow land, is called Hick's Meadow.

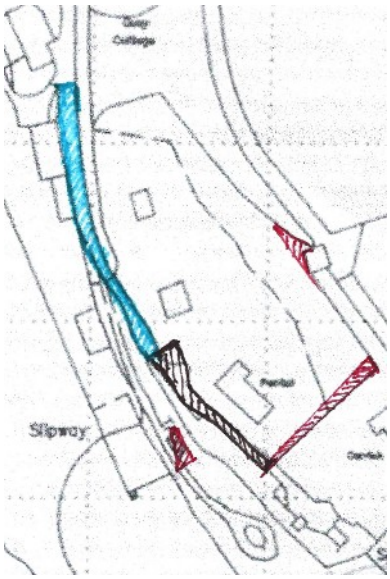
The three claims

4. I will have to go further into the details of the various claims made later on in this judgment. However, for present purposes I will merely summarise the three separate pieces of litigation, as follows. Claim 54 concerns claims by Mr Henwood against the Copelands to ownership of the Lower Quay land (coloured yellow), to Hick's Meadow (coloured green) and to the Strip (coloured hatched blue). The Copelands are the registered proprietors of all three, but Mr Henwood claims a possessory title to them, and seeks an appropriate alteration of the land register.

5. Claim 59 concerns the boundaries between Carrick and the neighbouring residential property, Pentui, owned by the McGaws. Plan 2 (below) is the plan attached to the particulars of claim, and shows the approximate areas of dispute. There is first of all an issue about the main boundary between these two properties running up from the lower track to the "dog-leg" extension. Mr Henwood says the fence has been moved by the McGaws about 3 metres into Carrick. Secondly, he says that the boundary around the modern garage at the end of the "dog-leg" and abutting the Strip has been wrongly recorded, to Carrick's disadvantage. Thirdly, he says that a small part of the unmetalled track leading from Upper Track to the Lower Quay has been registered as part of Pentui when in fact it should not have been. Fourthly, he says that the land

register should record (i) the obligation of the owners of Pentui to contribute to the maintenance of the metalled track which leads from the public highway to Pentui, and which he says belongs to him, and (ii) his right of way over that metalled track through Pentui to Carrick. In closing submissions, the claimant said that he did not press his claims against the defendants in respect of the third and fourth matters. However, they were argued, and in case it assists matters for the future I think I should state my views in relation to them.

PLAN 2



6. Claim 60 concerns the ownership of the track leading from the public highway up behind Pentui and Carrick to meet the Strip just where Carrick's modern garage is built. As I have said, this is referred to as the Driveway, and is shown coloured blue on plan 1 above. There are conveyancing documents apparently showing that (i) members of the Copeland family transferred this land to the ffrench-Constants in 2004 (when the title was first registered), and that (ii) they in turn transferred it to the McGaws on 16 June 2021 (about two weeks after the claim form was issued against the ffrench-Constants, leading to its subsequent amendment). Mr Henwood however claims to have obtained a possessory title.

7. It will be seen that this litigation concerns a number of what are essentially boundary disputes between neighbours, onto which have been grafted allegations and counter-allegations of trespass and nuisance. I have no doubt that, for most if not all of those involved, it has turned living in an idyllic part of the country into an incubus. It is one of the worst kinds of litigation, because, although the acts complained of may be comparatively trivial in themselves, they may strike at the heart of what we regard as our home, where we believe we are safest. Consequently, trivial acts may cause great offence, and thus raise the temperature, causing a vicious circle of recrimination and retaliation. The parties sensibly concluded an agreement in 2021 to the effect that the only use of the disputed land would be for the purposes of access. As I said at the end of hearing the live evidence, I am grateful for the dignified way

in which all parties conducted themselves during the trial. I wish other litigants would do the same.

DECISION-MAKING

8. Although the lawyers involved will know this, it may help the parties if I briefly explain how English judges decide civil cases like this. This is what I said about the process in a recent case, *Batt v Boswell* [2022] EWHC 649 (Ch):

> "9. Where there is an issue in dispute between the parties in a civil case, one party or the other will bear the burden of proving it. In general, the person who asserts something bears the burden of proving it. … The significance of who bears the burden of proof in civil litigation is this. If the person who bears the burden of proof of a particular matter satisfies the court, after considering the evidence that has been placed before the court, that something happened, then, for the purposes of deciding the case, it *did* happen. But if that person does *not* so satisfy the court, then for those purposes it did *not* happen. The position is binary. There is no room for 'maybe'.
>
> 10. Next there is the question of the *standard* of proof. Civil judges do not find facts on the basis of what is *scientifically certain*, nor even of what is *beyond reasonable doubt*. Instead, they find facts on the basis of what is *more likely than not* to have happened, the so-called "balance of probabilities". And it is the judge, and no-one else, who makes that (objective) evaluative decision. Self-evidently, the parties may have a quite different, subjective, appreciation of what the evidence shows. But it is the judge's independent and objective view that counts.
>
> 11. Thirdly, it is also well known that memories are fallible, especially going back a number of years, and once a false memory has been unwittingly absorbed, it may be almost impossible for the witness to divest himself or herself of it. Certainly, in commercial cases where there are contemporaneous documents available, these accordingly acquire a greater significance, as being more objective: see *Gestmin SGPS SPA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [22]. Even in such cases, however, oral evidence and cross-examination are still important. They enable proper scrutiny of the documents, and they also permit the judge to gauge the personality and motivations of parties and witnesses: *cf Armagas Ltd v Mundgas SA* [sic] [1985] 1 Lloyd's Rep 1, 57, per Robert Goff LJ.
>
> 12. On the other hand, where witnesses are personally and emotionally involved in events in family life, and death, those witnesses may have more cause to remember events, even going back many years, than any employee of a large corporation may have in relation to a past commercial transaction: *cf Kogan v Martin* [2019] EWCA Civ 1645, [89]."

9. This case is not a commercial case, and the events with which I am concerned go back very many years, but there are a lot of documents by reference to

which the accuracy of memories can be checked. So, I take full account of the documents, and test the oral evidence against them. The hearing of the witness evidence took slightly longer than anticipated. For that and for other reasons I suggested to counsel that we would deal with closing submissions serially, but in written form, and they have produced those submissions, which I have read and considered.

EVIDENCE

Witnesses

10. The following witnesses gave evidence before me. For the claimant there were the claimant himself, his wife Tracey Henwood, his step-daughter Emily Brunsden-Brown, Stanley Burgess (friend), Martin Luscombe (builder), Peter Bragg (friend and neighbour), Chris Thomason (friend), Adrian Watson (electrician), Gareth Dyer (friend), Colin Hawke (retired forestry officer), Catrina Thin (gardener's daughter). For the defendants there were David Scott (fisherman), Janet Copeland (defendant in claim 54), Alan McGaw (defendant in claims 59 and 60), Mary Copeland (daughter of defendants in claim 54), Edward ffrench-Constant (neighbour and former defendant in claim 60), Howard Dale (former tenant farmer), Paul Salmon (gardener), Stephen Rutherford (recreational sailor), Geoffrey Gilbert (local inhabitant), Steven McLernon (landscaping contractor), Michael Copeland (brother of the first defendant in claim 54), and Matthew Powell (shoot organiser).

Other evidence

11. In addition to that, I had witness statements from other witnesses who were not called to give evidence. These were Kenneth Bassett (builder) and Kelly Hill (the claimant's niece). Further, I had the benefit of a lengthy and detailed written report from a chartered surveyor, Paul Fassam, acting as single joint expert. He was not called at trial. His report contains much useful survey information about the disputed land, which should prove invaluable in the case that revisions to registered titles are called for. Unfortunately, his report is slightly marred by two things. The first is that he was not provided with all the conveyancing documents (and their accompanying plans) with which I have been provided. So, there are gaps in his information. The second is that he makes repeated attempts to give his opinion on certain points of law. These are matters outside his field of expertise, and, obviously, I have ignored them. Lastly, I record that, on the first day of the trial, I travelled to the site and carried out a visit to the disputed pieces of land, accompanied only by the two counsel involved. I found that visit of great assistance in understanding the maps, plans and photographs, as well as the arguments of the parties. The information gleaned by the court from that visit, of course, constitutes a kind of "real" evidence: *cf Tito v Waddell* [1975] 1 WLR 1303, 1307H-1308B.

12. The evidence given orally before me by the witnesses was not completely consistent, but I am satisfied that such conflicts as there were did not arise from any attempt to lie to or mislead the court. In other words, I accept that all the witnesses who gave evidence were telling the truth as they saw it. But, inevitably, different people see the same things from different points of view.

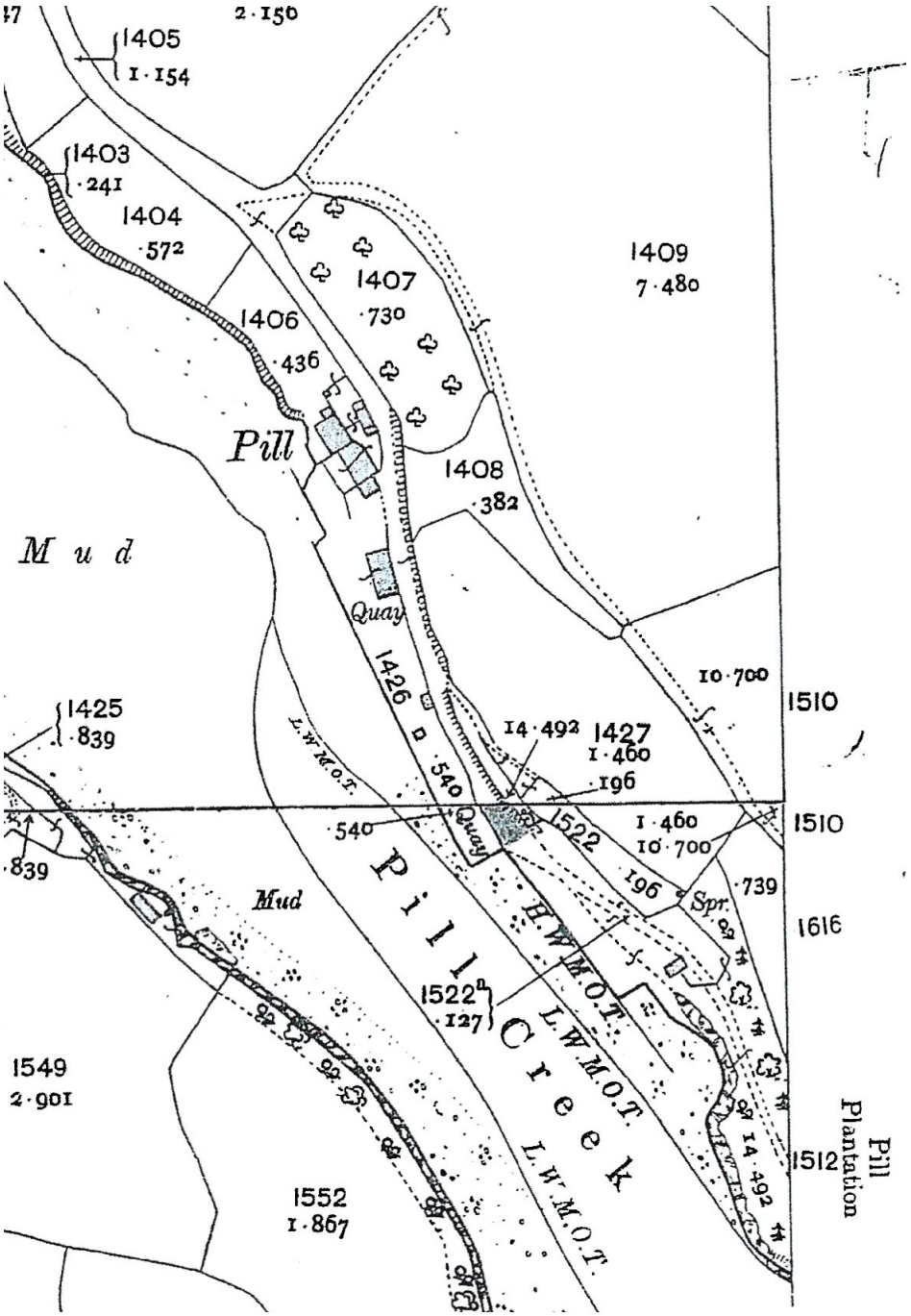
Moreover, and as will become apparent, that I think some of the witnesses were mistaken in some parts of their evidence. This often happens in cases like the present, where parties have had a long time to think about their case, and often they convince themselves that they are right. One of the important features of this case is that, given the isolated location and the overgrown vegetation, the protagonists did not often meet each other on the disputed land. As with the eponymous characters in *Cox and Box*, by Burnand and Sullivan, it is not difficult to understand how they could each gain a quite different impression of the use that the land was being put to. The task for the court is to look objectively at all the evidence, and to try to make (at least legal) sense of the situation.

NOTE ON MAPS AND MEASUREMENTS

Maps

13. Conveyancing documents are very important in what follows, both for the words used but also for the plans attached. Most of the plans used in the documents to which I shall have to refer were based on two maps of the relevant area made by the Ordnance Survey ("OS"). They were both made at a scale of 1 to 2500, but in 1907 and 1971 respectively. Each of these maps designated parcels of land by reference to a particular number. Unfortunately, these change from edition to edition, and so the numbers in the 1907 map do not correspond at all to those in the 1971 map. It is therefore necessary, when considering a parcel number, to be clear which map is being referred to. Because most of the documents to which I shall refer were made before 1971, it is usually the 1907 edition of the map which is used. For this reason, I set out a relevant extract from that map below (plan 3). The parcel on which both Carrick and Pentui were later built is marked 1427, on the right hand side, just above the horizontal line. I should add, for completeness, that the road coming down into Pill from the north is marked as parcel 1405, although it is not clear where that parcel stops. This becomes important later in considering the ownership of that part of the road which remains private. In the (separate) Appendix to this judgment, I set out a number of further plans, largely from conveyancing documents.

PLAN 3



Measurements

14. The conveyancing documents also use Imperial rather than metric measurements for the land concerned, although the acreage is sometimes expressed in completely Imperial units and subunits, and sometimes as decimal acreage (and occasionally both). So, for the benefit of those who are not as old as me, who learned all this at school, I point out here that, in relation to measurements of area, the standard measurement of a perch was an area of 30.25 square yards, there were 40 perches to a rood, four roods to an acre, and 640 acres to a square mile. (I say "standard" because there were many local variations.) The perch was also a measure of *linear* measurement (sometimes called a pole or a rod) measuring 5½ yards long. (There were then 4 poles in a

chain, 10 chains in a furlong, and 8 furlongs in a mile.) 30.25 is the result of multiplying 5½ by 5½, and explains why the perch as a measure of *area* is equal to 30.25 square yards. For a more homely comparison, a professional football field is usually 2 acres, and the distance between wickets on a cricket field is one chain, or 22 yards (4 poles x 5½ yards). The metric comparison is easy, at least at the level of acres, because an acre is just over 0.4 hectares, and so there are just under 2.5 acres in a hectare. (I should add that whereas the 1907 OS map uses Imperial measures only, the 1971 map expresses areas in hectares as well.)

FACTS FOUND

The Trelissick Estate

15. On the evidence before me I find the following facts. The Trelissick Estate was a large landed estate to the south of Truro in Cornwall, on the west side of the River Fal. Prior to his death on 1 December 1913, it was owned by one Carew Davies Gilbert, although significant parts of it were let on lengthy leases, as I shall mention. In April 1920 there was an auction sale of lots of the estate, amounting to some 1529 acres, by the trustees of the will of Mr Davies Gilbert. Three lots in particular are of interest in this litigation: lots 25, 26 and 71. But I shall mention others.

The Lots

16. Lot 25 is described in the summary of the lots in the auction particulars as "Penhale House [the former dower house to the estate], Buildings, Pleasure Grounds, Land, Plantations, Cottages, Quay", extending over 35 acres, 1 rood and 16 perches (35.375 acres). However, the plan in the auction particulars shows that lot 25 (coloured blue) was separated geographically into two component parts. The house and the main part of the land was to the west of Trelissick House, some way inland. But another part was down to the south west, by Pill Creek. The detailed description of the land accordingly includes the words "Boat House and Quay at Pill". A schedule sets out the component parcels by reference to the current Ordnance Survey 1:2500 map, then the 1907 edition. The coloured plan appears to show that the relevant waterside area at Pill covered what has been referred to at trial as the Upper Quay (and bore OS map reference "Part 1426"), but not the area known as the Lower Quay. I set out in the Appendix as plan 4 the relevant part of the coloured map accompanying the auction particulars. If this plan is compared to the plan following paragraph [13], it will be seen that the lotting of parcels for auction has sometimes split OS map parcels. Nos 1408 and 1426 are good examples.

17. Lot 26 is described in the summary in the auction particulars as "Pill Farm, Woods and Plantation", extending over 96 acres, 1 rood and 1 perch (96.258 acres). Again, a schedule sets out the component parts by reference to the 1907 OS map. It includes an arable field no 1409 (7.48 acres), another arable field no 1510 (10.7 acres), "Pill Plantation and Shed" part of no 1512 (14.336 acres), and "Grass" shown as "Mr Humphrey Hick's Holding" under no 1616 (0.739 acre). On the coloured plan attached to the particulars, plot 26 is shown in green, whereas plot 25 is shown still in blue. To judge from the colouring,

plot 26 appears to extend not only over Pill Farm as now known, but also Pill Plantation, Hick's Meadow, and to the area now referred to as the Lower Quay. At all events the Lower Quay is coloured, and so must fall within either Lot 25 or Lot 26. It is however clear from the plan that the colouring stops at the point where the Lower Quay meets the private road, opposite the end of the Upper Quay.

18. The relevant part of the coloured plan for Lot 26 from the auction particulars is set out in the Appendix as plan 5. If this is compared with the coloured plan for lots 25 and 70 to 72 (plan 4 in the Appendix), it will be seen that the road or track shown by dotted lines on the boundaries between lots 70 to 72 on the one hand and lot 26 on the other is plainly within lot 26. This is consistent with the 1907 OS map (see at paragraph [13] above), which appears to show that that road or track formed part of parcels 1409 and 1510, rather than parcels 1407, 1408 and 1427. The same coloured plan is used for the conveyance of 20 October 1920 referred to below (at [20]). The distinction between the blue of lot 25 and the green of lot 26 is rather clear on that version.

19. Lot 71 is described in the particulars summary as "Building land", but in the detailed particulars as "The Capital Building Site", extending over 2 acres, 0 roods and 13 perches (2.081 acres). It can be seen marked on the coloured plan set out in the Appendix as plan 4. The schedule once more sets out the component parts by reference to the 1907 OS map. It includes "Orchard", part of no 1408 (0.269 acre), "Grass", part of no 1427 (1.46 acres), "Bank", part of no 1512 (0.156 acre), and "Waste", part of no 1522 (0.196 acre). This is neither coloured nor indeed marked as such on the plan. But it is clear from other maps and plans that the land covered by OS no 1427 includes the land now occupied by Carrick and Pentui. I should also record that, in the auction particulars, it is further stated that "The Foreshore abutting on this Lot, as shown on Plan, is included". I shall come back to that.

Leonard Cunliffe

20. By an indenture of conveyance dated 20 October 1920, Mr Davies Gilbert's trustees sold and conveyed certain parts of the Trelissick Estate to one John George Head. It is clear from a deed of trust dated the following day that the purchase money had been provided by Leonard Daneham Cunliffe, and that Mr Head held the purchased land on an express bare trust for him absolutely. Mr Cunliffe already had a lease of a significant part of the Trelissick estate, not expiring until September 1928. That might explain why he did not buy in his own name, in order to avoid a merger between the leasehold and freehold interests, and why he did not call on Mr Head to convey to him until 1932. As I understand the matter (though this was not in evidence, but nothing turns on it) Mr Cunliffe with his brothers had founded the merchant bank in the City of London called Cunliffe Brothers. One of his brothers, Walter, later became the Governor of the Bank of England and was created Lord Cunliffe. Mr Leonard Cunliffe himself became a deputy governor of the Bank.

21. The land sold to Mr Head included lots 25 and 26 from the auction particulars. This is clear from two of the three parcels clauses and the two parts of the first schedule to the indenture. The first parcels clause reads:

> "First All those pieces or parcels of freehold land situated in the Parish of Feock in the County of Cornwall and containing in the whole 35 acres one rood and 16 perches or thereabouts together with the dwelling house cottages and outbuildings erected thereon and known as Penhale and the boathouse and quay at Pill which said pieces or parcels of land and premises are more particularly described in the First Part of the First Schedule hereto and are for the purpose of identification and not that of limitation delineated in the plan annexed hereto and thereon coloured blue…"

22. The second parcels clause reads:

> "Secondly All those pieces or parcels of freehold land situated in the Parish of Feock aforesaid and containing in the whole Ninety-six acres one rood and one perch or thereabouts Together with the farmhouse and outbuildings erected thereon and known as 'Pill Farm' which said pieces or parcels of land are more particularly described in the Second Part of the said First Schedule hereto and are for the purpose of identification and not of limitation delineated on the said plan and thereon coloured green Together with such rights as the Vendors have in the Foreshore abutting on the said lands lastly described Except nevertheless and reserving out of this conveyance (i) to the Vendors their heirs and assigns owners of the cottages and premises at Pill Creek shown on the said plan and all others having the light right the right as hitherto enjoyed of access to and taking water from the spring on the piece of land Numbered 1512 on the said plan (ii) to the Vendors their heirs and assigns owners of the piece of land containing Two acres and thirteen perches and coloured mauve on the said plan the right as hitherto enjoyed of passing and repassing along the South-West of the pieces of land respectively numbered 1409 and 1510 on the said plan…"

23. The first part of the first schedule referred to various parcels of land comprising the *whole* of lot 25, as described in the auction particulars, and with the same acreage. They included the parcel with 1907 OS map reference "Part 1426", described as "Quay and Boat House at Pill" (that is, the Upper Quay). Similarly, the second part of the first schedule referred to various parcels of land comprising the *whole* of lot 26, as described in the auction particulars, and with the same acreage. They included those with 1907 OS map references 1409 (arable field), 1510 (ditto), part 1512 (Pill Plantation and Shed), and 1616 (Hick's Meadow). The acreage of "part 1512" was 14.336. As explained below, I find that the parcels of land now known as the Driveway and the Strip were included in parcels 1409 and 1510 respectively.

24. As to the Lower Quay, I note that the plan attached to the conveyance showed the Lower Quay as coloured green, that is, forming part of the land in lot 26 sold under the second parcels clause. It is true that the clause says that the parcels "are for the purpose of identification and not of limitation delineated

on the said plan". But that does not mean that the plan has no relevance. It is still for identification. Moreover, the parcel contains an exception for the right of certain persons to come to the spring situated on lot 26 and draw water. That must mean that the parcel includes and the clause conveys the land where the spring is. I also agree with the evidence of Michael Copeland when he said that the expression "Pill Plantation" was a description of all of "part 1512", which includes the Lower Quay. As I say later, there was a shed built on the Lower Quay and occupied by a local boat builder, and so "Pill Plantation and Shed" was in my opinion a perfectly good shorthand description of lot 26. I find that the Lower Quay was part of lot 26 and was intended to be conveyed by the indenture.

25. In his closing submissions, at [54], I think that the claimant misunderstood the plan attached to an assent of 4 January 1980 (which I shall come back to) when he said that it showed "the little square shaped piece of land to the north-east of the Upper Quay" to have an acreage of 14.492. It is clear that the acreage of 14.492 refers to the *whole* of parcel 1512. The 1907 OS map was used for the 1980 assent, and unfortunately there was an arrow with the acreage 14.492 printed on the 1907 map but apparently pointing to the small piece of land assented, *as drawn on that map in 1980*. In fact, the arrow was pointing at the *bank* on the east side of the private road, because this was also part of parcel 1512. The acreage of 14.492 is also shown again further down towards the bottom right-hand corner of the map still within the parcel known as "part 1512". This parcel plainly continues onto the next sheet of the map, which is described in the margin as "Pill Plantation".

26. This leads to a further misunderstanding in the claimant's closing submissions, at [55]. He refers to an apparent discrepancy between (i) an acreage of 14.336 for "part of OS 1512", and also used for the statement of claim in the legal proceedings brought in 1979 against Henry Rackham, and (ii) a total acreage for 1512 of 14.492. If one looks at the original 1907 Ordnance Survey map, parcel 1512 (complete) is shown as amounting to 14.492 acres. However, in the 1920 auction particulars, a bank forming part of that parcel was added to lot 71 (parcel 1427), instead of remaining with the rest of parcel 1512 and becoming lot 26. The bank was measured at 0.156 acres and the rest of parcel 1512 at 14.336 acres. If 0.156 and 14.336 are added together, they produce 14.492. The Lower Quay forms part of OS parcel "part 1512" comprising 14.336 acres.

27. The status of "the little square shaped piece of land" is interesting. As stated above, the green colouring on the plan attached to the 1920 auction particulars and to the 1920 conveyance stops where the private road reaches a point opposite the end of the Upper Quay. But the small piece of land concerned lies to the north of that. On the face of it, therefore, this piece did not pass under the 1920 conveyance. I return to this later.

28. It is to be noted that none of the parcels with 1907 OS map references 1407 (lot 72), 1408 (lot 70) and 1427 (lot 71) was included in either schedule of the 1920 conveyance, and therefore they did not pass by it. However, the second parcels clause in that conveyance contains two exceptions. The second of these is a reservation to the vendors of a right of way over the land which

subsequently became the Driveway and the Strip for the benefit of their retained land "containing Two acres and thirteen perches and coloured mauve on the said plan". In fact, there is no mauve colouring on the plan attached to the conveyance (which is that for lot 26 taken from the auction particulars). But there *is* mauve colouring on the plan for lots 25 and 71 (amongst others) from the auction particulars. The mauve colouring is in fact lot 71, and the acreage is given as two acres and thirteen perches. In my judgment it is clear that the 1920 conveyance reserves a right of way over what is now the Driveway and the Strip for the benefit of the owners for the time being of lot 71.

29. By a conveyance dated 19 April 1928, the trustees of Mr Davies Gilbert's will sold further land to Mr Cunliffe directly. This is described in the conveyance in the following terms:

> "ALL THOSE pieces or parcels of freehold land situated in the Parish of Feock in the County of Cornwall and containing on the whole Three hundred and fifty nine acres one rood or thereabouts together with the Mansion House cottages and outbuildings erected thereon and known as 'Trelissick House' and the pleasure grounds, gardens, parklands, Home Farm, Woodlands, Boathouses and quays and Yacht Anchorage which said pieces or parcels of land and premises are more particularly described in the first part of the first schedule hereto and are for the purpose of identification and not of limitation delineated in the plan annexed hereto and thereon coloured red Together with such estate and interest only as the Vendors may have in the said foreshore …"

30. The particular parcels of land are more particularly set out in the first schedule to the conveyance. This appears to be lot 1 in the 1920 auction particulars, which was shown in the auction particulars as including the mansion house, Round Wood, Nullas' Plantation, Home Farm, and Careaddon Wood, all of which are mentioned in the schedule. There is however an inconsistency, in that lot 1 was there said to extend to 360 acres, 1 rood and 18 perches, rather than 359 acres and 1 rood. It may be that, in the interval between the original lotting in 1920 and the sale to Mr Cunliffe in 1928, a small part of lot 1, amounting to about 1.3 acres, had already been disposed of. However, once again, it is to be noted that none of the parcels with 1907 OS map references 1407 (lot 72), 1408 (lot 70) and 1427 (lot 71) was included in either schedule, and therefore they were not covered by the conveyance.

31. On 8 September 1932 Mr Head at Mr Cunliffe's request conveyed to Mr Cunliffe all the properties originally acquired under the conveyance of 20 October 1920 (which were held on trust for Mr Cunliffe), with the exception of a small piece of land which had been disposed of to a third party, with Mr Cunliffe's consent, on 26 October 1928 (that conveyance does not appear to be in the bundle). The important thing to notice from these transactions is that Mr Cunliffe did not by them acquire any of Lots 70-72 in the 1920 auction particulars, to which lots I shall return.

32. (I said that the disposal of a small piece of land in October 1928 was to a "third party". In fact the name of the disponee given in the 1932 conveyance

was Patience Davies Harding. A memorandum of this conveyance was endorsed on both the indenture of 20 October 1920 and the deed of trust dated 21 October 1920, stating that the property concerned was called Trevilla Farmhouse and its garden, no 1217 in the 1907 OS map, extending to 0.428 acres. It appears from the abstract of the title of Frederick Sworder to Lot 71**,** which I consider further below, that Patience Davies Harding was the daughter of Carew Davies Gilbert himself, and married Major Charles Henry Harding, who was one of the executors of Mr Gilbert, and thus jointly sold the Trelissick Estate to the various purchasers. Nothing turns on this, so I have not troubled the parties for their comments.)

33. Mr Cunliffe died on 14 August 1937, having by his will dated 17 February 1931 devised

> "all my freehold property in the County of Cornwall together with the Mansion House known as Trelissick and all other Houses buildings and cottages thereon to my step-daughter Ida Copeland in fee simple".

On 14 February 1938, Mr Cunliffe's executors assented to the vesting in Ida Copeland of the land left to her. This was said in the assent to amount to 554.842 acres, and was described therein as "The Trelissick Estate".

Ida Copeland

34. Ida Copeland was born in Italy, the daughter of an Italian father and an English mother. Her grandmother, Marianne Nicholson, later Lady Galton, was Florence Nightingale's first cousin. After her father's death, her mother married Mr Cunliffe as her second husband. In 1915 Ida married Ronald Copeland, of the well-known Spode-Copeland pottery company. She was elected a member of Parliament from 1931 to 1935 (incidentally defeating Sir Oswald Mosley). They had two sons, Spencer and Geoffrey. Geoffrey in turn had three sons, including Peter, the first defendant in claim 54, his brother Michael (who gave evidence before me), and Richard. I refer to the three siblings hereafter, without intending any disrespect, as "the Copeland brothers". Tragically, Geoffrey was killed on military service abroad in 1952. On 16 December 1955 Ida Copeland gifted Trelissick House (though the family continued to occupy it) and 375.448 acres of the estate to the National Trust. The land the subject of the present dispute was not part of the gift to the National Trust but (other than the lots, such as Lot 71, which had never been acquired in the first place) remained in the family. Ronald Copeland died in 1958. Their other son, Spencer, died in 2002.

35. It appears that from about 1906 until 1962 "the Quay" (which in context I take to mean the Lower Quay) was occupied by a local boatbuilder, who constructed a shed there. I find that this is the shed referred to in the expression "Pill Plantation and Shed", referred to in the 1920 conveyance to Mr Head. On 29 September 1963 a seven year lease of the Lower Quay was granted to John Mills, the husband of the then owner of Carrick, Mrs Kathleen Mills. It further appears that the lease was extended, at least up to the time of Mr Mills's death in 1973, as appears later in this judgment.

36. By clause 7 of her will dated 21 November 1958, Ida Copeland devised all her freehold properties in Cornwall in trust for such of Geoffrey's three sons who should attain 25 years, and if more than one in equal shares. Ida Copeland died on 29 June 1964, when her grandsons were still minors (at that time, under 21). Her remaining estate suffered duty at 65%, payable in instalments in respect of the farmland. By an assent dated 4 August 1975, by which time all three had attained 25, Ida Copeland's executors vested in the three Copeland brothers the property known as Penhale House (the former dower house of the Trelissick Estate), together with certain of its outbuildings, gardens, cottages and grounds. This land had not been gifted to the National Trust, and is not in dispute in this litigation.

37. On 26 September 1973, Ida Copeland's executors granted to the then owners of Carrick, Mr and Mrs Hutchins, just a few months after they had purchased it, a licence to pass and repass over the Lower Quay (on the plan attached called the "End Quay") to reach and make use of a mooring against the wall of the Quay for a dinghy, in consideration of an annual fee of £5, the agreement to be determinable on three months' notice. It is not clear to me how long this agreement endured. But it operated in express terms as a clear acknowledgment by the Hutchins that the executors owned the Lower Quay, and they did not. This, of course, was part of the land assented to the three Copeland brothers in 1978, as I will now describe.

Land in dispute in claim 54

The 1978 assent

38. By a further assent dated 7 July 1978 Ida Copeland's executors vested "the property described in the Schedule hereto for an estate in fee simple" in Geoffrey's three sons, Richard, Peter (first defendant in claim 54) and Michael. This was described in the Schedule to the document as

> "ALL THOSE the lands and foreshore situate in the Parish of Feock in the County of Cornwall constituting and known as the Upper and Lower Pill Quays the boundaries whereof are more particularly delineated by a pink border on the plan attached hereto…"

39. The relevant part of the plan attached (which is based on the 1971 Ordnance Survey map with a scale of 1 to 2500) is set out in the Appendix as plan 6. It shows that the lands and foreshore thereby assented cover both the Upper Quay and the Lower Quay, all of the area shaded yellow on plan 1 (following paragraph [2] above) and claimed by the claimant, as well as that part of the land shaded green on that plan (Hick's Meadow) to the south of the hatched line from right to left (and also claimed by the claimant). In terms of the 1907 OS map, it includes the lower part of parcel 1426, and part of 1512, but no part of 1427, the 'Bank' part of no 1512, or the 'Waste', part of no 1522, comprising Lot 71.

The 1980 assent

40. By a yet further assent dated 14 January 1980 Ida Copeland's executors vested "all such interest as the Executors may have in the property described in the Schedule hereto for an estate in fee simple" in Geoffrey's three sons. This was described in the Schedule to the document as

> "ALL THOSE the lands and foreshore situate in the Parish of Feock in the County of Cornwall constituting and known as the Upper and Lower Pill Quays the boundaries whereof are more particularly delineated [ ] coloured pink on the plan attached hereto…"

The cautious use of the extra words "all such interest as the Executors may have in", by comparison with the earlier assent, is to be noted. The purpose of inserting the square brackets in the extract above is to locate an uninitialled manuscript insertion between "delineated" (which comes at the end of a line) and "coloured" (which begins the next line). Unfortunately, I cannot read this, but it amounts to a few letters only, perhaps two short words.

41. The plan attached (which this time is based on the 1907 Ordnance Survey map with a scale of 1 to 2500) shows a small quadrilateral parcel of land coloured pink which appears to correspond to the whole width of the Lower Track for its short length between (i) the gate marked on the modern plan and (ii) an imaginary line running at 90 degrees off the end of the concrete Upper Quay and across the lower track. This is in fact the plan set out earlier as plan 3.

42. So far as I can tell, the land claimed by the claimant in claim 54 *did* include the south east corner of the quadrilateral, although this part of the claim was abandoned in closing submissions. But it was certainly not part of what was lot 71 in the 1920 auction particulars. As I have said (at [27]), this small piece of land appears not to have been conveyed to Mr Head in 1920. So what was assented in 1980 was any possessory title obtained over the previous 60 years. Since there is no claim as between the claimant and the defendants in claim 54 to the land, I say nothing more about that. But it is a matter which may be taken up with the Land Registry hereafter.

The 1987 assent

43. Lastly, by another assent, dated 26 June 1987, Ida Copeland's executors vested in the three Copeland brothers the property described in the first schedule. This schedule reads:

> "All those the lands situate in the Parish of Feock in the County of Cornwall constituting part of the Trelissick Estate formerly in the ownership of the said Ida Copeland deceased including the land known as Pill Farm the boundaries of all of which are more particularly delineated and edged in red on the plan attached hereto".

44. The relevant part of the attached plan is set out in the Appendix as plan 7. Leaving aside other land to which I will return, for present purposes the important thing is that it includes a thin triangle of land lying to the west of parcel 1427 and to the east of 1426, which was not vested in the three brothers by the earlier assent of 7 July 1978 (see the plan following paragraph [38]

above). This triangle lies immediately to the north of the small piece of land vested in the brothers by the assent of 14 January 1980 (see plan 3, following paragraph [13] above).

Later transactions

45. Michael Copeland's witness statement says that in about 1990 he bought his brother Richard's share in the land coming from their grandmother's estate. There is no conveyancing document evidencing this in the bundle, but this statement was not challenged, and I have no reason not to accept it. The position of the second defendant in claim 54 (Mrs Janet Copeland) is made clear by an assignment dated 23 September 1992, between the first defendant on the one hand, and the first and second defendants jointly on the other. This divided the beneficial interests of the first defendant in "the properties described in the schedule hereto" between the first and second defendants. It also recited that the properties concerned were held by the three Copeland brothers on trust for the first defendant as to one third, and for Michael Copeland as to two thirds. (This is consistent with the sale from Richard to Michael referred to above.) The schedule referred to the properties the subject of three separate assents: (i) one of 4 August 1975, dealing with Penhale (not relevant to this dispute), (ii) the assent of 26 June 1987, discussed above (at [43]), and (iii) the assent of 7 July 1978, discussed above (at [38]).

46. Then, in 2015, a partition was agreed between Michael Copeland on the one hand and his brother Peter and Peter's wife Janet Copeland on the other. This was implemented by various documents. One was a transfer of part in Form TP1 dated 9 March 2016, by which part of the land comprised in the assent of 1987 and part of the land comprised in the assent of 1975 were transferred by the defendants in claim 54 and Michael Copeland to the defendants in claim 54. The land referred to in the transfer is shown in the plan attached to the TP1 (and set out in the Appendix as plan 8) edged red. It includes the Upper Quay, about which there is no dispute, but also all the land claimed by the claimant in claim 54, including the Lower Quay, Hick's Meadow and the Strip.

47. In addition, by a transfer in form TR1 also dated 9 March 2016 the land in title no CL 187464 (which had been the subject of the land conveyed by the assent dated 14 January 1980) "which is shown edged red on the attached plan save and except the land shown coloured blue on the attached plan" was transferred by the three Copeland brothers and the second defendant in claim 54 to both defendants in claim 54. The plan attached is set out in the Appendix as plan 9. It shows that the blue land is in fact most of the land edged red, so the conveyance is only of the western edge and the south-east corner of the land edged red. This is more or less consistent with the registered title of Pentui, CL187464 (see [110] below).

48. The land the subject of the transfers in [46] and [47] was registered in the joint names of the defendants in claim 54 on 21 March 2016, under title number CL 321578.

Use of and works on the Lower Quay

49. I turn now to consider what use was made of, and what works were done upon, the Lower Quay, and by whom. (I shall have to carry out the same exercise for Hick's Meadow, the Driveway and the Strip, but it will be more convenient to deal with them in the next part of this judgment, after dealing with the relevant conveyancing.) On his purchase in 1984, which I deal with in more detail later, the claimant found that, by means of steps carved into the cliff behind his lower garage (that is, at the end of the metalled, or upper, track across Pentui), he could descend to the Lower Quay. He could also access it via an unmetalled (lower) track leading from the metalled track down past the Upper Quay to the waterside. He used this for more than thirty years to bring his boats and associated equipment from the house to the water and vice versa. However, he was not constantly at Carrick. He often worked away from Cornwall, and even when he was there he would go out on his boat for long periods. During such absences he obviously would not see what happened on the Lower Quay.

50. The claimant kept his Falmouth working boat on a permanent mooring in the Creek during the season from about March 1985 (when he obtained an annual mooring licence from the Copelands, through their agents Ward Williams) to 1989. He reached it via a tender moored to a post on the Lower Quay. During that time gardeners kept the steps down to the Lower Quay clear and safe and "kept an eye on the Lower Quay", and also the boat itself "when it was out of the water during the winter". Both Mr Dyer's and Mr Thomason's evidence was that the boat was kept at the top of the slipway over the winter. The gardeners also cleared the lower (unmetalled) track to enable access to the Lower Quay. There was evidence from the claimant's friends that no-one other than the claimant and his visitors had access to the Lower Quay.

51. From 1990, the claimant also kept a second boat on a mooring near the Upper Quay, and, from 1996, a third boat on a mooring further out in the Creek. There was a dispute between the claimant and Mr Rackham (then owner of Pentui) about the ownership of this third mooring. Mr Rackham sued the claimant in the Truro County Court. This litigation came to an end with a consent order of the County Court on 1 August 1997, by which it was declared that "as between the parties" the present claimant, rather than Mr Rackham, was the owner of the mooring in question and had "owned [it] since purchasing it with the property known as Carrick in 1984". This order bound Mr Rackham, and anyone claiming through him, but no-one else.

52. Electrical works were also done, so that an electric cable down to the cliff at the bottom of the formal garden, and the socket in the cliff face, were replaced. The Copelands installed a gate across the unmetalled (lower) track to prevent trespassers. The claimant's written evidence is that, in about 2002, he locked this gate and supplied a key to the Copelands and others who regularly used the Lower Quay. In cross-examination, he accepted that the Copelands wanted to install a gate and did so. On this point I prefer the evidence of the second defendant and other witnesses, including David Scott and Stephen Rutherford, that it was the Copelands who provided the keys to the locked gate. It may be that on one occasion it was the claimant who was responsible for changing the lock for some reason (*eg* rust inside), but if he means any

more than that I am afraid I find that he is mistaken. It was the Copelands' gate, and they kept it locked.

53. On the other side, the defendants in claim 54 have regularly used the Lower Quay since 1975, when they bought their present home at Trevilla, a little to the north of Pill Creek. They have also permitted third parties to use it. (They also visited the Lower Quay earlier than 1975, but I think it is not necessary to consider that.) Their use has been for barbecues, family parties, storage of their boat, canoeing, swimming and general recreation. There were numerous photographs of such activities in the trial bundle. Visitors included children's school friends, overseas students and their own friends, including those going on boat trips from the Quays. Their children and their children's friends spent nights or weekends camping there. The second defendant says that there were no complaints from neighbours, including the claimant. Their use of the Lower Quay was formerly weekly or fortnightly during the summer but more recently has been less, for various reasons.

54. As stated above, the defendants have permitted third parties to use the Lower Quay for access, and also sometimes storage purposes. They have generally done so by way of licences granted for an annual fee. There is for example a letter in the bundle from Peter Copeland to Mr Livermore dated 31 March 1978, in which Mr Copeland referred to a meeting with Mr Livermore, and made clear that he considered that the Copelands owned the Driveway, the Strip and the Lower Quay, but were willing to grant licences for the use of this. The Copeland's agent wrote to them in 1995 asking if he could give keys to 2 more people. The Copelands also wrote letters to keyholders asking them to ensure that they locked the gate and (in 2011) to use the Lower Quay in accordance with certain guidelines. The trial bundle contains an unbroken series of receipts for licence fees from the Gilberts (father and son) for the "use of Pill Quay and mooring" from 1979 to 2008. The claimant accepted in cross-examination that he knew that the Gilberts used the Lower Quay, that he never challenged them, and that he never sought to charge them either. The paying licensees also included the McGaws and (from 1984-85) also the claimant. Again, the claimant accepted in cross-examination that he was aware of others using the Lower Quay, but never challenged any of them.

55. In the trial bundle, there were a number of documents relating to the claimant's use of the Lower Quay. These included a letter from the Copelands to the claimant dated 5 March (no year stated, but evidently 2018) confirming

> "that we are able to grant you an annual licence for 2018 only to use Pill Quay solely for boating purposes – to launch/pull up the boat. During the Summer months please ensure you do not keep any trailers on the quay, or any other paraphernalia, as various members of the family are using it on a regular basis. This prerogative is only granted to a few like-minded people on an annual basis."

The fee is stated to be £190. Another document is a compliments slip from the claimant addressed to the first defendant saying "Dear Peter, I enclose a cheque for £210. Best wishes, Ted". The claimant last paid a licence fee in 2019, but did not pay in 2020 or thereafter.

56. Other persons were permitted by the defendants to use the Lower Quay *without* payment, in some cases because they helped out with maintenance or general assistance, such as David Scott. The Copelands installed a gate across the lower track and locked it, giving keys to those permitted access, including the claimant until 2020. (The claimant says he permitted the Copelands to do this, but I think he is mistaken.) They carried out repairs from time to time, such as to the ladder from the Lower Quay to the water, and maintenance, such as trimming back the vegetation. Several witnesses stated that they were not aware of anyone save the defendants granting permission to others to use the Lower Quay.

57. There is a dispute about who replaced one or two of the mooring poles at the Lower Quay with an old telegraph pole. Mary Copeland and David Scott said it was Peter Copeland. The claimant said it was him. Having seen all three in the witness box, I am satisfied that the poles came from the claimant's works done on Carrick in 1998 to 2000 and that the claimant was responsible for their replacement, Mary Copeland and David Scott are mistaken.

Pill Farm

Letting to Howard Dale

58. In October 1966 the executors of Ida Copeland's will agreed to let Pill Farm to Howard Dale on an annual tenancy. At the trial I had the advantage of examining the original of the tenancy agreement, with a large-scale plan attached. The demise included fields 1409 and 1510 (most of which were later sold to the National Trust, as set out below) and also 1616 (Hick's Meadow). There was however reserved

> "A right of way as at present enjoyed in favour of the owners and occupiers for the time being of the enclosure numbered 1427 on the said plan over and along the footpath situated adjacent to the south-western boundary of the fields numbered 1409 and 1510 thereon".

Enclosure 1427 was that land which had already been subdivided into Carrick and Pentui. I should say that this was not the first tenancy of Pill Farm. According to Mrs Copeland's evidence, which I accept, it had previously been let to a Mr Rosevear. But I have no other details of this, and I do not think anything turns on it.

59. In about 1980 Mr Dale surrendered Hick's Meadow to his landlords by agreement, and Peter Copeland (as their agent) took its management back in hand. It is clear that there can be an agreed surrender of part of land in a demise without affecting the rest of the demise: *cf Jenkin R Lewis & Son Ltd v Kerman* [1971] Ch 477, CA, 492B. It is a question of fact. There was no evidence that the parties intended a surrender and re-grant. I find that the existing tenancy continued, minus Hicks's Meadow. I also find that that there was no surrender of the Driveway and the Strip. In 1993, Mr Dale gave up the whole of his remaining tenancy, as his sons did not want to farm the land.

The 1987 assent

60. The assent dated 26 June 1987, discussed above (at [43]-[44]) is relevant also in relation to other land, connected with Pill Farm. The assent was intended to vest a significant amount of land formerly forming part of Pill Farm in the three Copeland brothers. The plan attached to that assent (shown as plan 7 in the Appendix) is based on the 1971 OS Map, so the parcel numbers are different from those used previously, which were taken from the 1907 map. The red edging is not very easy to see, even with a colour reproduction, but (using 1907 parcel numbering) it runs along the boundaries of parcels 1409 and 1510 with parcels 1407, 1408 and 1427, then runs down the boundary between 1427 and 1616 (Hick's Meadow), before turning away along the boundary between 1616 and 1512.

61. This means that parcels 1409 and 1510 (already let to Mr Dale) included the land now referred to as the Driveway and the Strip respectively running along their boundaries with parcels 1407, 1408 and 1427. That in turn means that the legal title to the Driveway and the Strip appears to have passed to the three brothers by this assent. A memorandum endorsed on the assent states that by a conveyance dated 20 October 1992 the three Copeland brothers conveyed to the first defendant in claim 54 a plot of land part of OS (1971) 7520 adjacent to Trevilla House. (This land would have passed to the brothers under the 1987 assent, but it is not relevant to the present dispute.)

62. I referred above to the sale by Richard Copeland of his interest in the land assented to all three brothers to Michael Copeland in about 1990. This sale apparently also covered Hicks's Meadow, the Driveway and the Strip. So Hicks's Meadow, the Driveway and the Strip belonged to Michael as to two thirds and Peter as to one third. Then in 1992 Peter divided his interest between himself and his wife. In 2004, as I explain below, the three remaining co-owners sold the Driveway to the ffrench-Constant cousins. Finally, and as already mentioned above ([46]-[47]), in 2016 Michael, Peter and Janet transferred the other land to Peter and Janet, the defendants in claim 54.

Sale to the National Trust

63. As I have said, Mr Dale gave up his tenancy of Pill Farm in 1993. On 4 July 1994, Michael Copeland and the defendants in claim 54 sold and conveyed 127.92 acres of land formerly forming part of Pill Farm to the National Trust for the sum of £135,000. The Trust was registered as proprietor on 20 July 1994 under title CL 99809. In so conveying, the Copelands reserved certain rights for themselves and members of their family. The land conveyed was relevantly described in part I of the first schedule to the conveyance, as follows:

> "**FIRST ALL THOSE** pieces or parcels of land forming part of Pill Farm Feock Truro in the County of Cornwall comprising 127.45 acres or thereabouts shown for the purpose of identification only edged red on the attached plan ("the Plan")
>
> […]"

64. The relevant part of the plan attached is set out in the Appendix as plan 10. It is clear from the red edging that, although the fields which were parcels 1409 and 1510 in the 1907 map were transferred to the National Trust, the roadway or track at the edge, where those parcels meet parcels 1407, 1408 and 1427, was not. (This is also clear from the plan attached to title CL 99809.) Thus, the ownership of the Driveway and the Strip did not change on the sale of the farm.

65. The rights reserved over the land conveyed included full and exclusive rights of hunting, shooting, fishing, fowling, and sporting (so far as lawful) over the whole property conveyed, and various rights of way. One of these was

> "A right of way with or without vehicles through OS No 0346 from a point marked J to a point marked A along the south-western boundary of the field".

66. Parcel 0346 on the 1971 map is the same as parcel 1510 on the 1907 map. The point marked J is at the north-western end of the Strip. The point marked A is at the southernmost point of parcel 0346, and well to the east of Hick's Meadow. Since, according to the plan, the Strip itself was not conveyed to the National Trust, the right of way being reserved must have been *inside* the remainder of parcel 0346, extending *alongside* the Strip until its eastern end, and then running along the northern boundary of Hick's Meadow. It is to be noted that no equivalent right of way was reserved alongside the Driveway, in parcel 8959 (parcel 1409 on the 1907 map).

The Driveway

67. As for the Driveway, Mr and Mrs Copeland and Mr Michael Copeland transferred this in consideration of the payment of £40,000 to Dr ffrench-Constant and Professor ffrench-Constant by a transfer in Form TR1 dated 30 April 2004. The transfer is stated to include a right of way over the Strip, but also to reserve to the transferors a right of way over the Driveway to reach their retained land, being the Strip, Hick's Meadow, and the other land to the south of Carrick, shown as edged blue on the attached plan (set out in the Appendix as plan 11). The TR1 has a box for the title number, but this is blank. It may be that the land was about to become registered for the first time (as contemplated by the printed note on the form). However there is a barcode sticker placed on the form (though, inexplicably, in the stamp duty box) giving the title number CL 205991. The transferees were certainly registered subsequently as proprietors under that title number.

Use of the Driveway

68. I referred above to the letting of Pill Farm to Howard Dale. He confirmed in his witness statement that his tenancy included the Driveway, as the plan showed, but he used it himself only infrequently. His evidence was that the owners of and visitors to Carrick used it, including the postman. The tenancy agreement by clause 1(b) was expressly made subject to such use. Under clause 2(24) of this agreement, Mr Dale had the obligation to close the gate at the end of the Driveway on two Sundays in every year. He did this until 1980,

when he gave up Hick's Meadow. But I find that he did not surrender the Driveway. Mr Livermore's statutory declaration of January 1985 made clear that he and his wife used the Driveway for access to Carrick without interruption or payment during the time of their ownership. Mr Henwood's evidence was to similar effect, but went further. The Driveway was separated from the field beyond (part of Pill Farm) by foliage and a bank. His gardeners cut back the foliage, kept the Driveway clear of debris, and also repaired fences. It appears from the evidence of Mr Bragg that a predecessor in title of the claimant, Mr Mills, also resurfaced the Driveway at some point. Several witnesses who were involved in carrying out works at Carrick in 1998-2000 gave evidence about contractors' use of the Driveway in that period and not seeing any other users at the time.

69. In his letter to the Land Registry dated 12 November 2014, dealing with the question whether the new garage was built outside Carrick's boundary, the claimant referred to the Strip and the Driveway and said that he did not claim ownership of either of them. However, in cross-examination he explained this by saying that Mr Rackham had told him that both were subject to a public right of way, and he therefore thought that no one could claim ownership. The claimant's evidence in cross-examination was that Mr Mills had put a "private" sign at the end of the Driveway, on a sycamore tree to the left of the gatepost, but that it disappeared about 25 years ago. There was also a granite post bearing a "Carrick" sign by Pill Lane (not on the Driveway). That disappeared in the 1990s too, though it was later found. There is a sign "Carrick", however. The claimant also said that he locked the gate at the end of the Driveway in the 1990s for about two years or so after a burglary.

70. On the other side, Michael Copeland gave evidence that the Driveway was part of Pill Farm that had come to him and his brothers out of the estate of their grandmother, but had not been sold to the National Trust in 1994. It was inspected annually by Peter Copeland as agent since 1975. He said that there had always been intended that there should be a right of way for the owners of lot 71 (later Carrick and Pentui) to use the Driveway to access their properties, whether formalised or not. (This is confirmed by a note in the 1920 auction particulars: see at [82].) He said that the Copelands and the claimant had negotiated for the sale and purchase of the Driveway in 2003-2004, but that ultimately nothing had happened. So, in April 2004 the Copelands sold it to the ffrench-Constant cousins instead (who owned the orchard further to the north of Pentui), reserving to themselves a right of way over it so that they could reach the Strip, and thereafter Hick's Meadow, both of which he said they retained. At the time the claimant did not know of the sale, though he became aware of it subsequently, at least by the time he sought to persuade the ffrench-Constants to upgrade the Driveway.

71. Dr ffrench-Constant's evidence was that he and his cousin maintained the Driveway during their ownership, whilst the claimant from time to time tried to persuade them to upgrade the surface (which in 2009 and 2013 they resisted). The claimant during the ownership of the ffrench-Constants filled holes with stones and rubble. He also arranged for fallen timber to be taken away (corroborated by other witnesses), in one case bartering it against

resurfacing work done on the roadway itself. In 2015 the ffrench-Constants did undertake resurfacing work, although the claimant complained to them that it was not good enough. In 2021, the ffrench-Constants sold the Driveway to the defendants in claim 60. Mr McGaw's evidence was that he was aware of use of the driveway, not only by the claimant and his visitors, but also by the Copelands, the ffrench-Constants and his wife and himself. He also gave evidence that when, in February 2022, Storm Eunice felled a tree which blocked the Driveway and cut a powerline, it was he and his wife who arranged for the blockage to be removed and the power to be restored, whilst (he said) the claimant's wife complained that they were not doing enough to unblock the Driveway.

72. I accept all this evidence, which is not necessarily in conflict. Certainly before 2004, when the Driveway was sold to the ffrench-Constants, the claimant may have thought that the Driveway was part of the property which he had bought. He certainly did believe he and his family and visitors were the only ones using the Driveway regularly and he carried out maintenance on it. After 2004, however, he asked the ffrench-Constants to carry out such works, thus acknowledging their possession, and his own lack of it: *cf Pavledes v Ryesbridge Properties Ltd* (1989) 58 P&CR 459, 481. But the Copelands and the ffrench-Constants also used it, though more infrequently. Considering the isolation of the Driveway from neighbouring properties by hedges, trees and fences, it would be rare for any user of it to be observed by anyone else. But the claimant's actual *use* of the Driveway was confined to passing and repassing. He did not actually *occupy* it.

Hick's Meadow and the Strip

73. Mr Fassam's report discusses the boundaries of Hick's Meadow, and concludes that the Cornish hedge on the boundary between Carrick and the Meadow is wholly within the curtilage of Carrick. I accept this evidence. As mentioned above, the 1987 assent vested Hick's Meadow in the three Copeland brothers. As further set out above ([46]-[47]) the paper title passed from them to the defendants in claim 54. They were registered as proprietors on 21 March 2016, under title number CL 321578. Both Hicks Meadow and the Strip are partly enclosed. Access to the former is open via Carrick, though at an earlier stage there was a gate from field 1510. Access to the latter is open from Carrick and the Driveway (of which it is a continuation).

Use of and work on Hick's Meadow

74. Most of Hick's Meadow (that is parcel 1616 on the 1807 OS map, and therefore excluding a triangle of land around the spring close to the boundary with Carrick) was originally part of the tenancy granted to Howard Dale, as the tenancy agreement plan showed. Because it was steep and overgrown, Mr Dale used it only as rough pasture, and did not work it with machines. Eventually, he gave that part up by agreement in 1980. So, when the claimant purchased Carrick in 1984, he saw it simply as an extension of his garden. At that stage he had not received any conveyancing documents from his solicitor, but got on with enjoying his new purchase. He employed gardeners not only in the formal gardens of Carrick, but also in Hick's Meadow. In that area, their

role was simply to maintain access to the fruit trees which were there. The claimant kept it as a meadow, and he and his visitors would walk there and pick the fruit. The claimant also shot vermin and other pests there. In 2003-2004 the claimant negotiated with the defendants in claim 54 to purchase Hick's Meadow, along with the Driveway and the Strip. However, as I have already said, no sale resulted.

75. On the other side, Mrs Copeland gave evidence of walking through Hick's Meadow with her children when they were growing up, and of the letting of the land for the purposes of shooting over it. The latter point was confirmed by Michael Copeland and also Matthew Powell who has leased the shooting rights for the last 5 years, and whose family have done so for the last 30. Mrs Copeland's daughter Mary Copeland said it had been used by her throughout her life and she was not aware of others using it, until the claimant began taking down the Cornish hedge between Carrick and Hick's Meadow in 2020 (though in fact, as I have found, that is in any event on his land). Paul Salmon was employed by the Copelands to do some work on the boundary between Hick's Meadow and Carrick, and gave evidence of this. I accept all this evidence on both sides also. Once again, it does not surprise me that those walking through Hick's Meadow would not meet anyone else or (especially given its overgrown nature) be aware of anyone else's use of it.

Use of and works on the Strip

76. In his statutory declaration of October 1948, Mr Emery had referred to his use of the Strip, unchallenged and without payment, for the purposes of his and his contractors' access to Carrick. Once again, Howard Dale's tenancy (lasting from 1966 until 1993) was of land including the Strip, as shown on the tenancy agreement plan, and, although he did not use it, he had the responsibility of maintaining it. However, the triangular part of the strip at the north-west end had been let to Mr Mills, the former owner of Carrick, in 1964 for £1 per annum, in order for him to be able to turn his car. This was reflected in Mr Dale's tenancy agreement, which made an exception for that letting. On the evidence before me I find that Mr Dale did not surrender the Strip in 1980. Mr Livermore, in his statutory declaration of January 1985, also stated that he had had the use of the Strip for the purposes of access to Carrick without interruption without payment in the whole period of his ownership that is from November 1976 to November 1984.

77. The claimant's evidence was that, when he arrived in 1984, the main access to the house was along the Strip and down a set of steps (which were removed in 1999-2000). The turning circle at the northern end had a dry-stone retaining wall and a fence dividing it from the field on the other side. The claimant said that he cut the grass and tidied the hedge on the Strip, and, when in 1998-2000 he constructed the new garage and the slope down to the house, the Strip in effect became a part of his garden. His gardeners worked on it regularly. In 1998-2000 the Strip was used by contractors, and indeed lighting that had previously been installed there by the claimant was removed as no longer necessary. The claimant stored a boat and trailers on the Strip. In cross-examination he denied that this was with the permission of the Copelands. Notwithstanding that he knew that persons occasionally walked over the Strip

the claimant did not erect a sign to show that it was private or that he claimed to possess it, for example as part of Carrick. As I have already explained in relation to the Driveway and Hick's Meadow, in 2003-2004 the claimant negotiated with the Copelands for the possible purchase of the Strip, but ultimately nothing came of it.

78. I have already referred to the claimant's letter of 12 November 2014 to the Land Registry (at [69]]. That letter was a response to the registry's requisition of October 2013 to the effect that the claimant's new garage appeared to be partly built on the Strip. In his letter of 12 November 2014, the claimant (i) denied that the garage was built partly on the Strip, and (ii) denied any claim to the ownership of the Strip.

79. Mrs Copeland gave evidence that the Strip had been used as an access to the rest of Pill Farm, but that, when Pill Farm was sold to the National Trust, the Trust did not want to buy it. The Copelands continued to use it to access Hick's Meadow, relying on the right of way reserved over National Trust land to reach it. Matthew Powell said that he used the Strip to access Hick's Meadow for shooting purposes until about 10 years ago. He had never seen anyone else using the Strip. I accept all this evidence, on both sides. As before, I accept that anyone using the Strip would be unlikely to meet anyone else, or be observed by anyone else using it. The evidence discloses only very occasional sightings (in one case, by virtue of an automatic CCTV recording at Carrick, rather than in person).

Lots 70, 71 and 72

80. I referred above to Lot 71 of the Carew Davies Gilbert Estate, which was *not* sold to Mr Head or Mr Cunliffe. As I said earlier, the auction particulars, referring to parcels in the 1907 OS Map, said that Lot 71 included "'Orchard', part of no 1408 (0.269 acre), 'Grass', part of no 1427 (1.46 acres), 'Bank', part of no 1512 (0.156 acre), and 'Waste', part of no 1522 (0.196 acre)." On the auction particulars "Plan No 7" (plan 4 in the Appendix), lot 71 is coloured mauve. But, on that same plan, parcel 1408 is divided into two parts, one mauve and one red. On the 1907 map (see plan 2, following [13] above), parcel 1408 is shown as extending the whole way across from the public highway, Pill Lane, to The Driveway, and to have an acreage of 0.382 (rather than 0.269). On plan 4, the part of parcel 1408 which is adjacent to Pill Lane, and coloured red, is marked as part lot 70 (the other part being Quay Cottage on the creek side of the road), and as having an acreage of 0.113. If 0.269 and 0.113 are added together, they produce 0.382.

81. Earlier, I referred to the fact that the 1920 auction particulars, in relation to Lot 71, had stated that "The Foreshore abutting on this Lot, as shown on Plan, is included". In fact, it is clear from plans 4 and 5 in the Appendix above that no foreshore abutted on this lot. Between lot 71 and Pill Creek lay lots 25 and (part of) 26. In the documents relating to the litigation between the Copelands and the Rackhams in 1980, which I mention later (see at [127]), there are three proofs of evidence included, two from estate agents and one from a prospective purchaser. Each of them refers to discussions had with Mr John Mills about the possible sale of Pentui in 1970. (At that time, as will be seen

shortly, Mr Mills was the co-owner with his wife of Pentui, and she was sole owner of Carrick.) Both estate agents were given the impression that the property had no water frontage, and the prospective purchaser was expressly told that there was not.

82. There is one other point to mention. The 1920 auction particulars, at page 31, in referring to Lot 26 (that is, Pill Farm) state:

> "Right of Access to Spring in No. 1512 on Plan is reserved out of this Lot to the Cottages and all others at Pill Creek. Also a Right of way along the South-West of Nos. 1409 and 1510 on Plan for Lot 71".

There is however no corresponding entry in the particulars relating to Lot 71. Nor (as I say below) is there any evidence of the grant of such a right of way along the south-west boundary of Pill Farm to reach lot 71.

Sale and conveyancing

83. For the first few transactions concerning lot 71, we have only abstracts of title, but these are sufficiently detailed to allow a good understanding of what happened. Lot 71 was sold in November 1920 by the executors of Mr Davies Gilbert to one Irene Nicol Jenkin, together with Lot 72. This latter lot was described in the auction particulars as "Building Land", but in fact consisting of the orchard forming an oval shape between the Driveway and the public highway, Pill Lane, on the plan above, and being 1907 OS Map parcel no 1407. It is worth remembering that Pill Lane itself is marked on the 1907 map as parcel 1405, but that parcel figures in none of the conveyancing documents that I have seen, and certainly none of those relating to lot 71. The abstract of the conveyance refers to the benefit of a right of way to reach the spring on lot 26, and the burden of a right of way for others to cross lot 71 for this purpose. But there is no mention of any right of way over the adjacent land which later became the Driveway and the Strip.

84. On 21 September 1923 Miss Jenkin sold the land so acquired (*ie* both lots) to Osman Horton Giddy. Again, there is no mention of any right of way over what became the Driveway and the Strip. Mr Giddy appears to have been the owner also of Quay Cottage, on the opposite side of Pill Lane, because on 18 May 1925 he sold Lots 71 and 72, as well as Quay Cottage, to Lt-Col Frederick Sworder, who was then occupying Quay Cottage. (From internal evidence in the documents, it seems he may also have owned Quay House, next door, and the adjacent property now called Waterside, but that does not concern us now.) It therefore seems that lots 70, 71 and 72 became reunited at that point. Once again, however, there is no mention of any right of way over what became the Driveway and the Strip.

85. On 2 June 1925 Col Sworder mortgaged his land to the Midland Bank Ltd to secure his bank borrowing. At this date a legal mortgage would have been completed by a conveyance of the legal fee simple estate to the mortgagee, subject to the usual proviso for redemption. But the bank would also have had the statutory power of sale of the property in case of default in repaying monies falling due under section 19 of the Conveyancing Act 1881 (later –

and still now – under section 101 of the Law of Property Act 1925). It appears that there was such a default because, on 24 December 1925, Col Sworder as beneficial owner and the bank as mortgagee together sold and conveyed to one Ernest Emery as purchaser,

> "All that close and pieces or parcels of land situate at Pill Creek in the Parish of Feock in the County of Cornwall on the eastern side of the road leading from Trevilla to Pill Creek aforesaid and containing 1 acre three roods and nine poles or thereabouts statute measure (be the same more or less) which said close and pieces or parcels of land are more particularly described in the First Schedule hereto and are for the purpose of identification only and not of limitation or extension delineated on the plan drawn hereon and thereon coloured pink Together also with a right (so far as the Vendors can lawfully grant the same) for the Purchaser his heirs and assigns his and their undertenants and servants in common with the Vendors and others at all times hereafter to pass and repass over the land marked 26 on the said plan for the purpose of access to and from and drawing water from the Spring marked by a red circle on the said plan … "

Once more, there is no mention of any right of way over what became the Driveway and the Strip. The deed recites that the purchase money was less than the amount due under the mortgage, so the whole sum paid was to go to the bank.

86. The First Schedule gives the following particulars in tabular form:

No. on Plan drawn hereon	Description	Decimal acreage
1427	Grass	1.460
Part 1512	Bank	.156
Part 1522	Waste	.196
		1.812

These details correspond to the auction particulars for the greater part of lot 71 as set out above, although 1 acre three roods and nine poles is about 1.806 acres, rather than 1.812. It is thus clear that this conveyance did not include any part of lots 70 or 72. Nor did it include the part of parcel 1408 (0.269 acres) which had formerly formed part of lot 71. These appear to have been disposed of elsewhere, as I say later. Both the parcels clause and the plan (not

reproduced here) make plain that the Spring for which a right-of-way was reserved was not part of the land conveyed, but of lot 26, to the south.

The division of lot 71

87. On 9 August 1927, Mr Emery conveyed to Andrew John Metford Wright

> "All those pieces or parcels of land situate at Pill Creek in the Parish of Saint Feock in the County of Cornwall aforesaid being parts or portions of the enclosures numbered part 1427 part 1522 and part 1512 on the Ordnance Map for the said Parish of Saint Feock and which are for the purpose of identification only and not of limitation or extension delineated on the plan drawn hereon and thereon coloured pink Together with a right (so far as the Vendor can grant the same) for the Purchaser his heirs and assigns and their undertenants and servants in common with others at all times hereafter to pass and repass over the land marked 26 on the said plan for the purpose of access to and from and drawing water from the spring marked by a red circle on the said plan Together also with a right for the Purchaser his heirs and assigns and their undertenants and servants in common with others at all times hereafter to pass and repass over and along the existing footpath or track over the land coloured green on the said plan leading to the land marked 26 on the said plan and to the said well marked with a red circle Excepting and Reserving a right of way out of and over the piece or parcel of land numbered part 1427 and coloured pink on the said plan for such person or persons as may be entitled to the use of the said Spring. And also Excepting and reserving to the Vendor his heirs and assigns a right of way for persons on foot or for motor carriages and other vehicles over and along the existing roadway leading to and from the Vendors Motor Garage situate on the land coloured green on the said plan"

88. Unlike other conveyances of this time, there was no schedule giving further particulars of the parcels conveyed. The plan referred to as "drawn hereon" shows the parcels of land conveyed to Mr Wright to be the same as those which Mr Emery received under the conveyance by Col Sworder and the Midland Bank, *except* for (i) a rectangular portion of parcel 1427 at the end closest to Hick's Meadow and (ii) its continuation towards the creek (also rectangular) over that part of parcel 1522 conveyed in 1925, which was coloured green on the plan. (That is no doubt why the present parcels clause refers to "part 1427" when that in the 1927 conveyance refers simply to 1427.) I set out the relevant part of the plan in the Appendix as plan 12.

Carrick

89. These two excepted portions were retained by Mr Emery, and together formed the plot of land on which he had already constructed the original house known as Carrick. That plot was to be separated from the land conveyed away by two stockproof fences, in an apparent straight line from south-west to north-east. The one spanning the lower half of the boundary (between points A and B on the plan) was to be installed and maintained by Mr Emery, and the other, spanning the upper part of the boundary (between points B and C on the plan),

was to be installed and maintained by Mr Wright. Importantly, on this plan there is expressly noted to be a distance of either 21 or 31 (it is not clear which) feet between (a) the boundary between the conveyed and the retained land, and (b) the edge of the house Carrick as it then was. I will return to this point later ([116] ff).

90. On 25 October 1948 Mr Emery made a statutory declaration, in which he stated two important things. The first was that, at the time of his purchase in 1925, he was told by the vendor (Col Sworder) that there was "appurtenant to the said plot of land" (*ie* lot 71) a right of way over fields 1409 and 1510, that is, what has become the Driveway and the Strip. (The intention to confer this is confirmed by the note on page 31 of the 1920 auction particulars (see at [82] above). Second, he said that he had made use of the Driveway and the Strip from 1925 to date for the purposes of access to his land (at that time the whole of parcel 1427), and in particular the construction of Carrick, and then the bringing of coal and other supplies, without challenge or interference, save for one (early) occasion. On that occasion he removed a padlock on the gate at the north end of the Driveway leading to the public highway, and left it on the ground. He heard no more about the incident, save that he subsequently observed that a post and wire fence had been erected between the Driveway and field 1409, though by the time of the declaration in 1948 this had "long since fallen into decay". No doubt this statutory declaration was made for the purposes of the sale referred to in the first sentence of the next paragraph. It is also worth noting that when, in 1966, Ida Copeland's personal representatives granted a tenancy of Pill Farm to Mr Dale, the agreement expressly reserved and accepted a right of way for the owners and occupiers of lot 71 along the Driveway and the Strip.

91. On 30 November 1948 Mr Emery sold and conveyed Carrick to Arthur Willcox. On 2 November 1954, Mr Willcox sold and conveyed Carrick to Mrs Kathleen Mills. Mrs Mills died on 28 February 1971. Her will was proved by her executors on 22 April 1971. On 25 February 1972 her executors assented to the vesting of Carrick in her widower, Mr John Mills. Mr Mills himself died on 21 January 1973, and probate of his will was granted to his executors on 13 April 1973. On 27 July 1973 his executors sold and conveyed Carrick (though by then enlarged, as set out below) to John Hutchins and Audrey Hutchins, for £40,000. Unfortunately, there is at least one page missing from the copy of the conveyance in the bundle, so we do not have the terms of the parcels clause. The relevant part of the plan attached to the conveyance is set out in the Appendix as plan 13.

92. However, we can ascertain the probable substance of the missing parcels clause. On 17 November 1976 Mr and Mrs Hutchins, in consideration of the total sum of £40,000, sold and conveyed Carrick via a company called Architectural Products Ltd to Anthony Livermore and Beryl Livermore, although the company provided a part of the purchase money and directed Mr and Mrs Hutchins nevertheless to convey the whole to the Livermores. The parcels clause in this case read as follows:

> "ALL THOSE pieces or parcels of land situate at Pill Creek in the Parish of Feock in the County of Cornwall lying to the South East at the

> termination of the road leading from Trevilla to Pill Creek aforesaid which said pieces of land forming part of the closes of land Numbered 1427 and 1522 on the Ordnance Survey Map for the said Parish and are for the purposes of identification and not by way of limitation or enlargement delineated on the plan next to the said Conveyance dated the Twenty Seventh day of July One thousand nine hundred and seventy three and thereon verged Pink and Green … "

Since the 1976 conveyance conveyed exactly the same property by reference to the 1973 conveyance map (plan 13), I would expect the conveyancer to have used the same or a very similar parcels clause (as indeed did the conveyancer who drafted the subsequent conveyance from the Livermores to the Henwoods). I find that the substance of the missing parcels clause was to the same or very similar effect.

93. The deed went on expressly to state that Carrick was conveyed to the Livermores

> "Together also with the right for the [Livermores] and their successors in title to pass and repass at all times and for all purposes with or without vehicles over and upon the roadway situate adjacent to the North Eastern boundary of the property hereby agreed to be sold and running in a North Westerly direction thereafter … "

In the context, the roadway referred to is what I have referred to in this judgment as the Driveway.

94. On 2 November 1984, Mr and Mrs Livermore, in consideration of the sum of £39,000, sold and conveyed Carrick to the claimant and his first wife, Rachel Henwood, as beneficial joint tenants. This conveyance does not contain a plan, but the parcels clause, in almost exactly the same terms as in the 1976 conveyance, once more identifies the property conveyed by reference to the plan in the conveyance of 27 July 1973 from Mr Mills's executors to the Hutchins (plan 13). This deed also repeated the conveyance of the right of way over the Driveway granted to the Livermores in similar terms. Mr Livermore made a statutory declaration on 9 January 1985, in which he said that throughout his and his wife's period of ownership they had exercised vehicular and pedestrian rights of way over both the roadways which gave access to Carrick "without the consent of any person and without interruption and without payment of any kind to any person whomsoever". Tragically, Mrs Rachel Henwood died in October 2004, leaving the claimant as sole legal and beneficial owner of Carrick by survivorship. He still lives there, with his second wife and his step-daughter.

95. The enquiries before contract raised on 30 August 1984 by the claimant's solicitors on his purchase from the Livermores were replied to by the Livermores' solicitors on 6 September 1984. In answer to question 1 (about boundaries), the reply was:

> "The boundaries are ill-defined except between Carrick and Pentire [sic], where a hedge exists which is mutually maintained, and a Cornish hedge on the northern boundary … "

In answer to question 7 (about shared facilities, that is, "roads, paths … or other facilities used in common with the owners or occupiers of any other property"), the reply was:

> "It is believed that Mr Mills, a previous owner of the property, surfaced the top road for his own use, but there is no agreement regarding its maintenance".

Additional enquiry 5 refers to the need for a right-of-way "to pass from the boundary to the location of the Spring". But the Spring is in Hicks's Meadow. So the claimant's solicitors knew that Hicks's Meadow was not part of Carrick.

Additional enquiry 7 stated, in part:

> "We regret that we do not understand the reference … to the roadway referred to running in a North Westerly direction but possibly this is because the plan supplied is only an extract from a much larger plan".

Again, I interpret this as a reference to the Driveway. So far as I can see, that enquiry was not responded to. Additional requisition 10 asked if the Livermores would be prepared to assign the benefit of "the Agreement relating to the turning area" (that is, on the Strip). The answer was Yes. But the claimant's solicitors must therefore have known that the turning area (and therefore the Strip) was not being bought.

96. In the bundle, there are two sets of estate agent particulars relating to Carrick, both of them undated. Both are from the disclosure of the defendants in claim 54 and not that of the claimant. One, from a firm called Sautelle and Hicks, states a price of "£38,500 o.n.o." The second is from a different firm called Stratton & Holborow, and states the price is "£45,000". The Sautelle and Hicks document refers to "the owner" (singular) in the past tense, and states that "IMMEDIATE VACANT POSSESSION" is available. It also states that "there is a private slip and jetty onto the creek" though in the next sentence it says, "The jetty is leased from the Trelissick Estate at a nominal rent". The references to a single owner in the past tense and the use of the words "immediate vacant possession" would be consistent with the sale by the executors of the late Mr Mills to Mr and Mrs Hutchins in July 1973. In addition, the Hutchins paid £40,000, rather than £38,500 or less, but so did the Livermores in 1976. That discrepancy may simply reflect the existence of multiple bidders for the property at the time of sale. The rateable value is stated to be £334.

97. The Stratton & Holborow document describes the property on the front page, including the words "PRIVATE QUAY WITH MOORING POSTS, SLIPWAY AND 2 MOORINGS". This wording appears to be significant. Further on, it explains that "A pathway leads from the property to the Private

Quay and slipway with mooring posts and ladder." In the next paragraph the following words are found: "A lease is held for use of the Private Quay at a payment of £20 per annum. A turning space to the rear of the property is rented for the sum of £1 per annum." The document also states that the rateable value is "£334 (1973/74 assessment)".

98. In his witness statement, the claimant says that, at the time of his dispute with Mr Rackham in 1997, the first defendant in claim 54 gave him a copy of estate agents' particulars relating to the sale of Carrick in 1973. He also says that he noted that the front page confirmed that "Carrick comprised, amongst other features, a private quay, slipway and two moorings". These latter words appear, in that order, on the front page of the Stratton & Holborow particulars, but not the Sautelle and Hicks'. There is an additional copy of the front page of the Stratton & Holborow particulars in the bundle, derived from the disclosure of the claimant. It bears the handwritten words "Sold June 1973 … ". I find that this is the document given to him in 1997. However, there is nothing to show that the either of these two sets of particulars was available to or seen by the claimant at the time of his purchase in 1984, and I find that they were not. On the other hand, since the claimant read the particulars, he must have known thereafter that the "Private Quay" did not belong to Carrick, and was not sold with it. Instead, and subject to acquisition by another method, it was (at best) leased.

99. The claimant says that at the same time the first defendant in claim 54 gave him a copy of some notes prepared for a witness statement in connection with a dispute between the Rackhams and the Copelands. (This litigation is referred to below, at [127].) These papers included a reference to three of the lots described in the auction particulars, that is, 25, 26 and 71. The notes copied over the descriptions of those lots from the particulars. In relation to lot 71, they included the words "The Foreshore abutting on this Lot, as shown on Plan, is included". The claimant says that this confirmed his view that the Lower Quay had been sold to him together with Carrick. The same notes also referred to the lease of the Quays to Mr John Mills of Carrick as a lease for seven years from 29 September 1963, subsequently extended at least until the time of his death in 1973, which I find explains the reference in the Stratton & Holborow particulars to a lease "of the Private Quay".

100. It is to be noted that none of the conveyances from Mr Emery in 1948 through to that to the claimant in 1984 purports to convey an estate in the land comprising the Driveway or the Strip. Those of 1976 and 1984 (but not the earlier ones) do express the grant of a right of way along both. As I have already noted above ([82]), the 1920 auction particulars stated (in the Notes on page 31) that a right of way was to be granted to the purchaser of lot 71. However, as I have said, the conveyancing documents before 1976 that I have seen do not in fact reflect this. In any event, the defendants to claim 60 do not challenge the existence of a right of way for the benefit of the owner and occupiers of Carrick over the Driveway. The defendants to claim 54 do not plead that the claimant has (or has not) any right of way over the Strip, but they do deny that the claimant is the owner of it.

101. Carrick was first registered on 2 October 2013, under title no CL 301145, with the claimant as sole registered proprietor. The registered plan is set out in the Appendix as plan 14. It will be seen that none of the disputed land is included in the registered title. It is clear that the claimant never applied for registration of any of it. He said that this was because his solicitors (who were not local, but based in Cardiff) simply went ahead and applied to register what they thought the claimant owned, rather than referring to him. The claimant's evidence (which I accept) is that he did not see most of the original conveyancing documents for Carrick until November 2015. After the registration of the property in 2013, the registry wrote to him about the siting of his garage a year later, in November 2014, he replied, and he received back copies of the 1984 conveyance and the 1973 plan referred to. That in turn led him in November 2015 to request the conveyancing file from his solicitors.

Pentui

102. On 31 August 1948, Mr Wright conveyed to Michael and Margaret Sheridan all that Mr Emery had conveyed to him in 1927. On 3 September 1970 Mr and Mrs Sheridan conveyed all that Mr Wright had conveyed to them to John Mills and Kathleen Mills as beneficial joint tenants. However, Mrs Mills was the owner of the adjacent property Carrick, having purchased it on 2 November 1954 (see above). Mrs and Mrs Mills took advantage of this acquisition of further land to build a new garage for Carrick at the top of Pentui, adjacent to the Driveway, with a short drive leading to it from the Driveway (see plan 13 in the Appendix). Although this garage was later replaced by a more modern one in a different position (but close by), this led subsequently to the creation of the "dog's leg" extension of Carrick which still exists today. I deal in more detail with the boundaries of this extension below.

The creation of "small" Pentui

103. On 8 March 1972 Mr Mills, after the death of his wife, and as surviving legal and beneficial joint tenant of Pentui, conveyed to Henry Rackham and Eileen Rackham as beneficial tenants in common in equal shares

> "ALL THOSE pieces or parcels of land having an area of approximately half an acre or thereabouts situate at Pill Creek in the Parish of St Feock in the County of Cornwall and being Part No 1427, Part No 1512 and Part No 1522 on the Ordnance Survey Map (1907 Edition) for the said Parish as the same are for the purpose of identification only more particularly delineated on the plan annexed hereto and thereon coloured Pink and Brown TOGETHER with the messuage or dwelling house garage and outbuildings erected thereon and known as "Pentui" Pill Creek St Feock aforesaid AND TOGETHER with a right of way at all times and for all purposes on foot or with motor or other vehicles over and along the roadway which is shown and coloured Blue on the said plan Subject to the Purchasers contributing a fair proportion of the cost of maintaining such roadway in a reasonable state of repair and condition AND TOGETHER with (so far as the Vendor can assure the same) the right for the Purchasers and their successors in title and their tenants undertenants and servants in common with all others entitled to like right at all times

> hereafter to draw water from the spring and well marked by a red circle on the said plan and for that purpose and for the purpose of access and egress and regress to and from the said spring and well to pass and repass over the land indicated by the Number 26 on the said plan with the right for the Purchasers and their successors in title and their tenants undertenants and servants in common with all others entitled to like right at all times hereafter to pass and repass over and along the existing footpath or track on or over the land coloured Green on the said plan leading from (inter-alia) the property hereby conveyed to the said land indicated by the Number 26 on the plan and to the said spring and well AND TOGETHER FURTHER with the benefit and advantage of the covenant on the part of Ernest Emery contained in a Conveyance dated the Ninth day of August one thousand nine hundred and twenty-seven and made between Ernest Emery of the one part and Andrew John Metford Wright of the other part to erect and for ever thereafter to maintain in good and tenantable repair a stock-proof fence between the points marked "A" and "B" on the said plan EXCEPT AND RESERVING unto the Vendor and his successors in title owners or owner for the time being of the Vendor's adjoining property known as "Carrick" shown on the said plan a right of way at all times and for all purposes on foot or with motor carriages and other vehicles over and along the existing roadway coloured Brown on the said plan leading across the property hereby conveyed to and from the Vendor's said adjoining property the Vendor contributing a fair proportion of the cost of maintaining such roadway in a reasonable state of repair and condition and also EXCEPT AND RESERVING unto the Vendor the right for the Vendor and his successors in title to maintain a water pipeline under the said roadway with liberty from time to time to carry out such work as may be necessary for the maintenance repair or renewal of such pipeline the Vendor making good any damage occasioned thereby … "

104. The plan attached (plan 15 in the Appendix) showed that what was conveyed to Mr and Mrs Rackham in 1972 was a much smaller piece of land (on which Pentui had already been built) than that which Mr and Mrs Mills had acquired in 1970. First of all, the "dog's leg" on which they had built a garage had been detached and added to Carrick. The original garage was not erected where the modern one now is, at the northern end of the dog's leg, where the turning circle is. Instead, it was built someway down the 'dog's leg', with its doors open on the axis towards the top end. A drive ran from the turning circle to the garage (see plan 13 in the Appendix). In 1998-2000, the claimant demolished the old garage, and constructed the new, sited at the top of the 'dog's leg', with its doors this time facing the turning circle rather than the north. I shall return to the issue about this garage and the Pentui-Carrick boundary shortly.

105. The second point about the March 1972 conveyance was that the northern two thirds or so of the remainder of parcel 1427 were *not* conveyed by Mr Mills to the Rackhams. They were retained by him. So, the Rackhams at that stage had a much smaller plot, sandwiched between Carrick and the northern part of parcel 1427. I find that the reference to "Number 26" near the spring on the plan is to the 1920 lotting number (see plan 5 in the Appendix). At the trial

plan 15 was criticised by Michael Copeland as inaccurate. It does not have a scale, no acreages are given, it does not bear an OS copyright or signature of a surveyor, and a number of features are omitted, such as the second boathouse and slipway. Mr Fassam's expert report for this litigation contains an overlay of this plan onto his modern survey plan. There are many significant variations between the two. They cannot both be right. Whilst I accept that the 1972 plan is an integral part of the 1972 conveyance, I do not accept it as an accurate representation of the land itself, even at the time. Where they differ, I prefer the modern survey plan as more accurate.

106. The plan (plan 15 in the Appendix) also shows the private extension of Pill Lane (from the adjacent boundary between parcel 1427 and parcel 1408) southwards as coloured blue. Therefore, under the conveyance the Rackhams as purchasers were seemingly granted a right of way over that private road to reach the Pentui plot. This is relied on by the claimant to show that Mr Mills as owner of parcel 1427 (*ie* Carrick and Pentui) also owned the private road. But it is a general principle of English law that you cannot grant what you do not have (in the Latin phrase, "*nemo dat quod non habet*"), and I have found no document evidencing any conveyance of the roadway *to* Mr Mills or any of his predecessors in title. Indeed, the conveyance to Mr Emery by Col Sworder in 1925 (see [85]) specifically conveyed land "on the eastern side of the road", but *not the road itself*.

107. It may be that, as Peter Copeland is said by Mr McGaw to have told him some time ago, the upper part of the road (outside the curtilage of Pentui) was part of the Trelissick Estate that was never sold to anyone by the executors of Mr Davies Gilbert's estate. (As stated at [13] above, the road was parcel 1405 on the OS 1907 map, and parcel 1405 did not feature as part of any lot in the 1920 auction particulars.) As a result, in the absence of a valid possessory title claim, that would remain the position. The upper track running over Pentui is shown on the plan coloured brown, so that the owners of Carrick for the time being had the right of way over it to reach their property. On the same plan, the southern part of Carrick, being part of parcel 1522 conveyed to Mr Emery in 1925 is shown coloured green, so that the owners of Pentui for the time being had a right of way over the footpath over that portion of land to reach the spring.

The restoration of "large" Pentui

108. As I have said, Mr Mills died on 21 January 1973. On 5 July 1978 the executors of Mr Mills conveyed to the Rackhams

> "ALL THAT Piece or parcel of land adjoining "Pentui" Pill Creek Feock as the same is for identification purposes only shown edged red on the plan attached hereto and being part OS 1427 and 1512 TOGETHER WITH (so far as the Vendors are entitled thereto) the right for the Purchasers and their successors in title and their tenants undertenants and servants in common with all others entitled to the like right at all times hereafter to draw water from the spring and well marked by a red circle on the said plan and for that purpose and for the purpose of access egress and regress to and from the said spring and well to pass and repass over the

> land indicated by the Number 26 on the said plan TOGETHER ALSO with the right for the Purchasers and their successors in title and their tenants undertenants and servants in common with others entitled to the like right at all times hereafter to pass and repass over and along the existing footpath or track on or over the land coloured green on the said plan leading from (inter-alia) the property hereby agree to be sold to the said land indicated by the Number 26 on the said plan and to the said spring and well TOGETHER ALSO with such title right or interest (if any) as the vendors have in the land coloured yellow on the said plan".

But the property was conveyed "subject [to] exceptions and reservations referred to in" the 1927 conveyance. This reserved a vehicular right of way over the land conveyed by Mr Emery to Mr Wright (essentially modern Pentui).

109. On the plan attached (plan 16 in the Appendix), the land shown edged red is that northern part of parcel 1427 which had been retained by Mr Mills in selling Pentui to the Rackhams in 1972. The land coloured green on the plan shows the line of the footpath over Carrick over which the right of way was granted to the owners for the time being of the land conveyed. The land coloured yellow on the plan is that part of the upper track leading from (the restricted 1972 form of) Pentui to the public highway at Pill Lane, over which the Rackhams had purportedly been granted a right of way in 1972. This 1978 conveyance now purported to convey all the rights which Mr Mills had had in that land. But, so far as I can see from the conveyancing documents, Mr Mills had none in that part of the track which lay outside the (modern) curtilage of Pentui (see [106] above). It could and did operate, however, to convey to the Rackhams that part of the upper track that crossed the northern portion of parcel 1427. This had been conveyed to Mr and Mrs Mills by Mr and Mrs Sheridan in 1970 (having been acquired by them directly from Mr Wright in 1948, who had in turn acquired it from Mr Emery in 1927: see [87] and plan 12 in the Appendix). As a result of the 1978 conveyance, however, Mr and Mrs Rackham certainly became entitled to all the land that Mr Emery had conveyed to Mr Wright in 1948, with the exception of the "dog's leg" which had been detached by Mr Mills and retained as part of Carrick in 1972. Again, I find that the use of "Number 26" near the spring on the plan refers to the 1920 lotting number.

110. Mr Rackham died in 1999. Mrs Rackham died in 2002. On 27 September 2002 Mrs Rackham's personal representatives sold and transferred Pentui to Mr and Mrs McCann. The title to Pentui was first registered on 7 October 2002, under no CL 187464, in the names of the McCanns. On 21 June 2007, the McCanns transferred the property to Alan McGaw and Susan McGaw, the defendants in claims 59 and 60. The plan for the registered title is shown as plan 17 in the Appendix. There are three points to note. One concerns the route of the Pentui boundary running off the end of the Upper Quay and across the lower track. On the earlier unregistered conveyancing plans (set out above) this is shown as running at 90° across the track, almost as a continuation of the edge of the Upper Quay. But on the registered plan it is shown as a sharp diagonal up-tick. I find that this is the result of the transfer at [47] above. The

second point is that the plan of the registered title covers part of the private road, running southwards from the point where the middle part of parcel 1427 meets the top part of parcel 1427, also shown on the previous plans (at plans 15 and 16 in the Appendix). The southern part (coloured yellow on the plan above) of the private road begins at the junction between the upper and lower tracks. So, the owners of Pentui are shown as proprietors of that southern part of the private road. This accords with the view that I have expressed in paragraph [109].

The garage land

111. The third point concerns the boundary between (i) the 'dog's leg' extension of Carrick and (ii) Pentui. The registered plan, at plan 17 in the Appendix, shows the boundary as wrapping round the garage at the northern end of the 'dog's leg'. The claimant says that it should continue north of the garage until it meets a bank on the original boundary between parcel 1427 and parcel 1408 (1907 map): see Mr Fassam's report at page 100. And then (he says) the boundary at the top of the dog's leg should follow the line of the bank back to the garage. This is shown on the plan attached to the particulars of claim in claim 59 (plan 2 above) as a red hatched area resembling half an arrow head (split lengthways).

112. But the conveyancing plans 13, 15 and 16 in the Appendix show that boundary as a straight-line west-east extension of the boundary previously existing between Pentui and the land to the north, retained by Mr Mills in 1972. They also show that the northern end of the 'dog's leg' was not contiguous with the bottom end of parcel 1408 (1907 map), which belonged to the ffrench-Constants until it was sold to the McGaws together with the Driveway in 2021. As I have said, Mr Mills sold only a small part of the current Pentui to the Rackhams in 1972. His estate then sold Carrick, with the 'dog's leg' – but not the extension of Pentui to the north (which it retained) – to the Hutchins in 1973. Finally, the Mills estate sold that northern extension of Pentui to the Rackhams in 1978.

113. For all three transactions, the exact boundary between the dog-leg and Pentui was important (save only that, on the first one in 1972, the *northern* boundary between the dog's leg and the extension of Pentui mattered less, because Mr Mills retained both; however, the western boundary was still of importance). Both the 1976 sale of Carrick from the Hutchins to the Livermores and the 1984 sale of Carrick from the Livermores to the claimant and his first wife referred to the 1973 plan (plan 13 in the Appendix) rather than attaching their own. All that the Livermores had to sell and convey to the Henwoods in 1984 was what the Mills estate had sold to the Hutchins in 1973, and which they had then sold to the Livermores in 1976.

114. As is clear from Mr Fassam's modern survey plan, the garage built by the claimant in 1999-2000 does not sit squarely on the north-south axis of the 'dog's leg', but at an angle: see his report at page 102. To the extent that the garage sits on land *outside* the 'dog's leg', *ie* originally belonging to someone else, it has sat there for more than twelve years without any complaint in the meantime. As I have said, the title to Carrick, including the whole of the land

on which the garage sits, was registered for the first time in the name of the claimant in 2013. There is no claim by either the Copelands or the McGaws in these proceedings for any alteration of the register to claim title to any of the land on which the garage sits. So, the questions for me are (i) whether any of the original 'dog leg' land *not* covered by the current garage is within the registered title of Pentui, and (ii) if so, whether the register of Pentui ought in consequence to be altered.

115. Looking at the plans in the 1972, 1973 and 1978 conveyances, it is clear that the boundary running down from the northern edge of the 'dog's leg' to the western edge of (modern) Pentui is more or less parallel to the main west-east boundary between Pentui and Carrick. It runs from a point on the west side of Pentui just to the north of the turning circle to a point on the east side of Pentui just south of the junction between the end of the Driveway and the turning circle at the beginning of the Strip. There is no evidence that there was ever a conveyance to the claimant or his predecessors in title of any part of the 'dog's leg' extending over the earlier boundary between (small) Pentui as conveyed in 1972 to the Rackhams and the northern part of (current) Pentui as conveyed to them in 1978, and certainly nothing with the jagged 'half an arrowhead' shape claimed. Nor is there any evidence that the claimant occupied or used any such land. And, to judge from the evidence before me of earlier litigation and complaints in which he was concerned, Mr Rackham, as the then owner of Pentui from before the claimant's acquisition of Carrick until his death in 1999, was not a man to let others trample on what he considered to be his rights without complaint. And here there was none.

The southern boundary of Pentui

116. In 2014 the fence dividing the southern edge of Pentui from the northern edge of Carrick was replaced. The claimant says that, in so doing, the boundary was moved some three metres towards Carrick, so that the owners of Pentui are now unlawfully occupying a strip along the north edge of Carrick. On the evidence I find the following facts. The division of lot 71 between Carrick and what became Pentui took place in 1927, when Mr Emery conveyed to Mr Wright (see [87] above). In that conveyance, mutual obligations were undertaken by the parties, each to provide the fence along half the boundary. As already stated, the plan (plan 12 in the Appendix) showed that there was to be a gap of either 21 or 31 feet between (a) the northern edge – nearest to the boundary – of the house constructed on Carrick and (b) that boundary. (The number is not clear on the copy I have seen. The first digit is quite differently shaped from the other examples of the number '2' on the plan.) The fence originally consisted of three strands of wire attached to metal posts. It was not in any event stock-proof. By 2013, that original, or any successor, fence had deteriorated to the point where it had virtually disappeared along most parts of the boundary. What now remained were simply some of the metal posts.

117. The first defendant in claim 60, Mr McGaw, and the claimant, Mr Henwood, had a number of meetings at that boundary, concerning the replacement of the fence. According to the first defendant, at these meetings the claimant alleged that the first defendant had moved the (surviving) metal posts. The first defendant referred to the plan to the 1927 conveyance, which he said showed

that there was a distance of 31 feet between the house and the boundary. He also said that he checked the distance and it was more than 31 feet, but he accepted the old fence position as it had been in place for many years. (I note in passing that, on the plan the product of Mr Fassam's recent survey, at a scale of 1:500, the distance between the northern edge of the house and the current boundary fence as surveyed by him would be approximately 10m, which is about 33 feet.)

118. The first defendant obtained a quotation of £300, for the replacement of this fence, from Steve McLernon, a fencing contractor. He says that the claimant agreed that the fence could be erected in the same position as the old fence, and that he told the contractor to do just that. And it was so erected in August 2014. The claimant paid his contribution of £150. Thereafter he did not complain about the line of the fence until the claim letter of 18 December 2020.

119. The claimant's evidence on this matter is ambiguous, but could be read as meaning that, whereas the original fence (and surviving posts) had been in the correct position, it was the fence *as replaced* which was in the wrong one, and it was only after the replacement that the claimant noticed the error. His case was that the *original* fence ran down between two lines of conifer trees on either side of the boundary, but the *replaced* fence was to the Carrick side of all of the trees. The other witnesses who refer to the lines of conifers are the builder, Mr Bassett, the forestry officer, Mr Hawke, Ms Thin, the gardener's daughter, and Mr Thomason, the claimant's friend of some 60 years.

120. The evidence of Mr Bassett, the builder, was that he was familiar with the layout of the grounds of the upper (north-western) part of Carrick. He says he recalls in particular two lines of conifers which lay either side of the fence dividing Carrick from Pentui. He says he had to remove three or four of them, on the Carrick side of the fence, to make space for the new sloping drive along the "dog's leg". It is not clear to me that he is referring to the fence between the south side of Pentui and the north side of Carrick. There was also a fence dividing the two properties running south to north along the west side of the "dog's leg" and the eastern boundary of Pentui. However, even assuming that he is referring to the south boundary of Pentui with the north boundary of Carrick, the removal of trees on the Carrick side would potentially give the impression that the fence had moved from between lines of conifers to the Carrick side of the conifers. Either way, I do not regard Mr Bassett's evidence as supporting that of the claimant.

121. The evidence of Mr Hawke is very much shorter. He was concerned with a number of trees which were subject to a Tree Preservation Order. But he made a report in the form of a letter dated 26 February 1997 accompanied by a plan on which he had marked the approximate location of the trees mentioned in the report and some other significant trees. His evidence is that those other significant trees included a line of trees running down the side of Carrick close to the boundary with Pentui. However, he does not say any more than that. I do not regard Mr Hawke's evidence as particularly supporting that of the claimant as to where the boundary between the two properties lay. Ms Thin remembers two lines of trees close to the boundary and the fence. But she says

no more than that. Mr Thomason says that the (by then, non-existent) fence passed between two lines of conifers, but that the replacement fence was put on the Carrick side of those lines. Coming from an occasional visitor to Carrick, and a long-standing friend of the claimant, I cannot regard this evidence, albeit honestly given, as of any great weight.

122. What is clear is that it was the first defendant who obtained a quotation for the new fence, and his workman who eventually installed it. I am also satisfied that the claimant paid his share of the cost of installing the fence. In addition, I am satisfied that the current position of the fence is at least 31 feet from the house built on Carrick (as indeed Mr Fassam confirmed in his report). All in all, having heard all the witnesses, where there is a conflict of evidence between the claimant and his witnesses on the one hand, and the first defendant on the other, on the line of the boundary between their two properties, I prefer the evidence of the first defendant. I think that the claimant has mistakenly convinced himself that he is right. Accordingly, (1) I find that there was an informal agreement between the parties that the new fence should be erected on the line of the old: *cf Neilson v Poole* (1969) 20 P & CR 909, 919, (2) I find that the fence was so erected, and (3) (whether or not there was a boundary agreement) I reject the claim of the claimant that the original boundary has been moved by the defendants, whether by 3m or any other distance, in favour of Pentui.

123. By way of footnote, I should mention that, in his survey report (page 98), Mr Fassam considered the 1927, 1972 and 1978 conveyances and their plans, but did not base his conclusion upon them, citing "inaccuracies in the historic Ordnance Survey mapping on which these deed plans were based". He said he had "carried out a survey and physical inspection of the area and found no evidence to persuade me that the boundary fence has ever existed in a different location." This also supports the view to which I have independently come.

Lots 70 and 72

124. It will be recalled that lots 70 and 72 were owned by Col Sworder in 1925, but not sold to Mr Emery. They appear to have been sold elsewhere, because on 15 August 1928 Mrs Mildred Bacon conveyed to Mr and Mrs Herbert Madge Forman

> "All that messuage dwellinghouse garden and premises known as Quay Cottage situate at Pill Creek in the Parish of Feock in the County of Cornwall on the western side of the road leading from Trevilla to Pill Creek aforesaid and now in the occupation of the Vendor And also All that garden or piece or parcel of land or part quay with the shed thereon adjoining to and held with Quay Cottage aforesaid now in the occupation of the Vendor And also All those closes or pieces or parcels of land situate at Pill Creek aforesaid on the eastern side of the said road leading from Trevilla to Pill Creek aforesaid all which said hereditaments containing together One acre one rood and twenty four perches or thereabouts statute measure are more particularly described in the schedule hereunder written and are for the purpose of identification only and not limitation or extension delineated on the plan drawn hereon and thereon coloured pink

> together with such rights as the Vendor may have in the properties abutting on the said closes and pieces or parcels of land situate on the western side of the said road leading from Trevilla to Pill Creek aforesaid Together also with a right (so far as the Vendors can grant the same) for the Purchasers and their successors in title their undertenants and servants in common with others at all times hereafter to pass and repass over the land marked 26 on the said plan for the purpose of access to and from and drawing water from the spring marked by a red circle on the said plan Together also with a right of way (so far as the Vendor can grant the same) out of and over the close of land coloured brown on the said plan to the Purchasers their successors in title and their undertenants and servants in common with others entitled to the use of the said spring Except and reserved to the owner and owners occupier and occupiers for the time being of the land marked blue on the said plan and all others having the same right access over the Quay shown on the said plan and the slipway therefrom And also except and reserved to the owner and owners for the time being of all or any part of the piece of land coloured yellow on the said plan right of access for the same person or persons for executing repairs to the lands coloured yellow on the said plan"

Once again, it will be noted that there is no mention of the ownership of the road itself (parcel 1405 on the 1907 map). The plan referred to is set out as plan 18 in the Appendix, and the roadway is entirely uncoloured.

125. The schedule to the conveyance referred to in the parcels clause contains the following information in tabular form:

Number on Plan	Description	Decimal acreage
Part 1406	Quay Cottage	.068
do 1426	Garden Shed and part Quay	.222
do 1408	Garden	.113
1407	Orchard	.730
Part 1408	Ditto	.269
		1.402

126. Lot 70 comprised Quay Cottage (the Schedule says "Part 1406", whereas the auction particulars say "Part 1408", but the acreage, 0.068, is the same), Garden Shed and Quay, Part 1426 (acreage 0.222), and Garden, Part 1408 (acreage 0.113). The Orchard mentioned in the schedule, which was parcel 1407, was lot 72. The remaining parcel in this conveyance was Part 1408 (acreage 0.269), originally part of lot 71, but detached in the sale by Col Sworder and his bank.

The private road and the upper track

127. By a statutory declaration dated 13 August 2008 Mr and Mrs Copeland stated that the Lower Quay had been in the ownership of their family since 1920, and in their own ownership since 1978 (strictly, that of Mr Copeland and his brothers). They also said that they and their family had used the private road leading from the public highway at Pill Lane to the Lower Quay at all times since 1920 to pass and repass as of right, with or without vehicles, for all purposes connected with the Lower Quay, without the consent of anyone and without payment. They referred to litigation in about 1979-82 between Mr Rackham (then of Pentui) and themselves regarding the use of the private road. They stated that they had successfully challenged Mr Rackham's claim to obstruct their use of the private road. The private road is coloured orange on the plan at plan 19 in the Appendix. The land at Lower Quay of which they said they were the owners is shown edged red, and corresponds to the land vested in the Copeland brothers by the 1978 assent.

128. Some of the court papers for that litigation were in the bundle before me, including a statement of claim, three "proofs of evidence" (not witness statements in the modern CPR sense) and a court order. I referred to the three proofs earlier, at [81]. The court papers show that the litigation was brought by the Copeland brothers against Mr and Mrs Rackham. They also show that on 8 July 1980 that litigation was settled by an agreement between the parties to the effect (*inter alia*) that:

(a) the brothers owned the Upper Quay and the Lower Quay and the foreshore immediately abutting thereon, the Lower Quay extending to the boundary with (but not including) that part of parcel 1522 shown on the plan below as having a decimal acreage of 0.196; they also owned the small quadrilateral of and formed by the four points JKLM on the plan (plan 20 in the Appendix);

(b) none of the parties to the litigation owned the private road from the public highway at Pill Lane down to points JK on the plan below; but

(c) all of the parties were entitled to a right of way for all purposes over that private road.

129. It will be seen that the small quadrilateral of land formed by the four points JKLM on the plan corresponds more or less to the land the subject of the 1980 assent ([40] above) and the transfer of 9 March 2016 ([47] above). Of course, this was litigation, concluded by an agreement, between *the particular parties to that litigation*, and the result binds only them and those who claim through them, and then only as against the other parties to the litigation. It does not, for

example, bind the claimant in his capacity as owner of Carrick. He was neither a party nor a successor in title to a party to the agreement. On the other hand, in principle it would bind the defendants in claim 54, as successors in title to the Copeland brothers, and the McGaws, if there were a relevant dispute between them. For present purposes, the important thing is that the litigation and agreement show that at that stage none of these parties claimed the ownership of private road for the future, but all of them claimed to have a right of way along it.

130. As I said earlier, the claimant claims to be the owner of the upper track between Quay Cottage and the turning circle at the (1972) boundary with Pentui. This is approximately the area coloured yellow on the plan attached to the conveyance of 5 July 1978 (plan 16 in the Appendix). He accepts in his particulars of claim that the defendants to claim 60, the McGaws, have a right of way over that part of the upper track to reach their property Pentui, by virtue of the conveyance in 1972 from Mr Mills to Mr and Mrs Rackham, the current defendants' predecessors in title (even though, as I have said above, Mr Mills appears not to have had any title so to grant, from Quay Cottage down to the junction between the upper and lower tracks). However, he relies on the fact that that conveyance in granting or confirming that right of way contains a proviso:

> "Subject to the Purchasers contributing a fair proportion of the cost of maintaining such roadway in a reasonable state of repair and condition".

This is not replicated in the registered title. Nor does it reflect the reservation in that conveyance to Mr Mills and his successors in title of a right of way over the metal track on Pentui to Carrick.

131. In claim 59, he

> "therefore seeks a declaration that he has title to the Metalled Track where it passes between Quay Cottage and the turning circle in Pentui to the upkeep of which the Defendants [*ie* the McGaws] are obliged to contribute, and right of way over the Metelled [sic] Track where it passes from the turning circle in Pentui to the boundary with Carrick".

I note in passing that this form of words involves a claim not only to ownership of the northern part of the track, from Quay Cottage down to the junction with the lower track, but also to ownership of that part of the track which is further south, *ie within* the (modern) curtilage of Pentui, between the junction between the upper and lower tracks and the turning circle. Given the terms of the conveyance of 1978 by the claimant's predecessor in title, this part of the claim seems to me on the face of it to be unsustainable. The plan attached to the particulars of claim in claim 60 (plan 2 above), shows the land claimed as a blue hatched area.

132. On the evidence before me, it is plain that many parties over many years have used the upper track from the public highway at Pill Lane down to their respective properties or claimed properties at Pill Creek, for the purposes of their and their visitors' access to those properties. Where there have been

attempts by one party or another to claim to obstruct others in the exercise of a claimed right of way, such claims have failed. Subject to those failed claims, all the parties to claims 54 and 59, and their predecessors in title, have exercised a claimed right of way as of right, openly, and without permission or payment, for more than 20 years. The McGaws have maintained and repaired that part of the upper track that is within the registered title of Pentui, but the only evidence that anyone (including the claimant) has maintained or improved the rest of the upper track up to the public highway is that of the McGaws that they alone have done so. Mr McGaw's evidence was that he has maintained and repaired not only that part of the track within his own registered title, but also that part leading up from Pentui to the public highway. His evidence was that on several occasions he asked both the claimant and Mr Peter Copeland to contribute to the cost, but that neither did so. I accept all this evidence.

Triangle of land across the lower track

133. The claimant also claims as against the defendants in claim 59 ownership of a small triangle of land, hatched in red on the plan 2 above, to the south of the blue area, lying partly across the lower track. Most of this is currently part of the registered title of Pentui. I say 'most' because, unlike plan 2 above, the registered title plan (plan 17 in the Appendix) does not draw a line straight across the lower track in line with the end of the quay. Instead, it makes a sharp uptick, to conform with the 2016 conveyance at [47] above. The plan to that conveyance shows that a small triangle in the south-east corner of the land edged in red was stated to be conveyed by the three Copeland brothers and Mrs Janet Copeland to Mr Peter and Mrs Janet Copeland jointly, and accordingly this was not registered as part of the title of Pentui. In relation to this small south-eastern triangle, the claim by the claimant against the McGaws as registered proprietors of Pentui is brought against the wrong defendants and must fail.

134. So far as concerns the remainder of the land hatched in red on the plan attached to the particulars of claim, this was the subject of the assent of 1980 by Ida Copeland's executors in favour of the three Copeland brothers (see plan 3 above above), but *not* the transfer dated 9 March 2016 from the brothers to Mr and Mrs Copeland (see at [47] above). However, it *was* registered as part of the title of Pentui. There is no paper title leading to the conclusion that it belongs or has ever belonged to the claimant. Any claim by him must accordingly rest on a possessory title. In relation to that, I have made findings (at [49] above) as to the use of and works done on the Lower Quay land, of which this forms an extension, and my findings apply just as much to this small portion of land as they do to the main part.

The Orchard and the Driveway

135. On 23 August 1971, National Westminster Bank Ltd, as personal representative of Norah Gertrude Beatty, who died on 11 February 1971, assented to the vesting in Louis ffrench-Constant and Martin ffrench-Constant of

> "ALL THAT piece or parcel of land being an orchard situate at Pill Creek in the Parish of Feock in the County of Cornwall more particularly described in the First Schedule hereto which said property comprises part of the property coloured pink on the plan drawn on a Conveyance dated the Fifteenth day of August One thousand nine hundred and twenty-eight and made between Mildred Irene Bacon of the one part and Herbert Edward Madge Forman and Maude Ellen Madge Forman of the other part … "

136. The schedule contains the following tabular information:

Ordnance Survey Number	Description	Acreage
1407	Orchard	.730
Part 1408	Orchard	.269

137. These details correspond to the last two entries in the schedule to the conveyance of 15 August 1928 between Mrs Bacon and Mr and Mrs Forman, and the plan referred to in the assent is that attached to that conveyance (see plan 18 in the Appendix). There were no documents before me showing the devolution of this land from Mr and Mrs Madge Forman to Norah Beatty. However, professional conveyancers of this period were very careful in checking such things (as the abstracts and epitomes of title in the bundle show), and I proceed on the basis that there was such a devolution.

138. As I stated earlier (at [67]), on 30 April 2004, the defendants in claim 54 and Michael Copeland conveyed the Driveway to Edward ffrench-Constant and his cousin Charles ffrench-Constant, in consideration of the sum of £40,000, and they were registered as proprietors at HM Land Registry under title no CL 205991 on 8 June 2004. On 23 November 2017, they were also registered as proprietors of the orchard inherited from their grandmother (parcels 1407 and part 1408 on the 1907 OS map).

139. A statutory declaration was made on 10 June 2021 by Dr Edward ffrench-Constant in relation to the access from the public highway at Pill Lane to the start of the Driveway. It concerns land in two registered titles, CL 205991 (the Driveway) and CL 335920 (land adjacent both to the Driveway and the orchard which they already owned), and says, in paragraph 3:

> "My family have been the owners of the main part of the Property [coloured red on the plan below] for many years (although in 2004 they acquired the secondary area of land currently comprised within registered title number CL 205991 [*ie* the Driveway]) and are therefore very familiar with it. My grandmother inherited the Property on her husband's death in

> 1967. When my grandmother died, the Property passed from her to my parents and eventually passed to myself and my registered co-proprietor."

As I have said, the "registered co-proprietor" was Professor Charles ffrench-Constant, who was his cousin, the son of his uncle, Martin ffrench-Constant. I do not think that anything turns on this, but I assume that Dr ffrench-Constant's and Professor ffrench-Constant's grandmother (and therefore Louis and Martin ffrench-Constant's mother) was Norah Beatty. The plan showing the two parcels of land concerned is plan 21 in the Appendix. One parcel is the Driveway. The other is the eastern part of parcel 1408 (on the 1907 OS map).

140. On 16 June 2021 Dr Edward ffrench-Constant and Professor Charles ffrench-Constant executed a transfer of part of registered land in form TP1 in favour of Mr and Dr McGaw, in consideration of the payment of £22,500. The latter were registered as proprietors on 27 June 2021, under title CL 205991. The land is stated to be identified on the plan attached as coloured red. The attached plan is the same as the one immediately above, but unfortunately not coloured in any part at all, least of all red. However, it is clear from the plan attached to the office copy entries for the title that the part transferred to the McGaws was the Driveway and the adjacent land also shaded on the above plan. That is no doubt why the McGaws were substituted for the ffrench-Constants as defendants in claim 60.

LAW

Land registration

Introduction

141. Until the nineteenth century, all conveyancing in England and Wales was unregistered, although there were deeds registries where deeds could be safely kept. Voluntary registration of *title* to land (not the land itself) in England and Wales began with the Land Registry Act 1862, but the legislation was of poor quality, though improved in 1875. It was only with the Land Registration Act 1925 that an effective national scheme of registration of title was created. This was slow to catch on, except in London, where registration on transfer had been compulsory for longer (since the Land Transfer Act 1897). The slow rate of uptake was partly because of reluctance from conveyancers, conservative by nature, and partly because of lack of resources given to the registry, so that registration became compulsory only one area at a time. But, by the end of the 20th century, compulsory registration extended to the whole country, and it was widely used. It was replaced in 2002 by a more modern and efficient system, though building on the existing one and obviously retaining the titles which were already registered by then.

142. The main problem in creating the land registration system for England and Wales was to cope with the complexity of our existing land law. The principle of owner autonomy meant that owners were largely free to divide up, fragment and even "timeshare" land as they chose (unlike in other systems). So land registration was preceded and facilitated by many simplification reforms. Some of these employed the use of trusts, whereby the owner autonomy

principle was satisfied by allowing the division of beneficial interests in land, whilst leaving conveyancers to deal (largely) with the legal owners, the trustees. But registration was assisted by not registering everything. Many interests in land in consequence have no place on the register. Often the land register "registers" rights against a title by merely referring to a particular deed, without even attempting to explain what the legal effect of it might be (see for examples entries 4 and 5 if you in the "Property" section of the register for Pentui). Many unregistered interests in land will bind the registered owners, whether they know about them or not. That is the price to pay for a functioning registration system imposed on a highly complex substantive land law.

143. The title to most land in the *private* sector is now registered, but much land in the *public* sector (which has not changed hands or been dealt with for many years) has still not been registered, since the transfer of ownership of land is the main trigger for registration. In registering titles to the various parcels of land described above, HM Land Registry will have acted on the basis of the conveyancing documents made available to them at the time. These may have included documents not in the trial bundle or otherwise available to me at this trial. I do not know. However, by section 58(1) of the Land Registration Act 2002,

> "If, on the entry of a person in the register as the proprietor of a legal estate, the legal estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of the registration."

144. For present purposes, the term "legal estate" here refers in practice to either a "freehold" (technically, the fee simple estate) or a lease for more than seven years. Essentially, this provision means that, if the unregistered conveyancing result would be that a legal estate is owned by A, but for some reason B has been registered as the proprietor of that estate, then, simply by virtue of the registration, *B*, rather than *A*, is the owner in law. This process is sometimes referred to as "statutory magic", though those whose legal rights appear to vanish overnight by means of forged documents presented to the Land Registry may prefer to use other words. On the other hand, there are provisions in the 2002 Act for the register to be subsequently altered if a mistake has been made in registration, or if there is some other good reason why it needs to be changed. In the present case, the claimant seeks to invoke those provisions. I shall deal with them later.

What can be registered?

145. As stated above, not all rights in relation to land can be registered as belonging to someone. Those that can include a legal estate (see above), a rentcharge, a franchise, a profit à prendre in gross, and charges or mortgages on all the above. Easements and covenants are commonly also entered on the register, in two places. They are commonly entered in the "Property" section of the register of the property *benefited* by them, and in the "Charges" section of the register of the property *burdened* by them.

Unregistered titles and first registration

146. At this stage, however, the results of all the conveyancing which I have described, are (on paper) as follows.

147. As to the **Lower Quay**, this was assented to the Copeland brothers in 1978 by Ida Copeland's executors, and appears to have passed under a transfer dated 9 March 2016 to the defendants to claim 54. They were registered as proprietors on 21 March 2016, under title number CL321578.

148. As to **Hick's Meadow**, this was part of the letting of Pill Farm to Mr Dale in 1966, but given up by him in 1980. It was assented to the Copeland brothers in 1987 by Ida Copeland's executors, and also appears to have passed under the same transfer dated 9 March 2016 to the defendants to claim 54. As I have said, they were registered as proprietors on 21 March 2016, under title number CL321578. The register states that the land has the benefit of the rights reserved on the sale of Pill Farm to the National Trust in 1994, but no relevant burdens.

149. As to the **Strip**, this was originally part of field 1510, which again was part of Pill Farm, and subject to the letting to Mr Dale from 1966 until 1993. It too was assented to the Copeland brothers in 1987, along with Hick's Meadow and the Driveway. By the same transfer dated 9 March 2016, it was passed to the defendants to claim 54. Once more, they were registered as proprietors on 21 March 2016, under title number CL321578, with the benefit of the rights reserved as stated above, but again no relevant burdens.

150. As to the **Driveway**, this was originally part of field 1409, which in turn was part of Pill Farm, and again subject to the letting to Mr Dale from 1966 until 1993. It was assented to the Copeland brothers in 1987, along with Hick's Meadow and the Strip. But it was sold out of the family to the ffrench-Constant cousins in April 2004, who were registered as proprietors of it in June 2004, under title number CL205991. After being made defendants in claim 60 by the claimant, they sold and transferred it to the McGaws, the current defendants in claim 60, in 2021, who in turn were registered as proprietors shortly afterwards. No relevant benefits or burdens are noted on the register.

151. As to **Carrick**, the title was registered in the name of the claimant in 2013, under title number CL301145, and the extent of the land covered by that registration is shown in plan 13 in the Appendix. The register states that the land has the benefit of the rights granted on the sale to the claimant and his late wife by the Livermore's in 1984, and the benefit of any legal easements reserved by the sale by Mr Mills to the Rackhams of "small" Pentui in 1972. Curiously, there is no "charges" section of the register for this property. But the entries in the "property" section make clear that the property is also subject to rights contained in the two conveyances already referred to, for the benefit of adjoining land. I note that the registered title to Pentui contains no relevant burden in favour of Carrick. The claimant claims in addition the Driveway, the Strip, Hick's Meadow and the Lower Quay, none of which is presently included in the registered title for Carrick. Nor is there any evidence in the unregistered conveyancing documents of any attempt to convey title to any of these parcels to the claimant or any of his predecessors in that title as owners

of Carrick. That means that, if the claimant is to succeed in any of his claims it must be on the basis that he has established title in a different way, for example by adverse possession or long user.

152. As to the **upper track**, this falls into two parts. The first is that part between Quay Cottage and the junction between the upper and lower tracks. This has not been registered, and it is unclear who owns it. There is no paper evidence to show that it belongs to any of the parties in this litigation and, as between each other, I find that they are not the owners. It *may* be that ownership remains with the estate of Mr Carew Davies Gilbert, not having been disposed of after his death. On the face of it, it looks as though the claimant, the McGaws and the Copelands have all established rights of way by long user against whoever the owner is, but I cannot and do not decide that in this litigation. The second part is that to the south of the junction between the upper and lower tracks and the boundary between Pentui and Carrick. This is now part of the registered title to Pentui (CL187464). But that also appears to be the result of the unregistered conveyancing, and in particular, the conveyances of the land which became Pentui in 1927, 1948, 1970, 1972 and 1978. This part of the claimant's claim was abandoned in closing.

153. As to the **lower track**, part of the area claimed is registered in the names of the defendants to *claim 54*, Mr and Mrs Copeland. However, they are not defendants in claim 60. The rest is registered in the names of the McGaws, who *are* defendants in claim 60. However, as I have already said, there is no paper title leading to the conclusion that it belongs or has ever belonged to the claimant or his predecessors in title. Any claim to this land as against them must be possessory. But in fact the claimant abandoned this claim in closing.

154. As to the **garage land**, the garage itself is part of the registered title of Carrick. But my own conclusion, looking at the photographs and the plans, and having had the benefit of a site visit, is that the north-western corner of the garage is built on land which in unregistered terms would belong to Pentui, and the north-eastern corner and most of the eastern side is built on land which was formerly part of the Strip. On the other hand, because the western boundary of the 'dog's leg' was a straight line, there is a small triangle of land behind the garage (*ie* on its western side) which should be part of Carrick but appears to have been registered as part of Pentui. But there is no other part of the registered title of Pentui that in unregistered terms would be part of Carrick. I illustrate my opinion in the plan at 22 in the Appendix. The dotted lines show the unregistered boundaries at the site of the garage. I may say that I have drawn these lines at points which I consider on the evidence to be the most favourable to the claimant. Even if they were drawn less favourably, I do not think it would make any difference in practice, because of the lapse of time.

155. As to the **southern boundary of Pentui with Carrick**, for the reasons already given, on the evidence I do not accept that the unregistered boundary, as created by the conveyance of 1927 by Mr Emery to Mr Wright, was in a different place from the position of the current boundary on the ground, or as registered at the Land Registry.

Adverse possession

The law: unregistered land

156. The Limitation Act 1980 (as amended) relevantly provides as follows:

> "**15.— Time limit for actions to recover land**.
>
> (1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.
>
> (2) Subject to the following provisions of this section, where—
>
> > (a) the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and the right of action to recover the land accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest; and
> >
> > (b) the person entitled to the preceding estate or interest (not being a term of years absolute) was not in possession of the land on that date;
>
> no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.
>
> […]
>
> (4) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.
>
> (5) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act, no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.
>
> (6) Part I of Schedule 1 to this Act contains provisions for determining the date of accrual of rights of action to recover land in the cases there

mentioned.

[…]

17. — Extinction of title to land after expiration of time limit.

Subject to—

(a) section 18[1] of this Act; […]

(b) […]

at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

[…]

29.— Fresh accrual of action on acknowledgment or part payment.

(1) Subsections (2) and (3) below apply where any right of action … to recover land … has accrued.

(2) If the person in possession of the land, … in question acknowledges the title of the person to whom the right of action has accrued—

(a) the right shall be treated as having accrued on and not before the date of the acknowledgment; and

[…].

(7) Subject to subsection (6)[2] above, a current period of limitation may be repeatedly extended under this section by further acknowledgments or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgment or payment.

30.— Formal provisions as to acknowledgments and part payments.

(1) To be effective for the purposes of section 29 of this Act, an acknowledgment must be in writing and signed by the person making it.

(2) For the purposes of section 29, any acknowledgment or payment—

(a) may be made by the agent of the person by whom it is required to be made under that section; and

(b) shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

[1] Section 18 deals with settled land and land held on trust. It has not been suggested that it is relevant here.
[2] This refers to payments of rent or interest due, and is not relevant here.

[…]

SCHEDULE 1

PROVISIONS WITH RESPECT TO ACTIONS TO RECOVER LAND

Section 15(6), (7)

PART I

ACCRUAL OF RIGHTS OF ACTION TO RECOVER LAND

Accrual of right of action in case of present interests in land

1. Where the person bringing an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action shall be treated as having accrued on the date of the dispossession or discontinuance.

[…]

Right of action not to accrue or continue unless there is adverse possession

8(1) No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as "adverse possession"); and where under the preceding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as having accrued and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession.

(3) For the purposes of this paragraph—

> (a) possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be treated as adverse possession of the rentcharge; and
>
> (b) receipt of rent under a lease by a person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease shall be treated as adverse possession of the land.

> (4) For the purpose of determining whether a person occupying any land is in adverse possession of the land it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present or future enjoyment of the land. This provision shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case."

157. It will be seen that the operation of the Limitation Act in relation to the recovery of (unregistered) land depends on the lapse of time since the right to the action accrued. The right of action to recover land accrues when the previous possessor has either (i) discontinued possession or (ii) been dispossessed, by "adverse possession" of a person in whose favour time can run: see Sch 1, para 8. However, the principles of adverse possession are not contained in the statute. Instead, they are elaborated in a series of judicial decisions. The principal of these are a decision of Slade J in *Powell v McFarlane* (1977) 38 P & CR 452, a decision of the Court of Appeal in *Buckinghamshire County Council v Moran* [1990] Ch 623 (where Slade LJ gave the leading judgment), and a decision of the House of Lords in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419, which largely confirmed *Powell*. Also relevant are the decisions of the House of Lords in *Fairweather v St Marylebone Property Co Ltd* [1963] AC 510 and *R (Beresford) v Sunderland County Council* [2004] 1 AC 889, and the decisions of the Court of Appeal in *Prudential Assurance Co Ltd v Waterloo Real Estate Inc* [1999] 2 EGLR 85, and *Lambeth LBC v Blackburn* (2001) 82 P & CR 494.

158. For present purposes I begin with *JA Pye (Oxford) Ltd v Graham*. In that case in 1983 the claimant landowner entered into a written grazing agreement with a farmer in relation to land enclosed by hedges and accessible through a locked gate. In 1993 the agreement ended, and the claimant required the farmer to vacate, as they wished to obtain planning permission to develop it. The farmer did not vacate and continued to use the land. During this time he made further requests to renew the agreement, with no response from the claimant. In 1997 the farmer, having continued to use the land, registered cautions at the land registry on the basis that he had by then obtained title by adverse possession. He died in February 1998 in an accident. In April 1998 the claimant sued to cancel the cautions, and in January 1999 brought possession proceedings against the farmer's widow and personal representatives. Neuberger J held that the farmer had established a title by adverse possession and dismissed the claimant's claims. The Court of Appeal reversed this decision. The farmer's personal representatives appealed to the House of Lords, which allowed the appeal, and restored the decision of the judge.

159. Lord Browne-Wilkinson (with whom Lords Bingham, Mackay, Hope and Hutton agreed), looked first at the concept of adverse possession for the purposes of the 1980 Act. He said:

> "35. … Para 8(1) of Schedule 1 to the 1980 Act defines what is meant by adverse possession in that paragraph as being the case where land is in the

> possession of a person in whose favour time 'can run'. It is directed not to the nature of the possession but to the capacity of the squatter. Thus a trustee who is unable to acquire a title by lapse of time against the trust estate (see section 21) is not in adverse possession for the purposes of para 8. …
>
> 36. … In my judgment much confusion and complication would be avoided if reference to adverse possession were to be avoided so far as possible and effect given to the clear words of the Acts. The question is simply whether the defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner.
>
> 37. It is clearly established that the taking or continuation of possession by a squatter with the actual consent of the paper title owner does not constitute dispossession or possession by the squatter for the purposes of the Act. Beyond that, as Slade J said, the words possess and dispossess are to be given their ordinary meaning.
>
> 38. … There will be a 'dispossession' of the paper owner in any case where (there being no discontinuance of possession by the paper owner) a squatter assumes possession in the ordinary sense of the word. Except in the case of joint possessors, possession is single and exclusive. Therefore if the squatter is in possession the paper owner cannot be. If the paper owner was at one stage in possession of the land but the squatter's subsequent occupation of it in law constitutes possession the squatter must have 'dispossessed' the true owner for the purposes of Schedule 1 para 1 … Therefore in the present case the relevant question can be narrowed down to asking whether the Grahams were in possession of the disputed land, without the consent of Pye, before 30 April 1986.[3] If they were, they will have 'dispossessed' Pye within the meaning of paragraph 1 of Schedule 1 to the 1980 Act."

160. Lord Browne-Wilkinson accordingly turned to consider the meaning of possession for these purposes. He said:

> "40. … there are two elements necessary for legal possession:
>
> 1. a sufficient degree of physical custody and control ('factual possession');
>
> 2. an intention to exercise such custody and control on one's own behalf and for one's own benefit ('intention to possess').

161. As to the former element, he then approved the statement of Slade J in *Powell* (at 470-71) that

> "Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an

[3] Twelve years before the first issue of proceedings by the claimant.

> owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. …. Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

162. Secondly, Lord Browne-Wilkinson discussed the nature of the *intention* required. He said:

> "42. There are cases in which judges have apparently treated it as being necessary that the squatter should have an intention to own the land in order to be in possession. … In the *Moran* case (1988) 86 LQR 472, 479 the trial judge (Hoffmann J) had pointed out that what is required is 'not an intention to own or even an intention to acquire ownership but an intention to possess. The Court of Appeal in that case [1990] Ch 623, 643 adopted this proposition which in my judgment is manifestly correct. Once it is accepted that in the Limitation Acts, the word 'possession' has its ordinary meaning (being the same as in the law of trespass or conversion) it is clear that, at any given moment, the only relevant question is whether the person in factual possession also has an intention to possess …
>
> 43. … Slade J reformulated the requirement (to my mind correctly) as requiring an 'intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow'."

163. Two cases in the Court of Appeal, amongst others, have considered the question whether the squatter's acts must be apparent to the paper owner. In *Prudential Assurance Co Ltd v Waterloo Real Estate Inc* [1999] 2 EGLR 85, the property squatted was in effect the non-owned half of a party wall, where the squatter owned the other half. It had carried out works to the wall, cut through and attached things to it, leased it as part of a larger demise and demonstrated its intention such that the other owner and its predecessors in title could have seen what was being done, but never objected. Giving the judgment of the court (himself, Robert Walker and Tuckey LJJ), Peter Gibson LJ said (at 87):

> "For a claimant to establish the necessary intention by his conduct, that conduct must be unequivocal in the sense that his intention to possess has been made plain to the world. If his conduct is equivocal and that intention has not been made plain, his claim will fail. … It would plainly be unjust for the paper owner to be deprived of his land where the claimant had not by his conduct made clear to the world including the paper owner, if present at the land, for the requisite period that he was

> intending to possess the land. The claimant must of course be shown to have the subjective intention to possess the land but he must also show by his outward conduct that that was his intention."

164. Similarly, in *Lambeth LBC v Blackburn* (2001) 82 P & CR 494, where a squatter moved into an empty flat, refurbishing it and intending to stay until evicted, and prepared to pay rent if asked, Clarke LJ (with whom Judge and Laws LJJ agreed) said:

> " … the possession must be adverse, that is adverse to the interest of the paper owner. It can only be adverse if the adverse possession is apparent to the owner; that is if it is manifest to the owner that the trespasser intends to maintain possession against the whole world including the owner. That does not mean that it must in fact be known to the owner, but that it must be manifested to him so that, if he were present at the property he would be aware that the trespasser had taken possession of it and intended to keep others out."

165. The question about the willingness of a squatter to pay or take a lease if asked to do so arose in *Pye v Graham*. Lord Browne-Wilkinson said:

> "46. In a number of cases (such as the present case) squatters have given evidence that if they had been asked by the paper owner to pay for their occupation of the disputed land or to take a lease they would have been prepared to do so … Once it is accepted that the necessary intent is an intent to possess not to own and an intention to exclude the paper owner only so far as is reasonably possible, there is no inconsistency between a squatter being willing to pay the paper owner if asked and his being in the meantime in possession. An admission of title by the squatter is not inconsistent with the squatter being in possession in the meantime."

However, possession by consent is not adverse possession. As Lord Browne-Wilkinson said (at [37]),

> "the taking or continuation of possession by a squatter with the actual consent of the paper title owner does not constitute dispossession or possession by the squatter for the purposes of the Act."

So the question is, what amounts to such consent? In *R (Beresford) v Sunderland County Council* [2004] 1 AC 889, the House of Lords was concerned with the meaning of the phrase "as of right" in the Commons Registration Act 1965, section 22. All their lordships except Lord Hutton (who simply agreed with Lord Walker) gave reasoned speeches, but all except Lord Scott also expressed agreement with Lord Walker's speech. So this is clearly a majority view.

166. Lord Walker referred to the case where a person paid for entry to land, and continued:

> "72. An entry charge of this sort can aptly be described as carrying with it an implied licence. The entrant who pays and the man on the gate who

> takes his money both know what the position is without the latter having to speak any words of permission (although he may qualify the permission by saying that no dogs, or bicycles, or radios are allowed). Similarly (especially in a small village community where people know their neighbours' habits) permission to enter land may be given by a nod or a wave, or by leaving open a gate or even a front door. All these acts could be described as amounting to implied consent, though I would prefer (at the risk of pedantry) to describe them as the expression of consent by non-verbal means. In each instance there is a communication by some overt act which is intended to be understood, and is understood, as permission to do something which would otherwise be an act of trespass."

167. He then compared this with acquiescence by the landowner in another's entry on the land:

> "79. Acquiescence, by contrast, denotes passive inactivity. The law sometimes treats acquiescence as equivalent in its effect to actual consent. In particular, acquiescence may lead to a person losing his right to complain of something just as if he had agreed to it beforehand. In this area of the law it would be quite wrong, in my opinion, to treat a landowner's silent passive acquiescence in persons using his land as having the same effect as permission communicated (whether in writing, by spoken words, or by overt and unequivocal conduct) to those persons. To do so would be to reward inactivity; despite his failing to act, and indeed simply by his failure to act, the landowner would change the quality of the use being made of his land from use as of right to use which is (in the sense of the Latin maxim) precarious."

168. A further point which is significant in this case concerns the legal position where a squatter has possession for the purposes of the Limitation Act, but the land is let. In such a case, it is clear law that, although the squatter can during the currency of a lease establish a title by adverse possession against the tenant (who is in possession), he cannot do so against the landlord (who is out of possession during the lease). In *Fairweather v St Marylebone Property Co Ltd* [1963] AC 510, a squatter claimed to be entitled by adverse possession against the lessee of part of a shed at the back of a house in Hampstead. The lessee purported to surrender the lease some 33 years before its term end, and the landlord began possession proceedings. As Lord Radcliffe put it (at 534):

> "The respondents' claim to possession can be stated in a few words. They are the fee simple owners of No. 315, including the site of the shed, so far as it is on that land; they have cleared off the lease which stood between them and their present right to possession; and, although the appellant as squatter was entitled to hold possession against the lessee, he had held no adverse possession against them until by the surrender of the lease, which took place on December 14, 1959, their right to claim possession from him accrued for the first time. As they began their ejectment proceedings in August 1960 their right is not statute barred."

169. The squatter's defence was based on the provision by the then Limitation Act (like the 1980 Act, s 17) that the previous title was *extinguished* by the adverse

possession for the relevant period. Therefore, the squatter argued, he was entitled to remain in possession until the end of the term, another 33 years. The House held that that was wrong, and that the landlord was right. But, on the way to that conclusion, the House also made clear, as Lord Radcliffe put it (at 536), that

> "No one supposes that adverse possession against a lessee during his term is itself adverse possession against his landlord."

This is confirmed by section 15(2) of the 1980 Act, set out earlier. Accordingly, to the extent that the claimant establishes adverse possession in relation to land that was let to Howard Dale, time will not run against his landlord(s) until the tenancy comes to an end in relation to the property concerned.

170. A further question is whether time once running can be interrupted. Section 30 provides that it can where an acknowledgment is made by the squatter to the paper owner. This was considered by the Court of Appeal in *Edginton v Clark* [1964] 1 QB 367. Upjohn LJ, giving the judgment of the court (himself, Ormerod and Davies LJJ) said, at page 376:

> "If a man makes an offer to purchase freehold property, even though the offer be subject to contract, he is quite clearly saying that as between himself and the person to whom he makes the offer he realises that the latter has a better title, and that would seem to be the plainest possible form of acknowledgment. Mr. McCulloch, however, has ingeniously argued that when an intending purchaser makes an offer to purchase he does not thereby acknowledge that the vendor can prove or establish the title which the purchaser is entitled to have on a sale and purchase of land. He says that the letters, properly understood, mean merely: 'If you can prove your title in a manner which I am bound to accept, then I will buy,' and accordingly, so the argument proceeds, there is no acknowledgment of the vendor's title. We are quite unable to accept that argument. Of course an intending purchaser does not acknowledge that the vendor has a marketable title when he makes an offer to purchase. That is a matter for inspection of title and requisitions at a later stage. But he does acknowledge that as between himself and the vendor the vendor has the better title to the land, and that seems to us to be all that is required. True, the plaintiff did not know the identity of the owner, but he knew that he was dealing with the owners' agent, and that, in our judgment, is sufficient (see section 24 (2))."

171. This decision was affirmed by the House of Lords in *Offulue v Bossert* [2009] 1 AC 990, which was the case of an action to recover land. In that case, Lord Neuberger (with whom Lords Hope, Rodger and Walker agreed) said:

> "76 On the other hand, I agree with the Court of Appeal [in the present case] on the issue of whether the offer to purchase the freehold of the property, as contained in the letter, was an acknowledgement sufficient to satisfy section 29, subject to the fact that it formed part of without prejudice negotiations. While any statement has to be construed by

> reference to its context, an offer to purchase an interest, even if made expressly 'subject to contract', will, at least in the absence of special facts, amount to an acknowledgement of the offeree's title to that interest. The decision in *Edginton v Clark* [1964] 1 QB 367 was, in my view, correct on this point."

The law: registered land

172. The law relating to possessory titles was significantly altered *in relation to registered land* by the Land Registration Act 2002, which came into force in October 2003. This relevantly provides as follows:

> "**PART 9**
>
> **ADVERSE POSSESSION**
>
> 96 Disapplication of periods of limitation
>
> (1) No period of limitation under section 15 of the Limitation Act 1980 (c. 58) (time limits in relation to recovery of land) shall run against any person, other than a chargee, in relation to an estate in land or rentcharge the title to which is registered.
>
> (2) No period of limitation under section 16 of that Act (time limits in relation to redemption of land) shall run against any person in relation to such an estate in land or rentcharge.
>
> (3) Accordingly, section 17 of that Act (extinction of title on expiry of time limit) does not operate to extinguish the title of any person where, by virtue of this section, a period of limitation does not run against him.
>
> 97 Registration of adverse possessor
>
> Schedule 6 (which makes provision about the registration of an adverse possessor of an estate in land or rentcharge) has effect
>
> […]
>
> SCHEDULE 6
>
> REGISTRATION OF ADVERSE POSSESSOR
>
> Section 97
>
> Right to apply for registration
>
> 1(1) [A] person may apply to the registrar to be registered as the proprietor of a registered estate in land if he has been in adverse possession of the estate for the period of ten years ending on the date of the application.

(2) [A] person may also apply to the registrar to be registered as the proprietor of a registered estate in land if—

(a) he has in the period of six months ending on the date of the application ceased to be in adverse possession of the estate because of eviction by the registered proprietor, or a person claiming under the registered proprietor,

(b) on the day before his eviction he was entitled to make an application under sub-paragraph (1), and

(c) the eviction was not pursuant to a judgment for possession.

(3) However, a person may not make an application under this paragraph if—

(a) he is a defendant in proceedings which involve asserting a right to possession of the land, or

(b) judgment for possession of the land has been given against him in the last two years.

(4) For the purposes of sub-paragraph (1), the estate need not have been registered throughout the period of adverse possession.

2(1) The registrar must give notice of an application under paragraph 1 to —

(a) the proprietor of the estate to which the application relates,

(b) the proprietor of any registered charge on the estate,

(c) where the estate is leasehold, the proprietor of any superior registered estate,

(d) any person who is registered in accordance with rules as a person to be notified under this paragraph, and

(e) such other persons as rules may provide.

(2) Notice under this paragraph shall include notice of the effect of paragraph 4.

3(1) A person given notice under paragraph 2 may require that the application to which the notice relates be dealt with under paragraph 5.

(2) The right under this paragraph is exercisable by notice to the registrar given before the end of such period as rules may provide.

4 If an application under paragraph 1 is not required to be dealt with under paragraph 5, the applicant is entitled to be entered in the register as the new proprietor of the estate.

5(1) If an application under paragraph 1 is required to be dealt with under this paragraph, the applicant is only entitled to be registered as the new proprietor of the estate if any of the following conditions is met.

(2) The first condition is that—

(a) it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant, and

(b) the circumstances are such that the applicant ought to be registered as the proprietor.

(3) The second condition is that the applicant is for some other reason entitled to be registered as the proprietor of the estate.

(4) The third condition is that—

(a) the land to which the application relates is adjacent to land belonging to the applicant,

(b) the exact line of the boundary between the two has not been determined under rules under section 60,

(c) for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him, and

(d) the estate to which the application relates was registered more than one year prior to the date of the application.

(5) In relation to an application under paragraph 1(2), this paragraph has effect as if the reference in sub-paragraph (4)(c) to the date of the application were to the day before the date of the applicant's eviction.

6(1) Where a person's application under paragraph 1 is rejected, he may make a further application to be registered as the proprietor of the estate if he is in adverse possession of the estate from the date of the application until the last day of the period of two years beginning with the date of its rejection.

(1A) […]

(2) However, a person may not make an application under this paragraph if—

(a) he is a defendant in proceedings which involve asserting a right to possession of the land,

(b) judgment for possession of the land has been given against him in the last two years, or

> (c) he has been evicted from the land pursuant to a judgment for possession.
>
> 7 If a person makes an application under paragraph 6, he is entitled to be entered in the register as the new proprietor of the estate."

173. It will be seen that, with the exception of claims to possession by chargees, the 1980 Act does not apply to registered land (s 96). Subject to the possible exercise of the power to alter it in the future (to which I shall have to return), the register is conclusive. But the concept of adverse possession in unregistered land is the same in registered land. Hence, if the paper title to land is registered before the completion of 12 years of adverse possession, the procedure under the 2002 Act applies, and not the unregistered land law under the 1980 Act (as the claimant accepted in closing). This generally means that the registrar cannot register the squatter after 10 years without first notifying the paper owner (and others) (Sch 6, para 2). Any of those notified may then require the application to be refused (under para 5) unless one of three exceptions applies (para 5(2),(3),(4)). The first relates to equities by estoppel, the second to "some other reason" for entitlement to be registered, and the third to boundary land where the boundary is uncertain and the applicant believes it belongs to him or her. In the present case, I need only refer to the third of them.

174. The third exception has been narrowly construed by the court, and extends only to disputed land the whole (or possibly substantially the whole) of which is adjacent to the unclear boundary. In *Dowse v Bradford MBC* [2021] P & CR 8, Fancourt J said:

> "41. On that basis, reading conditions (a), (b) and (c) together, it is clear that the exception is to the effect that the applicant was justified in believing that the true position of the boundary was where he believed it to be. The exception is necessarily to do with the position of the boundary, and not simply giving effect to a reasonable belief of the applicant as to ownership, otherwise conditions (a) and (b) would be otiose. It would otherwise be bizarre that Parliament should intend to allow the proprietor to be dispossessed after only 10 years', without warning, if part of the disputed land adjoined the applicant's land but not if it did not, and not in a case where the boundary had been fixed, even if the claim to adverse possession had nothing to do with the general boundary between the applicant's land and the disputed land.
>
> 42. This construction in my view does no violence to the language of the statute and does not need to be justified on that basis. Condition (a) is that 'the land to which the application relates' is adjacent to the applicant's land. That is clearly a reference to the whole (or possibly substantially the whole) of the disputed land, not simply part of it. Thus, the whole (or substantially the whole) of the disputed land would have to be capable of being described as 'adjacent to' the applicant's land for the condition to be satisfied. That is clearly the case when the land in dispute is land within what would be regarded as the general boundary area between the two parcels of land, but it is not the case where only a small fraction of the

> land in dispute adjoins the applicant's land, as is the case here. The claim to adverse possession of the greater part of disputed land that does not adjoin the boundary can have nothing to do with the position of the boundary between the two parcels."

Application of the law to the facts of this case

175. **The Lower Quay:** The paper title was in the executors of Ida Copeland from her death in 1964 until the assent of 1978, when it passed to the three Copeland brothers, and thence to the defendants in claim 54 in 2016. Until 1962 some part of it at least was occupied by a boatbuilder. From 1963 to 1973 it was let to Mr Mills of Carrick. From 1973 to (at the latest) 1976, the executors granted a formal *licence* to the Hutchins to pass over the Lower Quay to reach a mooring against the Quay wall. There is no evidence of any acts amounting to dispossession of the Copelands by the Livermores. There is evidence of acts of possession by the Copelands from 1975 onwards, including use for parties, swimming, boating, and camping. Formal licences were granted to third parties to use the Lower Quay, usually for money but sometimes in consideration of services. They installed and locked a gate, including a private sign. There is no evidence of any discontinuance of possession by the Copelands.

176. The burden is accordingly on the claimant to show that he has dispossessed the paper owners by taking possession adversely to them, in a way which would be apparent to the owner if present. That would involve taking factual possession, by dealing with the land as an occupying owner might be expected to do, coupled with the intention to possess to the exclusion of the owner. The claimant has undoubtedly passed and repassed over the Lower Quay for many years to reach his tender and his mooring in the Creek, though that is perfectly consistent to a claim to a right of way only. His gardeners have maintained the steps down the cliff to the Lower Quay from his house, and his workmen have replaced electric cables. Again however, this is consistent with a claim to a right of way. He has stored his boat on the Lower Quay over the winter, and replaced two mooring poles. That is more significant. On one occasion he challenged use of the Lower Quay by calling the police to turn out Mary Copeland. However, he did not install any "private" signs, or otherwise challenge use of the Lower Quay by others. Most significant of all, he accepted licences from the Copelands over many years both for moorings and to use the Lower Quay. In my judgment, first of all, his acts in themselves do not amount to sufficient to dispossess the paper owners, but, secondly, even if they otherwise would, the licences are fatal to his claim. He was using the Lower Quay with the consent of the owners. In my judgment the claimant has failed to show a possessory title to the Lower Quay.

177. **Hick's Meadow:** The paper title of that small part of Hick's Meadow which contains the spring and lies to the west of the main part follows that of the Lower Quay. The paper title of the larger part to the east (field 1616) was in the executors of Ida Copeland from her death in 1964 until the assent of 1987, when it passed to the three Copeland brothers, and thence to the defendants in claim 54 in 2016. From 1966 to 1980 it was let to Howard Dale, the tenant farmer, but from 1980 was taken back in hand, although not much appears to

have been done to it by the Copelands. They have leased the shooting rights over it since about 1993 to the Powell family. They have used it for recreation, walking through it from time to time, especially as part of a walk through the adjacent Pill Plantation. There is no evidence of discontinuance of possession by them. They registered their title for the first time in 2016.

178. Again, the burden lies on the claimant to show dispossession. His gardeners have tidied it up, he shot vermin and other pests there, and he and his family and visitors have walked there to pick fruit, and for recreation. I bear in mind that access to it is difficult except from Carrick. But there are no "private" signs. Moreover, in 2003-04 the claimant negotiated with the Copelands to buy it, but no sale resulted. There is no document that I have seen signed by the claimant amounting to a formal acknowledgment within section 30(1) of the 1980 Act, sufficient to stop time running, but neither does it show dispossession. In my judgment, the claimant has not shown sufficient acts of possession to dispossess the paper owners, and certainly none sufficient to be apparent to the owner if present at the time. In my judgment the claimant has failed to show a possessory title to Hick's Meadow.

179. Nor does paragraph 5(4) of schedule 6 to the 2002 Act assist the claimant. The decision of Fancourt J in *Dowse* (see [174] above) makes clear that this applies only where the land in dispute is within the general boundary area between two parcels. That is not the case here. In any event, I do not consider that the claimant is entitled to raise the question by way of reply: see *D & G Cars Ltd v Essex Police Authority* [2013] EWCA Civ 514, [70], per Briggs LJ.

180. **The Driveway:** The paper title originally followed that of the larger (eastern) part of Hick's Meadow, above. From 1966 to 1993 it was part of the letting to Howard Dale, so that the claimant could not claim a 12-year possessory title against the Copelands until at the earliest 2005 (by which time the title was registered): see section 15(1), (4) of the 1980 Act. Peter Copeland as agent of the owners inspected the land about once a year from about 1975. But the Copelands did not use the Driveway, except very occasionally to reach the Strip, and thence (on foot) Hick's Meadow, via an old gate from field 1510. They negotiated with the claimant to sell the Driveway to him in 2003-04, but when he did not buy it they sold it to the ffrench-Constants, who were first registered proprietors, in 2004. They resurfaced the Driveway in 2015, having refused the claimant's requests to do so in 2009 and 2013.

181. The claimant and his predecessors in title from Mr Emery onwards have all used the Driveway to access Carrick. It had been intended in the 1920 auction particulars that there should be a formal right of way in favour of Carrick, and the Copelands and their paper successors in title have never suggested that there is not one. The Driveway is open at each end, at the northern for access to the public highway, and at the southern end for access to the Strip and thence Carrick. But it is bordered along its length on both sides by fences and hedges. The claimant's gardeners used to cut back foliage to enable a clear passage, and the claimant filled potholes and removed dead trees and disposed of them. I do not think that these acts demonstrate an intention to possess the land to the exclusion of the paper owner. They are quite consistent with a claim to a right of way (which is not contested): *cf William Sindall plc v*

Cambridgeshire County Council [1994] 1 WLR 1016, 1024. On the other hand, until about 1997 there was a "private" sign at the public highway end of the Driveway, apparently erected by the claimant's predecessor in title Mr Mills. The claimant locked the gate there for about two years in the 1990s.

182. It is true that, in 2003-04, the claimant negotiated with the Copelands to buy the Driveway. On the other hand, there is no document that I have seen signed by the claimant amounting to a formal acknowledgment within section 30(1) of the 1980 Act, sufficient to stop time running. Then, in 2009 and 2013, having become aware of the sale to the ffrench-Constants, he sought unsuccessfully to persuade them as owners to resurface the Driveway. On the third time of asking, in 2015, he was successful. After the ffrench-Constants had sold to the McGaws, he asked the McGaws to remove a tree blocking the Driveway after a storm (which they did). All these are further acknowledgements of the title of the owners from time to time, because they recognise the owners as liable to carry out maintenance and repair, and assert that liability against persons other than the claimant. They are not acts of adverse possession. Also, in 2014 he wrote a letter to the Land Registry, expressly making no claim to own the Driveway. But this is irrelevant to the question whether he had the intention of *possessing* the land, and that is all that is necessary.

183. The only acts which I consider could constitute taking possession adversely to the paper owner were the use of the "private" sign and the locking of the gate at the northern end. But both of those ceased in the 1990s, only a few years after Mr Dale's tenancy had ceased, and well before the 12 year limitation period had been reached. I cannot regard the claimant as having been in possession of the Driveway adversely to the Copelands, at the time of the sale to the ffrench-Constants. After the sale, indeed, the evidence is all the other way, with acts acknowledging the ownership of others, rather than exclusionary possession being taken. But in any event the registered title regime was engaged before any 12 year period of adverse possession was achieved under the unregistered regime. In my judgment, the claimant has not established a possessory title to the Driveway. Nor, for the reasons already given (at [179] above), does paragraph 5(4) of schedule 6 to the 2002 Act assist the claimant.

184. **The Strip:** The paper title followed that of the larger (eastern) part of Hick's Meadow, above. From 1966 to 1993, although it was and is fenced off from field 1510, it was part of Howard Dale's tenancy, so that the claimant could not claim a 12-year possessory title against the Copelands until at the earliest 2005. Unlike the driveway, however, the title to the Strip became registered for the first time only in 2016. But the Copelands did not use it, except (as with the Driveway) very occasionally to reach (on foot) Hick's Meadow, via the old gate from field 1510. They negotiated with the claimant to sell the Driveway to him in 2003-04, but in the end he did not buy it. However, as I have already said, in the trial bundle there was no formal acknowledgment within section 30(1) of the 1980 Act, sufficient to stop time running against the Copelands.

185. The claimant used the strip as the access to Carrick, just as his predecessors in title had done. He installed and later removed lighting from the Strip (one lamp post remains). His contractors used the strip to bring materials and men to the site for the 1998-2000 works, which replaced the entrance down steps from the Strip with the new sloping driveway. But all this is consistent with a right of way. It would not merely from this have been apparent to the owner being present that the claimant was intending to possess the Strip to his exclusion. On the other hand, after 2000 he made the Strip into an extension of his garden, and also used it for storage. In my judgment these last are true acts of dispossession which would have been apparent to the true owner if present. Although he negotiated with the Copelands to buy the Strip in 2003-04, in the trial bundle there was no formal acknowledgment within section 30(1) of the 1980 Act, sufficient to stop time running against the Copelands. By 2012, therefore, he had completed 12 years' possession, sufficient to give him an original possessory title.

186. **Garage/Strip boundary:** To the extent that the garage is built on land outside the current registered title to Carrick, it has been there without challenge since 2000, and there has been no acknowledgment sufficient to stop time running against the owners of any encroached land. Accordingly, Carrick has a possessory title to that encroached land. In relation to the small triangle behind the garage, identified by me as part of Carrick, there is a fence which has been in position for more than 12 years. It shows that the owners of Pentui have sought to take possession of any part of the triangle which is on their side of the fence. On the evidence before me the owners of Pentui are entitled to retain any such part by way of a possessory title.

187. **Small parcel of land on lower track:** This part of the claim was abandoned in closing, but I should say that, on the evidence before me the claimant had not proved a possessory title to it. Just as with the Lower Quay, the claimant has not satisfied me that he has taken possession of it adversely to the Copelands or the McGaws.

ALTERATION OF THE REGISTER

The law

188. The Land Registration Act 2002 relevantly provides:

> "65 Alteration of register
>
> Schedule 4 (which makes provision about alteration of the register) has effect.
>
> […]
>
> **SCHEDULE 4**
>
> **ALTERATION OF THE REGISTER**
>
> **Section 65**

Introductory

1 In this Schedule, references to rectification, in relation to alteration of the register, are to alteration which—

(a) involves the correction of a mistake, and

(b) prejudicially affects the title of a registered proprietor.

2(1) The court may make an order for alteration of the register for the purpose of—

(a) correcting a mistake,

(b) bringing the register up to date, or

(c) giving effect to any estate, right or interest excepted from the effect of registration.

(2) An order under this paragraph has effect when served on the registrar to impose a duty on him to give effect to it.

3(1) This paragraph applies to the power under paragraph 2, so far as relating to rectification.

(2) If alteration affects the title of the proprietor of a registered estate in land, no order may be made under paragraph 2 without the proprietor's consent in relation to land in his possession unless—

(a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or

(b) it would for any other reason be unjust for the alteration not to be made.

(3) If in any proceedings the court has power to make an order under paragraph 2, it must do so, unless there are exceptional circumstances which justify its not doing so.

(4) In sub-paragraph (2), the reference to the title of the proprietor of a registered estate in land includes his title to any registered estate which subsists for the benefit of the estate in land.

4 Rules may—

(a) make provision about the circumstances in which there is a duty to exercise the power under paragraph 2, so far as not relating to rectification;

(b) make provision about the form of an order under paragraph 2;

(c) make provision about service of such an order."

189. The provisions set out above create a scheme for the court to *alter* the register in certain circumstances. *Rectification* of the register is a subset of alteration, where a mistake is corrected, but this correction prejudicially affects the title of a registered proprietor. (There is another scheme for the registrar to alter the register, but I am not concerned with that here.) The two main situations in which the court might make an order for alteration of the register are (i) in order to correct a mistake and (ii) in order to bring the register up to date. The concept of "mistake" in this context is not defined in the 2002 Act, but it has been considered in a number of decided cases since 2002. For present purposes it is sufficient to refer to the decision of the Court of Appeal in *NRAM Ltd v Evans* [2018] 1 WLR 639.

190. In that case, the borrowers of a first loan from a lender charged their property with the repayment of that first loan, and the charge was duly registered. Subsequently, they took out a second loan from the same lender, and out of that loan paid off their first loan and charge. The lender took a second charge on the property as security for the second loan. However, although the first charge had been entered on the land register, the second charge never was. Some years later, the borrowers' solicitors applied to the Land Registry to discharge the first charge, and the lender, overlooking the second charge, supplied the appropriate certificate, so that the first charge was removed. When the lender's mistake was discovered, it applied to rescind the first discharge, saying that it had been procured by mistake.

191. Kitchen LJ (with whom David Richards and Henderson LJJ agreed) referred to passages in Megarry & Wade, *The Law of Real Property*, 8th ed (2012) and also to Ruoff & Roper, *Registered Conveyancing*, looseleaf edition, and said:

> "52. It will be noted that both of these formulations focus on the position at the point in time that the entry or deletion is made. That, so it seems to me, must be right. If a change in the register is correct at the time it is made it is very hard to see how it can be called a mistake.
>
> 53 It does mean, however, that, as the editors of Megarry & Wade: The Law of Real Property noted, a distinction must be drawn between a void and a voidable disposition. On this analysis, an entry made in the register of an interest acquired under a void disposition should not have been made and the registrar would not have made it had the true facts been known at the time. By contrast, a change made to the register to reflect a transaction which is merely voidable is correct at the time it is made.
>
> […]
>
> 59 In my judgment, the registration of a voidable disposition such as that with which we are concerned before it is rescinded is not a mistake for the purposes of Schedule 4 to the LRA 2002. Such a voidable disposition is valid until it is rescinded and the entry in the register of such a disposition before it is rescinded cannot properly be characterised as a mistake. It may be the case that the disposition was made by mistake but that does not render its entry on the register a mistake, and it is entries on the register with which Schedule 4 is concerned. Nor, so it seems to me, can such an

> entry become a mistake if the disposition is at some later date avoided. Were it otherwise, the policy of the LRA 2002 that the register should be a complete and accurate statement of the position at any given time would be undermined.
>
> […]
>
> 60 The second issue is whether, in a case such as the present, the register can be brought up to date once the voidable disposition has been rescinded. In my judgment, it plainly can. Paragraph 2(1)(b) of Schedule 4 confers on the court a power to make an order for the alteration of the register by bringing it up to date; and paragraph 3(3) provides that if in any proceedings the court has power to make an order under paragraph 2, it must do so, unless there are exceptional circumstances which justify its not doing so …"

Application of the law to the present case

The Driveway

192. The registrar made no mistake in registering the title of the ffrench-Constants in June 2004, because the 2002 Act had come into force in October 2003, and by the date of registration the claimant had failed to establish a possessory title. The registrar would not have refused to register the title of the ffrrench-Constants on the basis (if it were so) that the claimant had completed some but not all of the necessary 12 years. That would not be a relevant mistake. Moreover, the claimant was not in possession in June 2004. Nor was there any mistake in registering the McGaws in 2021, because even if the registrar had known of the proceedings, he would have continued with the registration. This is because the title of the ffrench-Constants had already been registered, and registration was conclusive unless altered (which it had not been).

193. In his statements of case the claimant argues, as a fallback position, that he is entitled to a right of way of the Driveway, at least by prescription, that is, by user as of right, openly and not by permission (in the Latin phrase, *nec vi, nec clam, nec precario*). That position was not contested in their defence by the ffrench-Constants as the original defendants, and is not contested by the McGaws as the present defendants in theirs. On the evidence in this case it seems eminently justified, and the register should be altered to reflect it.

The Lower Quay and Hicks' Meadow

194. The claimant was not in possession of the Lower Quay and Hicks' Meadow in 2016, and neither had he established any possessory title. Accordingly, there was no mistake by the registrar in registering these titles in the names of the Copelands. In the statements of case, the claimant alternatively claims a right of way by prescription or under the doctrine of lost modern grant over the Lower Quay. What he would need to show was 20 years' user of the alleged right, as of right, openly, and not by the owner's permission. The problem for the claimant is that he used the land by virtue of licences from time to time granted by the Copelands. This is fatal to his claim to a right of way.

The Strip

195. At the time of registration of the Strip in 2016, the claimant had established a possessory title to it. The registrar was accordingly acting under a mistake in registering it in the names of the Copelands. Altering the register to show the name of the claimant would correct the mistake. If the claimant's possessory title were obtained after registration, altering the register would bring it up to date. But altering the register to correct a mistake would affect the title of the Copelands. So no alteration can be made without their consent (which is obviously not forthcoming), *unless* they can be shown to have caused or substantially contributed to the mistake by fraud or lack of proper care, or it would in any other case be unjust not to alter the register. In my judgment it would be unjust not to alter the register in circumstances in favour of the claimant where the persons first registered were not in fact entitled to be registered, and, if he had applied, the claimant would have been.

Pentui

196. The claimant makes an alternative claim to a right of way over the metalled or upper track to the lower part of his property where the old garage is situated. He says this is not recorded in the land registry title for Pentui. In fact it is, although not in very satisfactory way. The reference in the Charges section of the register for Pentui refers to the conveyance of 1927 from Mr Emery to Mr Wright, which first expressly created this right of way. However, that reference refers to "restrictive covenants" rather than rights of way. More useful are entries 4 and 5 in the Property section of the register. These say that the land is subject to the rights reserved in the 1972 and 1978 conveyances. The former reserves the right of way for Carrick over (small) Pentui, and the latter does the same for the rest of the upper track from the turning circle to the boundary of (large) Pentui, by reference back to the 1927 conveyance (even though the rights originally granted have merged on the unification of the two parcels of land in 1971 when Mrs Mills died). Although this is an untidy and rather unhelpful way to register the rights of way over Pentui and in favour of Carrick, it means that there is no need for any alteration of the register.

CLAIMS IN TRESPASS AND NUISANCE

Law

Trespass

197. In this case, claims are made of two kinds of trespass, trespass to land and trespass to goods. In *Clerk and Lindsell on Torts*, 23rd ed, 2020, [18-01], the former is defined as "any unjustifiable intrusion by one person upon land in the possession of another. The slightest crossing of the boundary is sufficient." Moreover, "it is not necessary that there should have been any actual damage" ([18-09]). In the same work, at [16-132], trespass to goods is defined as "the direct, immediate interference with the claimant's possession of a chattel". Again, there is no need for physical damage to the chattel.

Nuisance

198. In *Lawrence v Fen Tigers Ltd* [2014] AC 822, a case of alleged nuisance by noise from a motor sports stadium, Lord Neuberger (with whom, on these matters, Lords Sumption, Mance, and Clarke agreed) said:

> "3. A nuisance can be defined, albeit in general terms, as an action (or sometimes a failure to act) on the part of a defendant, which is not otherwise authorised, and which causes an interference with the claimant's reasonable enjoyment of his land, or to use a slightly different formulation, which unduly interferes with the claimant's enjoyment of his land.
>
> 4. … Accordingly, whether a particular activity causes a nuisance often depends on an assessment of the locality in which the activity concerned is carried out.
>
> 5. As Lord Goff said in *Cambridge Water Co v Eastern Counties Leather plc* [1994] 2 AC 264, 299, liability for nuisance is
>
> > 'kept under control by the principle of reasonable user – the principle of give and take as between neighbouring occupiers of land, under which "those acts necessary for the common and ordinary use and occupation of land and houses may be done, if conveniently done, without subjecting those who do them to an action": see *Bamford v Turnley* (1862) 3 B & S 66, 83, per Bramwell B'."

The claimant's claims

Trespass to land

199. In claim 54, the claimant makes no claims in respect of the Strip. He makes them in that claim in respect of Hicks Meadow and the Lower Quay. But I have held that those parcels of land do not belong to him, and neither is he in legal possession of them, and so his claims of trespass to land in relation to them must fail. He also alleges trespass to Carrick (which he does own and is in legal possession of), but only by the defendant's daughter and her friend. But there is no allegation that the defendants are vicariously liable for their acts, and that part of the claim must also fail.

200. In claim 59, the claimant claims that the defendants to that claim have crossed Carrick to assist in the erection of a barrier at the boundary with Hick's Meadow, and that they have flown drones "over and in the vicinity of Carrick with a view to disturbing its occupants". The claimant does not claim damages, but seeks an injunction. In relation to the claim for the flying of drones, this can only be a trespass if the drones fly into the airspace over Carrick. But I have found that they did not do so, and hence the claim in trespass fails. (I deal with the nuisance aspect later.) As to the crossing of Carrick, the allegation is that the land crossed is that which I have held to belong to the Copelands, and so the claim must fail. In any event, this occurred at a time when there was uncertainty as to where the true boundaries were, and I have no doubt would not now be repeated. In the circumstances,

even if the facts showed a trespass, it would not be appropriate now to grant an injunction for the future.

Trespass to goods

201. The claimant claims that the defendants in claim 59 removed two signs belonging to Carrick. Mr McGaw accepts that he removed one of the signs relating to Carrick from his own gate on his own land, in 2014. That would not be a trespass to goods, because he was entitled to remove it from his own gate. In any event, that is more than six years before the commencement of this claim, and therefore any claim would be statute barred. Even given that admission, I do not accept that he must therefore have taken away a granite post as well. His evidence is that it was found in the undergrowth on Pentui land and returned to Carrick land. There is no other evidence, and that claim must be dismissed.

Nuisance

202. In claim 54, the claimant says that in summer 2020 the defendants lit fires and made noise on the Lower Quay (which is admitted), amounting to a nuisance (which is denied). As to this, I am not prepared to hold that merely having a campfire and singing songs on the Lower Quay during the late summer evening is an unreasonable use of one's land. It is an ordinary recreational use of land bordering the sea. In my judgment, and on the evidence before me (in particular including a video recording), it does not amount to an actionable nuisance.

203. In claim 59 the claimant says that the defendants have committed nuisances by (i) blocking the access to Carrick from the upper track with a wheelbarrow and tape, (ii) frequently obstructing the upper track with parked vehicles, (iii) planting palm trees and installing a septic tank next to the upper track, (iv) taking photographs of visitors to and occupants of Carrick, and (v) flying drones in the vicinity of Carrick with a view to disturbing its occupants.

204. As to this claim, the use of the wheelbarrow and tape on the upper track was in the short term, for health and safety reasons, and in my judgment did not amount to a nuisance. The obstruction of the upper track with parked vehicles is not proved to have been by the defendants alone or deliberate, and is only to be expected occasionally in the reasonable user of the defendants' land. If there were evidence that the defendants on being asked to move their vehicles unreasonably refused, that would be different. There was no evidence to show that there was any real risk to the upper track caused by planting trees and installing a septic tank next to it, and accordingly this cannot amount to a nuisance. As to the flying of drones from Pentui, another recreational activity, in principle this could amount to a nuisance. But the evidence shows a limited number of such flights, which do not invade the airspace of Carrick, and indeed so far as I can judge are mostly over the Creek. There was no evidence that they were being used to invade the claimant's privacy or to harass him. In the circumstances and on the evidence before me I hold these do not amount to a nuisance either. Even if they did, the activity has long ceased, and it would not be appropriate to grant an injunction now for the future.

205. I accept that taking photographs of the occupants of and visitors to Carrick and stopping such persons and telling them that they had no right of access could amount to an actionable nuisance in certain circumstances. But, in the context of an active dispute between the two neighbouring landowners as to what rights they had exactly, and the firm belief by each side that it was in the right, I cannot say that the defendants were wrong to check up on the persons who claimed to be crossing their land to reach Carrick, or even to tell them that they had no right to do so if that was their genuine belief. But, in any event, that is all in the past, at a time when the rights of the parties were not clear and tempers were hot. But the parties to this litigation are all sensible adults, and I have no doubt that, now the legal position has been ascertained, there will be no repetition of this behaviour. Accordingly, even if I considered that it were a (historic) nuisance, it would not be appropriate to grant an injunction in respect of it.

The Copelands' counterclaim for trespass

206. The defendants in claim 54 allege trespass by the claimant on the Lower Quay, the felling of trees there, and a threat by him to remove a padlock on the gate to the Lower Quay. They also allege trespass to the Strip, Hicks' Meadow and the removal of part of a Cornish hedge. The claimant accepts that he accessed the Lower Quay without the defendants' permission, and threatened to remove a lock from the gate leading to the Lower Quay. He also accepts that he felled trees on that land. He must therefore pay damages for having done all these things (to be assessed if not agreed). The claims in respect of the Strip and in respect of removing parts of the Cornish hedge fail, because I have found that the claimant has a possessory title to the Strip, and the hedge is on the Carrick side of the boundary.

The McGaws' counterclaim for trespass

207. In claim 60, the defendants complain of a trespass by the claimant in the area near his garage. The claimant accepts that he cleared the land bordering the Driveway near his garage, and planted hedges and other things there, in July 2020. But at that time the McGaws were not the owners of that land. They only became so in July 2021. Accordingly, they have no cause of action, and that part of the claim is dismissed. But the claim for an injunction was misconceived in any event. In the light of this judgment, I cannot conceive that any of these parties would seek to repeat this kind of petty trespass.

CONCLUSION

208. In claim 54, I will make an appropriate declaration in relation to the claimant's possessory title of the Strip, and order the alteration of the land register accordingly. Subject to that I dismiss the claim. I allow the counterclaim in respect of the access to the land and the felled trees, and there will have to be directions in relation to the assessment of damages (which can be carried out by a district judge). I will order the alteration of the land register in relation to the claimant's right of way over the Driveway. In the circumstances, there is no need for any alteration of the land register in relation to the boundary between Carrick and Pentui in relation to the garage on the Strip. Subject to

that, I dismiss claims 59 and 60, as well as the counterclaim in 59. I should be grateful to receive a draft minute of order to give effect to this judgment.

209. I cannot leave this case without expressing my gratitude to the parties and their lawyers for the immense assistance afforded me during the trial. I am only sorry that the pressure of other work has meant that I have taken so much longer than I expected to produce this judgment. I express the hope that, the boundaries between the various parcels of land now being settled by judicial decision, peace will once again reign over this idyllic corner of England, and the parties will be able once more to enjoy their respective parcels of land. I cannot repair their relationships: only they can do that. But they have shown themselves capable of conducting their relationships with dignity and forbearance, and that should be recognised by all.

NOTE ON THE APPENDIX

I have prepared a separate appendix to this judgment, which contains a number of plans taken from conveyancing documents. The reason for doing so separately is that some of these plans are very bulky computer files, and, if they were contained in the judgment itself, it would be a very large file, which could not be sent by email. But the plans in the Appendix are an integral part of the judgment itself.