

REF/2016/0552

**PROPERTY CHAMBER LAND REGISTRATION  
FIRST TIER TRIBUNAL  
IN THE MATTER OF A REFERENCE FROM THE LAND REGISTRY  
UNDER THE LAND REGISTRATION ACT 2002**

**BETWEEN**

**John William Cooper**

**Applicant**

**and**

**David John Ward (1)  
Maureen Ann Ward (2)**

**Respondents**

**Property Address: land Adjoining Water Recycling Centre, High Street, Little Bytham,  
Grantham, Lincolnshire**

**Title Number LL360908**

**Before Judge Beasley**

**Sitting at Peterborough Magistrates' Court, Bridge Street, Peterborough PE1 1ED**

**Hearing On: 23 February 2017**

**Applicant's Representation:** Mr Alan Plummer, Solicitor, Roythornes Limited

**Respondents' Representation:** The Respondents appeared in person

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**DECISION**

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*KEYWORDS – Adverse possession – nature and extent of possession – claim by squatter to alter the register to correct the mistake in registration where land registered in circumstances where the paper owner's title had already been extinguished under the Limitation Act 1980 and where the land had then been sold to a bona fide purchaser for valuable consideration who went into possession of the land*

**Cases Referred to:**

*J A Pye (Oxford) Ltd v Graham [2003] 1 AC 419; Balevents Ltd & Anor v Sartori [2014] EWHC 1164; Tower Hamlets London Borough Council v Barrett [2006] P&CR 132; Powell V Macfarlane (1977) 38 P&CR 452; Cooper v Gick [2008] EWLandRA 2007\_103; Heaney v Kirby [2015] UKUT 178 (TCC); Re*

*Chowood's Registered Land [1933] 1 Ch. 574; Baxter v Mannion [2011] EWCZ civ 120; Walker v Burton & Bamford [2013] EWCA Civ 1228; Knights Construction (March) Ltd v Roberto Mac Ltd [2011] 2 E.G.L.R. 123; Pawson v Vaines & Anor REF/2015/0339/0340.*

### *Background*

1. The case concerns approximately 1.55 acres of rural land adjoining the Water Recycling Centre, High Street, Little Bytham, Grantham, Lincolnshire, which is now registered under title number LL360908 (the "Disputed Land") with title absolute in the Respondents' name.
2. The Water Recycling Centre is situated to the west of the Disputed Land and is the site of the local sewage works (the "Sewage Works") and is registered under title number LL255976, with Anglian Water Services Limited ("Anglian Water") being the registered proprietor.
3. The land to the south and east of the Disputed Land is owned by the Applicant and is registered under title number LL367323 (the "Adjoining Land"). The Disputed Land abuts the High Street, Little Bytham to the north.
4. From the 1950s, the Disputed Land, the Adjoining Land and the Sewage Works (together with other land) was all owned by the Church Commissioners for England with unregistered title. By a Conveyance dated 21 February 1968 the Sewage Works together with the Disputed Land was conveyed to South Kesteven Rural District Council, the predecessor in title to Anglian Water. In June 2005, Anglian Water registered title to the Sewage Works together with the Disputed Land with title number LL255976. By a transfer dated 1 October 2015, Anglian Water conveyed the Disputed Land to the Respondents, who became the registered proprietors of the Disputed Land with title number LL360908 on 6 October 2015. (The Sewage Works is the only land which is now held by Anglian Water in title number LL255976.)
5. Following the Conveyance to the Anglian Water of the Sewage Works and the Disputed Land in 1968, the Lincoln Diocesan Trust and Board of Finance Limited (as successors in title to the Church Commissioners for England) held the Adjoining Land (other with other land) until 1989, when they conveyed the Adjoining Land (and other land), but not the Disputed Land, to the Applicant's father, the Applicant's mother and the Applicant (who were at that time in partnership together). By a transfer made on 20 November 2015, the Adjoining Land was conveyed to the Applicant together with "*all estate right title and interest*" in the Disputed Land as the transferor had acquired, and this was registered in the Applicant's name with title number LL367323.

### *The Application to alter the registered title of the Disputed Land*

6. The Applicant applied in Form AP1 dated 3 February 2016 for alteration of title number LL360908 due to an error on the proprietorship register of that title. The Applicant claims to have barred by adverse possession of the Disputed Land Anglian Water's paper title to the Disputed Land prior to June 2005, being the date the Disputed Land was first registered within title number LL255976, and to have remained in possession of the Disputed Land until around 15 November 2015, with the effect that the Respondents' interest in the Disputed Land was subject to the Applicant's overriding interest when they registered the Disputed Land with its own title number LL360908 on 6 October 2015.

7. The Respondents opposed the Application by a letter of objection dated 29 April 2016. Land Registry, in its administrative capacity, was unable to dispose by agreement of the objection, and on 20 July 2016 the Chief Land Registrar referred the Application to the Tribunal pursuant to section 73(7) of the Land Registration Act 2002 (2002 Act).

#### *The hearing*

8. The Application came on for hearing on 23 February 2017. Mr John Cooper ("Mr Cooper") was represented by Mr Alan Plummer of Roythornes Limited. Mr Cooper gave evidence on his own behalf. His evidence had been set out in his Statutory Declaration dated 29 January 2016, his Statement of Case dated 24 August 2016 and his witness statement dated 6 November 2016.
9. Mr Cooper called Mr Jon Barrie Strickland to give evidence on his behalf. Mr Strickland's evidence was set out in his witness statement dated 4 November 2011. In addition, the witness statement of Mr Peter Norman Wilson dated 8 November 2016 had been served together with a Hearsay Notice pursuant to section 21A of the Civil Evidence Act 1995, as Mr Wilson has emigrated to America, where he now lives permanently.
10. The Respondents represented themselves, although the advocacy was undertaken in the main by the Second Respondent. Mrs Maureen Ward gave evidence on her own behalf, and no other witnesses were called. The Respondents' evidence was set out in their Statement of Case dated 30 September 2016.
11. Anglian Water was not joined as a party to these proceedings, and did not appear in them.
12. Those witnesses who gave oral evidence took the oath or affirmed and were cross-examined by the opposite party. All witnesses confirmed that their written evidence was true when signed, and remained true. The only witness who corrected himself was Mr Cooper, who accepted that the Council's use of the Disputed Land in the early 1970s may in fact have occurred in the mid-late 1970s. Mr Cooper accepted that his evidence may have been inaccurate on this point, but that was down to a lack of recollection rather than any issue of credibility.

#### *The Applicant's Case*

13. The Applicant's case is that the registered title number LL360908 should be altered under Schedule 4 of the Land Registration Act 2002 as there is an error on the proprietorship register of the title as the Applicant should be registered with possessory title of the Disputed Land. The Applicant claims that as at 13 October 2003 he was an occupier in adverse possession and enjoyed an overriding interest under section 70(1)(f) of the Land Registration Act 1925 as a "*right acquired under the Limitation Act 1980*", and by reason of section 15 of the Limitation Act 1980 Anglian Water's right to recover possession of the Disputed Land was time barred, and Anglian Water's title was extinguished by section 17(1) of the Limitation Act 1980.
14. The Applicant claims that his position is protected by Schedule 12, para. 7 of the 2002 Act as "*a right acquired under the Limitation Act 1980 before the coming into force of [Schedule 1]*". This right was an unregistered interest

which overrides the first registration of title number LL360908. By section 11 of the 2002 Act, the freehold estate of title number LL360908 (previously registered as part of title number LL255976) vested in the first registered proprietor subject to the unregistered interest of the Applicant. The subsequent transfer of the Disputed Land to the Respondents was similarly subject to the same right under the Limitation Act 1980 by reason of para. 2 of Schedule 3 of the 2002 Act. As a result, Anglian Water was not entitled to apply for the registration of the Disputed Land as part of title number LL255976, and Schedule 4 of the 2002 Act can be called upon to correct the mistake which has occurred. The Applicant seeks to rely on para. 3(2)(b) in Schedule 4 of the 2002 Act which permits alteration of the register against a proprietor in possession where "*it would for any other reason be unjust for the alteration not to be made*". In circumstances where the Applicant and his predecessors in title have been in undisturbed possession of the Disputed Land for over 27 years, the Applicant says that it would be unjust for the alteration not to be made, and in fact it would be a matter of "*simple justice*" to correct this mistake and alter the register of title number LL360908.

#### *The Respondents' case*

15. The Respondents put the Applicant to strict proof as to whether he has acquired any interest in the Disputed Land by adverse possession. They are a bona fide purchaser for valuable consideration and claim that they were without any notice of the Applicant being in possession of the Disputed Land at the time of the purchase, and also the subsequent registration of the title to the Disputed Land. They say that they relied on the conclusiveness of the Register, and that it would be unjust for the title to the Disputed Land to be closed, particularly in circumstances where the Applicant did not raise his entitlement to the Disputed Land with Anglian Water, nor seek to register his interest whilst Anglian Water was the registered proprietor of the Disputed Land; but instead, the Applicant attended at the auction of the Disputed Land and did not make any objection to the sale, and in fact bid for the Disputed Land.
16. I now turn to the evidence produced in this case, both documentary and from the live witnesses. It is necessary to have regard to the detail of the factual evidence in order to determine the issues and make the appropriate findings of fact based on the legal principles.

#### *John William Cooper*

17. Mr Cooper gave evidence, and he was a reliable and credible witness. He said that from the 1950s, the Disputed Land, the Adjoining Land and the Sewage Works (together with other land) was all owned by the Church Commissioners for England with unregistered title. The Disputed Land was part of a field (the Field) which was not physically separated in any way from the remainder of the Field, and that the Disputed Land had always been treated as part of the single Field which his father (Joseph Russell Cooper), the family partnership and then he himself had in turn farmed and maintained for over 60 years, until around 15 November 2016. The Field has been referenced in various manners since the 1950s by the Ordnance Survey and

- Rural Payments Agency, which include the Disputed Land under reference Ordnance Plot 94 under OS County Series: Lincolnshire 1904 1:2,500; OS Map Sheet number TF0018; and NG Field Number 9503.
18. From about 1959, Mr Cooper said that the Field (including the Adjoining Land and the Disputed Land) formed part of an agricultural holding known as Rectory Farm, Little Bytham, Grantham, Lincolnshire entered into between the Church Commissioners for England and his father, the written document of which has been lost. The tenancy was one which continued from year to year under the Agricultural Holdings Act 1986 Act (then the Agricultural Holdings Act 1948). *Tenant J.R. Cooper 1956*" can be seen as a postscript note on a wayleave agreement concerning Ordnance Plot 94 dated 17 January 1939, reference 013019.
  19. In 1968 the Sewage Works and the Disputed Land was conveyed to Anglian Water, but it was not about 1972 that the Sewage Works was fenced off, and the sewage works were constructed. It was at that time that barbed wire fencing was erected on the western boundary of the Disputed Land (being the eastern boundary of the Sewage Works).
  20. Even after the 1968 conveyance, Mr Cooper said that the Disputed Land was never removed from the tenancy. The local council carried out landfill on the Disputed Land in the 1970s until around 1976 (and not 1972 as the Applicant had previously thought).
  21. Both before and after the Sewage Works had been fenced off, the southern and eastern boundaries of the Disputed Land remained unfenced, and the Disputed Land and the Adjoining Land comprised and continued as the single Field. The Field was bounded by fences on the eastern boundary and trees and hedges on the northern, southern and western boundaries (as well as the fencing on the western boundary after the Sewage Works were constructed).
  22. Mr Cooper said that his father enjoyed uninterrupted possession of the Disputed Land until 1982 when the partnership of J R Cooper & Son was formed, between Mr Cooper, and his father and mother (Jean Raeside Cooper), and being a partnership carrying on the business of farming from Boarden House Farm, Morton Fen, Bourne, Lincolnshire, PE10 OXL ("the Partnership"). From its formation in 1982, the Partnership has farmed approximately 96 Acres of land across various fields, including the Disputed Land, situated at Little Bytham. When Mr Cooper's mother died on 15 February 2004, the Partnership continued with Mr Cooper and his father.
  23. By a written tenancy agreement made 31 January 1985 between Lincoln Diocesan Trust and Board of Finance Limited and Mr Cooper, Mr Cooper became the tenant of the Adjoining Land (and other land). The tenancy was one to which the 1986 Act (then the Agricultural Holdings Act 1948) applied, and the tenancy was expressed to be granted as a succession tenancy to the tenancy of the Mr Cooper's father.
  24. The third schedule of the tenancy refers to "Ordnance Plan Pt 94, Arable 8.5 Acres" (3.43ha), which the Applicant said included the Disputed Land. The Partnership continued to farm the Disputed Land with the Applicant as tenant. During the tenancy the Field (as a whole) was always enclosed as a single field by a mixture of fences, trees and hedges at the boundary.
  25. The Applicant (and his predecessors) continued to acknowledge by paying rent to the Church Commissioners for England as the Applicant's (and his predecessors') Landlord in respect of the Disputed Land (and other land).

26. By a conveyance dated 3 May 1989 the Partnership purchased the land which they had been farming (but excluding the Disputed Land) from Lincoln Diocesan Trust and Board of Finance Limited, at which point Mr Cooper's tenancy came to an end.
27. Neither the 1985 tenancy agreement nor the 1989 conveyance disrupted the Partnership's actual possession of the Disputed Land and the Partnership continued to farm the Disputed Land without interruption including sowing a mixture of grass, taking crops of hay and/or regularly topping the Disputed Land.
28. The Disputed Land has been included in the Partnership's registration and claims for support and other payments under the Common Agricultural Policy and the Integrated Administration and Control System each year since 1985 through to 2015.
29. Until about 1988 the Disputed Land and the Adjoining Land was used for arable cultivation. In 1985 the European Union Common Agricultural Policy required that a "set-aside" scheme was introduced, initially as a voluntary scheme, but later enforced as compulsory. The Partnership had other agricultural land and was able to meet its set-aside requirements by setting-aside the whole of the Field. The Partnership set-aside the Field to grass and topped it once a year in accordance with the rules and continued to receive subsidy payments against the Disputed Land. Following the introduction of the Single Payment Scheme in 2005, the Partnership complied with all its obligations under the Scheme to meet the requirements to keep the Field (including the Disputed Land) in "*Good Agricultural and Environmental Condition*".
30. In or around 1989 the Field was the subject of a routine compliance inspection. Mr Cooper said that he attended the inspection at Little Bytham on behalf of the Partnership and met with an official from the Ministry for Agriculture, Fisheries and Food named Pauline Green. The inspection was successful and the Partnership holding was deemed compliant. The physical inspection included the Disputed Land.
31. Save for the western boundary, Mr Cooper, and his father and the Partnership alone maintained the Field boundaries, including the trees and hedges on the northern boundary of the Disputed Land.
32. By a Transfer dated 20 November 2015 the Partnership transferred its interest in the Disputed Land and the Adjoining Land to Mr Cooper. The Adjoining Land was registered under title number LL362877.
33. Mr Cooper continued in exclusive possession of the Disputed Land until about November 2015 when wooden stakes had been erected along the boundary line of the Disputed Land by the Respondents' agents, and in February 2016 the southern and eastern boundaries of the Disputed Land were fenced by the Respondents.

*Jon Barrie Strickland*

34. Mr Strickland gave evidence and he was a reliable witness. He said that he worked as a farm labourer for the Partnership and Mr Cooper from 1992, and continued to do so for 23 years until 2015. He gave evidence that he worked on all the land owned by the Partnership and Mr Cooper including the Field, (incorporating the Disputed Land). Part of his role was to 'top' and maintain

the Disputed Land to ensure it did not become overgrown. He performed this task, alongside other farm workers, for the 23 years whenever the Disputed Land needed 'topping', and the Disputed Land was topped at different times of the year, but it was often left alone during the nesting season. The Disputed Land had already been "set aside" and was always grassed throughout the period he worked on the farm.

35. Mr Strickland confirmed that throughout the time he worked on the Disputed Land, the Disputed Land was always treated and maintained as part of the Field as whole, and that there was no separation between the Disputed Land and the remainder of the Field. Mr Strickland also said that during this time the only entrance on to, or exit off, the Disputed Land on the northern boundary was through a gap in the hedge which runs along the northern boundary, and which is parallel to the High Street.

*Peter Norman Wilson*

36. Mr Wilson's statement corroborated Mr Strickland's evidence to the extent that during a period of 13 years from December 2003 until October 2016 (when Mr Wilson lived in a house which overlooked the Field) the Disputed Land formed part of the entire Field, with no physical demarcation between any part of the Field.
37. Mr Strickland's statement also confirmed that the Field had been put down to grass for all the time he had lived in the house, and in 2012 Mr Cooper had let the land to a farmer who had put cattle on the Field, and there was no separating the cattle from the Disputed Land and the Adjoining Land.

*Maureen Ann Ward*

38. Mrs Maureen Ann Ward gave evidence and she was a reliable and credible witness. Her evidence was that she and her husband believed that they had done everything they could to check that all was well the purchase of the Disputed Land as they were investing their life savings to fulfil their dream of having a land holding. They had been advised to inspect the Disputed Land from the High Street. On 3 September 2015 Mrs Ward and her husband attended a public auction of part of the land within title number LL255976 (being the Disputed Land) which was at that point in time registered in Anglian Water's name. The sale of the Disputed Land had been advertised by selling agents, and there was a notice on the Disputed Land advertising the sale. She said that she saw Mr Cooper at the auction, and that he bid for the Disputed Land at the auction (and he had apparently made an oral offer for the purchase of the Disputed Land directly to Anglian Water's agents prior to the auction). Mrs Ward said that she and her husband outbid Mr Cooper, and they purchased the Disputed Land for £17,000. After the sale Mrs Ward said that Mr Cooper approached her and Mr Ward and asked them if they wanted to purchase the Adjoining Land, but they declined to do so.
39. On 5 October 2015, Mrs Ward said that small wooden markings were put along the boundary between the Disputed Land and the Adjoining Land.
40. On 6 October 2015, Mr and Mrs Ward became the registered proprietors of the Disputed Land when it was registered with its own title number LL360908. They then employed land agents to mark out the boundary of the Disputed

Land with stakes, which was done on 15 October 2015, and the Disputed Land was fenced off from the Adjoining Land in February 2016.

41. On being notified of Mr Cooper's claim to the Disputed Land, Mr and Mrs Ward contacted Anglian Water who said that they had not received any claim from Mr Cooper to the Disputed Land.

#### *Findings of Fact*

42. Each case will turn on its own facts and I make the appropriate findings based upon the evidence. I find that the Partnership farmed part of Plot 94 from 1989 not only because this is Mr Cooper's evidence but because both Mr Strickland and Mr Wilson have confirmed that there was never any demarcation on the ground between the Disputed Land and the Adjoining Land and there was nothing to suggest that there had been. In addition, the maps attached to the applications for Rural Payments include the entire Field, including the Disputed Land, and the entire Field was subject to the inspection by the Rural Payment Agency in 1989. The payments were applied for in respect of the Disputed Land for the period 1985 to 2015, and taking into account the fact that the Disputed Land was used as a landfill site in the 1970s.
43. I do not accept that the Disputed Land actually formed part of the agricultural tenancies of either Mr Joseph Cooper or the 1985 tenancy with Mr Cooper because the succession tenancy to Mr Cooper was expressed as being a tenancy of 95.864 acres (more or less) being "*now in the occupation of Joseph Russell Cooper*" and the Schedule to that tenancy shows that only "PT94" was being demised. Further the 1968 conveyance was also for "*part of Enclosure No. 94*", and the plan on the 1989 conveyance clearly excludes the Disputed Land from being part of 94 which was conveyed to the Partnership.
44. I accept that the Disputed Land was farmed for arable cultivation until around 1988, when it was then set aside for grass. It was then topped whenever it needed topping, and Mr Cooper let the Field out to another farmer to graze his cattle on in 2012, where the cattle roamed the entire Field, including the Disputed Land.
45. I also accept the evidence from Mr Cooper and Mr Strickland that the boundary hedges and trees around the Disputed Land (save on the western boundary) were maintained by Mr Joseph Cooper, the Partnership and Mr Cooper.
46. I hold that the Partnership had acquired a right to the Disputed Land by adverse possession by at least May 2001, being 12 years after the said conveyance of 3<sup>rd</sup> May 1989, and there was no interference or claim for possession of the Disputed Land from Anglian Water during this period.
47. Mr Cooper remained in possession of the Disputed Land until 5 October 2016, and not later in November 2015 or February 2016, as it was on 5 October 2015 when the Respondents put markings on the ground to demarcate the boundary between the Disputed Land and the Adjoining Land.

#### *Possession of land: the general principles*

48. There was no dispute as to the legal principles which apply in a case where the tribunal is asked to determine whether a person has been in possession of



land. These principles were authoritatively considered by the House of Lords in J A Pye (Oxford) Ltd v Graham [2003] 1 AC 419 and were summarised by Mr Justice Morgan in the case of Balevents Ltd & Anor v Sartori [2014] EWHC 1164 as follows:

- (1) *There is a presumption that the owner of land with a paper title is in possession of the land.*
- (2) *If a person who does not have the benefit of this presumption wishes to show that he is in possession of land, the burden is on him to show that he is in factual possession of the land and that he has the requisite intention to possess the land.*
- (3) *For a person to show that he is in factual possession of the land, he must show that he has an appropriate degree of physical control of the land, that his possession is exclusive and that he has dealt with the land in question.*
- (4) *Whether a person has taken a sufficient degree of control of the land is a matter of fact, depending on all the circumstances, in particular the nature of the land and the manner in which such land is commonly enjoyed.*
- (5) *The person claiming to be in possession may be in possession through his tenant or licensee, if that tenant or licensee has, on the facts, sufficient control of the land to amount to factual possession.*
- (6) *The person seeking to show that he has had possession of land must show that he had an intention for the time being to possess the land to the exclusion of all other persons, including the owner with paper title.*
- (7) *The relevant intention is an intention to possess and need not be an intention to own.*
- (8) *The intention to possess must be manifested clearly so that it is apparent that the person now claiming to have been in possession was not merely a persistent trespasser.*
- (9) *If the acts relied on are equivocal then they will not demonstrate the necessary intention*
- (10) *It is possible in some cases for a person in possession to add his own period of possession, the period of time during which his predecessor was in possession; this applies in particular where the predecessor relinquishes possession to a person who then takes possession.*

49. The simple cutting of grass is something which could be consistent with rights other than ownership and does not generally amount to possession, but cultivating the land and the like is generally cogent evidence of possession: Powell V Macfarlane (1977) 38 P&CR 452 and Cooper v Gick [2008] EWLandRA 2007 103. Dealing with the land how an occupying owner might have been expected to deal with it and where no-one else had done so, demonstrated to the whole world the intention to incorporate the land as part of their property, and therefore was sufficient to establish adverse possession of a verge: Heaney v Kirby [2015] UKUT 178 (TCC).

#### *Possession by tenant*

50. It is also necessary to consider a possible question which arises is where the person in adverse possession of land is a tenant of adjoining land. The relevant principle is summarised in Megarry and Wade at 35-027 namely that encroachments by a tenant on land belonging to third parties will enure for the landlord's benefit provided that the land is very close to the demised land and occupied by the tenant together with the demised land, and no different intention is shown by the conduct of the landlord or the tenant within the 12 years of adverse possession.
51. It is clear that a tenant who believes wrongly that they hold a tenancy of the disputed land nevertheless has the intention to possess the land. In Tower Hamlets London Borough Council v Barrett [2006] P&CR 132 at para 42, Neuberger LJ said, of the squatters in that case: "[42] Further, effectively for the same reasons, they plainly satisfied the requirement of legal possession i.e. an intention to possess. They believed their tenancy included the area. Hence they thought they were enjoying exclusive possession of it – i.e. they not only manifested, but, for what it is worth, they also subjectively had, what Slade J referred to as the "intention to exclude the world at large" quoted with approval in para 43 of Pye's case".

#### *Acknowledgement*

52. In relation to cases where the Limitation Act 1980 applies, where time is running against a person entitled to possession of the land, but the limitation period has not expired, and a squatter in possession gives a written acknowledgment of that person's title, the limitation period starts to run afresh from the date of the acknowledgement. That is the effect of sections 29-31 of the Limitation Act 1980.
53. A request by a person in unlawful possession to purchase the property does not negate the intention to possess the property. On the contrary, it shows that the occupier intends to possess, but wishes to do so lawfully. An oral offer to purchase the property does not prevent the squatter from being in possession. A written offer to purchase will constitute an acknowledgment of title which will restart the limitation clock. But an oral offer will not [para 9-100 Adverse Possession by Stephen Jourdan QC and Oliver Radley-Gardner].

#### *Adverse Possession: before the Land Registration Act 2002*

54. Before the coming into force of the relevant provisions of the 2002 Act (on 13 October 2003), the law as to the acquisition of title by adverse possession in the case of unregistered land was governed by section 15(1) of the Limitation Act 1980 which states that "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 who he claims, to that person". The right of action accrues, and the limitation period starts to run, from the start of the adverse possession.
55. By section 17 of the 1980 Act "at the expiration of the period prescribed by this Act for any person to bring an action to recover land ... the title of that person shall be extinguished." This latter provision was modified in the case of registered land so that, instead of the registered proprietor's title being extinguished under the 1980 Act, his title was held on trust for the person who

had, by virtue of the 1980 Act, acquired title against the registered proprietor and that person could apply to be registered in the place of the registered proprietor [section 75 of the 2002 Act].

56. By para 1 of schedule 1 to the 1980 Act, where a person bringing an action to recover land had been dispossessed or had discontinued his possession, then his right of action was treated as having accrued on the date of dispossession or discontinuance. By para. 8(1) of schedule 1 to the 1980 Act, no right of action to recover land was treated as accruing until the land was in the possession of some person in whose favour the period of limitation could run; such possession was referred to in paragraph 8 as “adverse possession”.

#### *Adverse possession after the Land Registration Act 2002*

57. The 2002 introduced a different regime as to adverse possession in relation to registered land. Schedule 12 to the 2002 Act contained transitional provisions which applied during the period 13 October 2003 to 12 October 2006, so that if a person had already been in adverse possession for 12 years prior to the coming into force of the 2002 Act so that the registered title was held on trust for that person (under section 75 of the 2002 Act), then he remained entitled to be registered as the proprietor of the estate: 2002 Act, schedule 12 para 18(1).
58. Subject to the transitional provisions of the 2002 Act, section 96 dis-applied the earlier regime as to adverse possession in relation to registered land. Section 97 gave effect to the new regime contained in schedule 6.

#### *The rights of the person in adverse possession on first registration of title*

59. Section 11(4) of the 2002 Act provides that on first registration of a freehold estate, the estate is vested in the proprietor subject only to certain specified interests affecting the estate at the time of registration, namely:
- (b) unregistered interests which fall within any of the paragraphs of schedule 1; and
  - (c) interests acquired under the Limitation Act 1980 of which the proprietor has notice.
60. The 2002 Act schedule 1 lists unregistered interests which bind a proprietor on first registration. One such interest is listed at para 2 to schedule 1, being “*an interest belonging to a person in actual occupation, so far as relating to land of which he is in actual occupation ...*”
61. If the person in adverse possession is in actual occupation of the land, and has by the date of first registration been in adverse possession for the limitation period, his rights will bind the registered proprietor by reason of section 11(4)(b) of the 2002 Act. If the squatter is not in actual occupation at that date, his rights will only bind the registered proprietor, if the proprietor has notice of those rights.
62. For the transitional period of three years from 13 October 2003 to 12 October 2006, schedule 1 also included para 15 which included “*a right acquired under the Limitation Act 1980 before the coming into force of this schedule*”. The effect of this was that in the case of first registration of title between those dates, the rights of the person in adverse possession were protected whether he was in actual occupation or not.

*The rights of a person in adverse possession on a registered disposition of a registered estate*

63. By reason of section 29(1) of the 2002 Act, if a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration.
64. Under section 29(2)(a)(iii) of the 2002 Act, on a registered disposition of a registered estate, the priority of an interest falling within any paragraph of schedule 3 is protected. Schedule 3 relates to unregistered interests which override registered dispositions. Para. 2 states:  
*“An interest belonging at the time of the disposition to a person in actual occupation, so far as relating to land of which he is in actual occupation, except for –*  
*(b) an interest of a person of whom inquiry was made before the disposition and who failed to disclose the right when he could reasonably have been expected to do so;*  
*(c) an interest-*  
*(i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition, and*  
*(ii) of which the person to whom the disposition is made does not have actual knowledge at that time.”* The effect of these provisions is that the new registered proprietor will only be bound by the rights of the person in adverse possession if the person in adverse possession is in actual occupation of the land and either that person’s occupation would have been obvious on a reasonably careful inspection of the land at the time of the disposition or the registered proprietor knew about the occupation.
65. In relation to the test as to whether the occupation would have been obvious, the test does have an element of objectivity. It is not whether the purchaser actually did or did not discover the occupation, but whether the purchaser would have done so had he made a reasonably careful inspection of the property. The purchaser does not have to inspect at all to gain the benefit of this provision, and he will be released from the priority of the adverse interest if the actual occupation was not discoverable on a reasonable inspection whether he inspected or not. It is the visible signs of occupation which have to be obvious on inspection [para. 17-016 Ruoff & Roper].
66. At para 21-46 of *Adverse Possession* by Stephen Jourdan QC and Oliver Radley-Gardner it states:  
*“it [schedule 3, para 2] does not protect a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition, and of which the disponee did not have actual knowledge at the time. Thus if, for example, a squatter farmed open land at a time when there were no visible signs of the squatter’s occupation, it might be that schedule 3, para 2 would not protect the squatter.”*

*Alteration of the Register: Schedule 4 of the Land Registration Act 2002*

67. Where the person in adverse possession claims that the unregistered title of the original proprietor had already been extinguished by adverse possession at the date when the application for first registration was made, the person can make an application to alter the register under schedule 4 of the 2002 Act. By reason of section 57(1) of the 2002 Act the party which had applied to be registered proprietor acquires title to that land by virtue of the “statutory magic”. Section 57 provides that “*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*”.
68. An alteration of the register to give effect to an overriding interest does not amount to rectification, because the registered proprietor was already bound by those rights, and the alteration was not prejudicial to its title: Re Chowood’s Registered Land [1933] 1 Ch. 574.
69. Pursuant to schedule 4 of the 2002 Act, the tribunal can make an order for alteration of the register to correct a mistake. Section 2(3)(b) of schedule 4 provides that if the alteration affects the title of the registered proprietor of a registered estate in land, no order may be made without the proprietor’s consent in relation to land in his possession unless “*it would for any other reason be unjust for the alteration not to be made*”. The burden of proving this lies on the party seeking rectification of the register against the registered proprietor in possession.
70. In the absence of fault, it should require some exceptional circumstance to warrant the court exercising its discretion to rectify the register against a registered proprietor in possession of land who did not give his consent: Walker v Burton & Bamford [2013] EWCA Civ 1228. In the cases of Cooper v Gick [2008] EWLandRA 2007 0103 and Pawson v Vaines & Anor REF/2015/0339/0340 the register was rectified against a registered proprietor in circumstances where the applicant had been in adverse possession for 12 years by the time the title was registered (even though the applications to rectify were made pursuant to schedule 6 and not schedule 4 of the 2002 Act), but in both cases neither respondent was in possession of the land and the cases did not involve any subsequent sale to a third party.
71. It has been held to be a mistake within schedule 4 of the 2002 Act where a person was registered as first proprietor of an estate but where the unregistered title of his predecessor had already been barred by a squatter; Baxter v Mannion [2011] EWCZ civ 120, and Balevents Ltd & Anor v Sartori [2014] EWHC 1164 (Ch). The effect on both parties of the alteration and the refusal to alter has to be considered, and where not only the original mistake but the “consequence of the mistake” may also be corrected: Paton v Todd [2012] EWHC 1248 and Ruoff and Roper para 46.017. The former owner of land had the right to have the register rectified where, following a mistake, a third party had acquired an interest in it for valuable consideration: Knights Construction (March) Ltd v Roberto Mac Ltd [2011] 2 E.G.L.R. 123.
72. I will now apply the above legal principles to my earlier findings of fact. I do find that the Partnership had acquired a right to the Disputed Land by adverse possession by at least May 2001 in accordance with section 15 of the Limitation Act 1980. In any event, the critical date for the Applicant to show is twelve years having accrued before 13 October 2003, and with the conveyance to the Partnership of 1989, the latest date that the Partnership

would have acquired a right to adverse possession was in 2001. Whilst the acts of possession were less marked after the Disputed Land stopped being cultivated for arable after 1988, nevertheless the Partnership, being the Applicant's predecessor, physically used and occupied the Disputed Land as their own in the manner in which land would ordinarily be used. They let Disputed Land out to a third party to graze their cattle on in 2012, and claimed for rural payments for successive years in respect of the Disputed Land from 1985 up to 2015. At no point during this time is there any evidence that the Anglian Water was in possession, or took any steps to be in possession of, the Disputed Land.

73. When Anglia Water applied to register the Disputed Land as part of title number LL255976 in 2005, the title to the Disputed Land would have been extinguished as a result of section 17 of the Limitation Act 1980. However, by the "statutory magic" of section 57 of the 2002 Act, title to the Disputed Land would be deemed to vest in Anglian Water. By reason of the transitional provisions the rights of the Partnership would have constituted an overriding interest which would have bound the Anglian Water. At that point in time, the Partnership could have successfully applied to have the register altered so as to become the registered proprietor of the Disputed Land.
74. Anglian Water then put the Disputed Land up for sale in September 2015. The Respondents inspected the Disputed Land, and not being alerted to the Applicant's occupation, and taking the register as conclusive as to Anglian Water's title to the Disputed Land, the Respondents bid at the auction for the Disputed Land. The Respondents say that the Applicant attended at the auction and also bid for the Disputed Land, but this did not constitute an acknowledgment of Anglian Water's title to the Disputed Land. The Respondents successfully bid for the Disputed Land, paying valuable consideration for it. They went into possession of the Disputed Land on 5 October 2015 (so the Applicant was not in actual occupation of the Disputed Land after this point in time), and on 6 October 2015 they became the registered proprietors of the Disputed Land at Land Registry under title number LL360908.
75. After the Respondents had gone into possession of the Disputed Land fencing it, and becoming registered as proprietors of it, the Applicant, as successor in title to the Partnership, brought this Application to alter the register of title number LL360908 in order to become the registered proprietor of it. Whilst there was clearly a mistake in Anglian Water being registered as proprietor, and with the Tribunal having the jurisdiction to correct not only the original mistake but the consequences of that mistake, the critical issue is whether it would be unjust for the alteration not to be made. Bearing on this issue is whether the Applicant's interest would have been protected as an overriding interest. In accordance with para 2(c)(i) of schedule 3 to the 2002 Act even if the Applicant was in actual occupation of the Disputed Land, the occupation would not have been obvious on a reasonably careful inspection of the Disputed Land at the time of the disposition; the Disputed Land was a rough field with no obvious indications that it was occupied by the Applicant. In such circumstances, and aside from the original mistake with Anglia Water, the Applicant's interest would not successfully have overridden the registered disposition to the Respondents. The Applicant should have protected his

interest, but he failed to do so and gave no reason as to why he had not done so, even when he was aware of the impending sale of the Disputed Land at auction. In light of the Applicant's failure to protect his own interest over a prolonged period of time and when set against the background to the sale of the Disputed Land, is it now unjust not to alter the register – I find that it is not.

*The Decision*

76. Accordingly, I shall direct the Chief Land Registrar to cancel the Application. This Tribunal has an unlimited jurisdiction in relation to costs. Costs normally follow the event – namely, that the loser pays the winner's costs. I therefore propose to make an order to this effect, but before doing so, will give the opportunity of the Applicant providing arguments that he may have as to why a different order should be made. I direct that written submissions should be filed (and served on the Respondents) no later than 4pm on 5 June 2017. The Respondents may respond within 14 days.

Dated this 12<sup>th</sup> day of May 2017

BY ORDER OF THE TRIBUNAL



