Neutral Citation Number: [2012] EWHC 978 (Ch)
Case No: 2007/1124 Appeal Ref: Ch2011/0158

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
ON APPEAL FROM THE ADJUDICATOR TO HM LAND REGISTRY

Date: Tuesday 17th April 2012

Before:

MR JEREMY COUSINS Q.C.
(Sitting as a Deputy Judge of the Chancery Division)

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Between:

(1) ERIC WALKER
(2) ANGELA WALKER
(3) CAROLE SCOTT (representing herself and the estate of Elizabeth Chamberlin)
(4) EDWARD MILLS **Appellants**
(5) CHRISTOPHER BALCHIN

- and -

(1) PETER CHARLES BURTON **Respondents**
(2) SUSAN ANNE BAMFORD

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Mr Paul Stafford (instructed by Messrs Blakemores, of 40, Great Charles Street, BIRMINGHAM B3 2AT) for the **Appellants**
Mr Jeffrey Littman (instructed under the Bar's Public Access Scheme) for the **Respondents**

Hearing dates: 23rd, 24th November, 11th December 2011,16th January 2012

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JUDGMENT

MR JEREMY COUSINS QC:

INTRODUCTION

1. This is an appeal by Mr Eric Walker and others ("the Appellants") against the decision ("the Decision") of a deputy adjudicator to Her Majesty's Land Registry, Mr Simon Brilliant, dated 10th December 2010. The appeal is brought with the permission of Briggs J under an order dated 30th June 2011.

2. In September 2000 Mr Peter Burton and Miss Susan Bamford ("the Respondents") bought Over Hall Farm ("the Hall"), which is just to the north of the village of Ireby, in Lancashire, from Mr and Mrs Stephen Brown. The transfer, dated 1st September 2000, was in respect of 39.25 acres of Over Hall, including the Hall itself. There was no express transfer at this time, in respect of either the lordship or of the Fell with which this case is concerned.

3. On 28th September 2000, the Respondents were registered as freehold proprietors of the Hall. On 10th October 2003, the Respondents were registered as first proprietors of the lordship or manor or reputed lordship or manor ("the Lordship", "the Manor") of Ireby ("the

Lordship Title"). On 21st February 2005 the Respondents were registered as first freehold proprietors of the Ireby Fell ("the Fell", "the Fell Title"). The Fell consists of some 362 acres of moorland, and it is registered as common land. The Proprietorship Register in respect of the Fell Title described the Respondents as "being Lord of the Manor of Ireby".

4. On 9th May 2007 the Appellants, who are all residents of the village of Ireby, made an application ("the Application") under paragraph 5(a) of Schedule 4 of the Land Registration Act 2002 ("the 2002 Act", "the Schedule") to alter the register by closing the title of the Respondents in respect of both the Lordship and Fell Titles. A letter of objection was written on behalf of the Respondents by the solicitors then acting for them, Messrs Henmans. The dispute was then referred to the adjudicator on 30th August 2007. Subsequently the Respondents applied to strike out the application on the basis that the Appellants had no *locus standi* because they claimed no rights themselves to the Fell or the Lordship. This question was ordered to be tried as a preliminary issue, the hearing for which came before the adjudicator, Mr Edward Cousins in January 2009. In a reserved decision dated 13th March 2009, and re-dated 14th May 2009, he determined that it was not necessary for an applicant seeking to rectify the register to demonstrate *locus standi,* and he directed that the case should proceed to a full hearing. There was no appeal against that decision

5. Following the subsequent full hearing, by the Decision the deputy adjudicator acceded to the application in respect of closing the Lordship Title, but directed that the Application be cancelled in respect of the Fell Title. The Appellants maintain that the deputy adjudicator was right to close the Lordship Title, but wrong to decline to close the Fell Title. The Respondents do not challenge the Decision as to the closure of the Lordship Title, but they maintain that the deputy adjudicator was right to decline to order the closure of the Fell Title.

6. For the avoidance of doubt, throughout this judgment I shall refer to the parties respectively as the Appellants and Respondents, as indicated above, although they were differently described throughout the proceedings before the deputy adjudicator.

THE CASE BEFORE THE DEPUTY ADJUDICATOR

7. The deputy adjudicator gave directions, on 19th November 2009, for the preparation of the case below for trial. These included a requirement that the Respondents should serve a Consolidated Statement of Case which might anticipate and deal with points taken by the Appellants in earlier statements of case, and this was to be followed by a Consolidated Statement of Case from the Appellants which should, amongst other things, set out their case on the Fell. This direction was necessary because the pleadings, by this time, had become extremely numerous and cumbersome.

8. Ultimately the hearing below took up some ten days of oral hearing; the trial bundle consisted of some fourteen volumes, and there was a site view. Although oral submissions were made to the deputy adjudicator, time was insufficient for Mr Littman (counsel for the Respondents) to conclude, so that he completed them in writing. To these Mr Stafford (counsel for the Appellants) replied in writing.

9. Many more matters were in issue before the deputy adjudicator than were argued on the appeal before me. The primary case for the Respondents below was that the Lordship had existed since the late 11th century, and that by the early 17th century it was with the Tatham family who built the Hall. Thereafter, they maintained, the ownership of the Lordship passed with the Hall to the Marton family in 1737. They contended that subsequently it passed from the Martons to Mr Harry Fawcett in 1947, then in 1953 to his daughter, Mrs Catherine Bracken, thereafter by a conveyance in 1995 to Mrs and Mrs Brown, and finally, by a further conveyance of 21st September 2004 to the Respondents themselves.

10. The deputy adjudicator set out, in a very helpful table at paragraph 25 of the Decision, a history of the express dispositions of the Lordship, the Fell and Over Hall. This demonstrated that the only express disposition of the Fell since 1892 was contained in a Settlement of 1892 itself, whereas the Lordship had been the subject of express disposition in each of the transactions mentioned, save for in the 2000 transfer of the Hall.

11. The Respondents advanced alternative cases in relation to the Lordship based upon adverse possession, prescription, and on the grounds of proprietary estoppel. All of these alternative cases were rejected by the deputy adjudicator; see paragraphs 66-69 of the Decision.

12. Before the deputy adjudicator the Appellants argued that the registration of the Lordship and Fell Titles amounted to a mistake, so that the respective Titles should be closed. They relied upon paragraph 6(2) of the Schedule asserting that an alteration to the register should be made because the Respondents had, by a lack of proper care, caused or substantially contributed to the mistake which led to registration, and alternatively they asserted that it would be unjust for the alteration not to be made. (I deal later in this judgment with the question of whether the Appellants' case below had raised issues as to the Respondents' being in possession of the Fell at material times, and whether a lack of care had contributed to mistaken registration. The question of whether the point as to possession was controversial, or was conceded below by the Appellants, was argued before me at some length on the hearing of the appeal.)

13. Since the provisions of the Schedule to the 2002 Act were very significant in the deputy adjudicator's decision, and are similarly important on this appeal, it is convenient at this stage to set them out. Paragraph 5 provides that:

> "The registrar may alter the register for the purpose of—
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> (a) correcting a mistake,
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> (b) bringing the register up to date,
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> (c) giving effect to any estate, right or interest excepted from the effect of registration, or
>
> (d) removing a superfluous entry."

Paragraph 6 provides that:

> "(1) This paragraph applies to the power under paragraph 5, so far as relating to rectification.
>
> (2) No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor's consent in relation to land in his possession unless—
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> (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 on an application for alteration under paragraph 5 the registrar has power to make the alteration, the application must be approved, unless there are exceptional circumstances which justify not making the alteration.
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> (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."

14. The Appellants advanced below three positive cases, in the alternative, as what became of the Lordship:

> (1) That it remained appendant to the original *caput* of the corporeal Manor which is today the site of Netherbeck House and had devolved by conveyance to Miss Scott and the late Miss Chamberlin. ("The Netherbeck Case", as it was described in the Decision.)
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> (2) That it was held by the Knights of St John of Jerusalem since before 1290 and continued to be so held until the Grand Prior of that Order conveyed it to the Appellants and the Respondents as tenants in common on 4th December 2008, the Respondents demurring thereto, and that if such conveyance was ineffective, then the Knights continued Co hold the Lordship. ("The Knights' Case", as it was described in the Decision.)
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> (3) That the Lordship has ceased to exist, or alternatively has passed to the Crown.

15. The significance of the year 1290, mentioned above, is not confined to the Knights' case. It was the year of the statute *Quia Emptores* which remains in force today. Its effect, with regard to manors, was that no new manors could be created, save by the Crown, after the statute came into force.

The deputy adjudicator's decision

16. The deputy adjudicator's Decision was lengthy and careful. He reviewed the factual history, making extensive references to the historical materials available. He reached his conclusions for the following reasons:

> (1) Title to the Lordship was not acquired by the Tatham or Marton families, who had respectively been the owners of the Hall since the 17th and 18th centuries; rather, it had been assumed by the Marton family during the late 18th, or early 19th centuries. It followed that although, on 21st September 2004, Mr and Mrs Brown, the Respondents' immediate predecessors in title of the Hall, had purported to convey title to the Lordship to the Respondents, such conveyance was not effective in transferring such title to them. Since the Respondents' case depended upon its being established that the Tatham and Marton families had owned the Lordship, it followed that the Respondents' case on the issue of the Lordship failed. (See paragraphs 217-226 of the Decision.)
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> (2) The Netherbeck and Knights' Cases were misconceived and failed.
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> (3) The Respondents had no claim, independent of the Lordship, to the Fell Title; paragraphs 72 and 234 of the Decision. Paragraph 6(2) of the Schedule had no relevance to the application to close the Lordship Title because, unlike the Fell, the Lordship had no physical existence and therefore could not be in the physical possession of the Respondents.
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> (4) In the circumstances, the Respondents had had no title to the Fell when they sought to be registered as its proprietors, and their registration as such was a mistake; paragraph 234. However, pursuant to paragraph 6(2) of the Schedule, no alteration affecting the title of a proprietor of a registered estate in land might be made under paragraph 5 of the Schedule without the proprietor's consent in relation to land in his possession unless (a) he had 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. The deputy adjudicator implicitly accepted that the

Respondents were in possession of the Fell. (His actual finding, at paragraph 39 of the Decision was that they took control of it shortly after being registered as its proprietors in 2005.)

(5) There was no suggestion that the Respondents had caused, or substantially contributed to, the mistake by fraud (paragraph 237). Further, the deputy adjudicator rejected the submission that that there had been a lack of proper care. He found that Mr Burton's statutory declaration in support of his application for the registration of the Fell Title was not only honest, but reasonable, and based on a careful and proper assessment of what was then known to Mr Burton. (Paragraph 239)

(6) It would have been inequitable to close the Fell Title in the light of the Respondents' expenditure upon the Fell, and the Appellants' inactivity in respect of the application to register, and since registration had occurred. (Paragraph 241)

(7) It would not be unjust for an alteration to the Fell Title not to be made. The parish council did not support the application, and "it is far better that the fell should be owned than left in limbo." (Paragraph 243)

17. The deputy adjudicator did not make any express finding as to the suggestion made on behalf of the Appellants that the Lordship had ceased to exist or passed to the Crown, and that the freehold to the Fell was vested in the Crown. He held, at paragraph 73, that if the Fell Title was closed then the Fell would revert to unregistered land "owned by no one", and at paragraph 243, that "it is far better that the fell should be owned than left in limbo". A finding as to vesting in the Crown, the Appellants say, should have been made, and they maintain that the deputy adjudicator erred in concluding that, absent registration in favour of the Respondents, the land was in limbo or owned by no-one. The deputy adjudicator's omission in making such a finding as to vesting in the Crown is a central part of the Appellants' case on this appeal.

THE CASE ON THE APPEAL

18. The Appellants' Grounds of Appeal are somewhat discursive in their content. I think I can fairly summarise the paints raised as follows:

(1) Ground 1 is that since the deputy adjudicator found the Lordship to have become extinct, he should have found that the waste of the Manor, and hence the Fell, had vested in the Crown directly, or through the Duchy of Lancaster, and had remained so vested. Such a finding would, it is suggested, have had to be considered when addressing the question of the supposed injustice of not altering the register pursuant to the Schedule 4 provisions. ("The Crown's Interest issue")

(2) Ground 2(a), as limited following Mr Stafford's concession during the hearing of the appeal, is that if the protection in favour of a registered proprietor in possession of land, as afforded by paragraph 6(2) of the Schedule, applied, there was nothing unjust in tikis case about altering the register. This was, it was argued, because the mistake as to registering the Fell was consequential upon the mistaken registration of the Lordship. Ground 2(b) is that the deputy adjudicator was wrong to find that these protection mentioned was available because, first the Respondents were not in physical possession, and secondly it was not unjust in all the circumstances to close the Title, thereby correcting a mistake which had led to the registration of the Fell in the Respondents' favour. (I shall refer to these issues as to possession and as to the alleged injustice in not altering the register respectively "the Possession issue", and "the Injustice issue".)

(3) Ground 3 is that the deputy adjudicator wrongly rejected the Appellants' case

that the Respondents' lack of proper care caused or substantially contributed to the mistaken registration of the Fell Title. ("The Lack of Care issue")

19. The Grounds of Appeal, as originally drafted, relied on additional matters, which are no longer pursued. First, what is now Ground 2(a) consisted of sub-limbs (a) and (b). Sub-limb (a) was that the protection of paragraph 6(2) and the protection afforded to someone in possession of land, did not as a matter of principle apply in favour of the Respondents whose title to the Fell was entirely dependent upon an entitlement to the Lordship which had arisen from a mistaken registration. As formulated in the Grounds of Appeal, paragraph 6(2) protection would automatically not apply in respect of registration consequent upon a mistake, without the need to consider whether it would be unjust not to alter the register. Mr Stafford, in the course of submissions, abandoned sub-limb (a). In my judgment he was right to do so. The terms of paragraph 6 contemplate that a registration may be brought about by mistake, but limit the circumstances in which that mistake may be rectified. The mere fact of a mistake, in itself, was not considered by Parliament to justify alteration of the register without consideration of the other matters identified in the paragraph. Alteration on the grounds of mistake alone, in my judgment, would be to ignore the express provisions of the statutory code.

20. The other original Ground of Appeal which Mr Stafford abandoned was Ground 4. It was in the alternative to the first three Grounds, and was founded upon the Knights' case. It was that the deputy adjudicator was wrong to conclude that the effect of the Religious Houses Act 1558 was the same as the relevant provisions of the Hospital of St John of Jerusalem Act 1540. Under the latter statute, the order of the Knights was dissolved and their property vested in the Crown. The effect of this Act was effectively reversed by the provisions of the Crown Lands Act 1557, and letters patent issued pursuant thereto. The abandoned case was that the interest of the Knights was in an incorporeal interest in gross, to which the interest in the Fell was merely incidental. The 1558 Act had been directed, so it was said, at corporeal interests alone. The argument, if pursued, would have been that the Lordship had remained vested in the Knights, unless and until it was transferred to the Appellants. Again, in my view, this Ground was rightly abandoned, as I do not consider that on its true construction the effect of the 1558 Act was limited in the manner suggested.

21. The Respondents have maintained no appeal against the Decision. They do not, therefore, pursue any case based upon the Lordship. They do not maintain, nor could they on the available evidence, that the Fell had been effectively conveyed to them independently of the Lordship. They concede that, but for the provisions of s58(1) of the 2002 Act[1], ownership of the Fell would be vested in the Crown, whether directly or through the Duchy of Lancaster. They submit that the deputy adjudicator was right in finding, having regard to the Schedule 4 provisions, that they should remain registered as proprietors of the Fell. They accepted, however, on the hearing of this appeal, that it would be necessary to delete the words "being Lord of the Manor of Ireby" from their description in the Proprietorship Register.

22. Mr Littman made preliminary applications on the hearing of this appeal. They arose in these circumstances. When Briggs J granted the Appellants permission to appeal, he did so in general terms without limiting the permission to any particular points. In his reasons he indicated that he considered that the Appellants had a real prospect of success in relation to (1) the Crown's Interest issue (2) the Injustice issue, and (3) the Possession issue. Subsequent to the grant of permission, there was correspondence between the Appellants' solicitors and the clerk to Briggs J as to whether any limitation as to the scope of the

[1] "(1) 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 <u>him</u> as a result of the registration."

permission to appeal had been imposed. Neither in the order granting permission, nor in the subsequent correspondence, was any limit imposed, pursuant to CPR 52.3(7) and 52PD 4.18, as to the extent of permission granted. Nonetheless, Mr Littman urged that I should interpret the permission granted as confined to the three points mentioned earlier in this paragraph, or alternatively that I should set aside the grant of permission insofar as it went beyond those points. Further, he invited me to set aside the grant of permission in relation to the Possession issue, having regard to the pleadings, and the course of the case below.

23. For reasons which I gave in a short judgment dealing with these preliminary applications, I declined to accede to them. In short, the terms of the permission had not been limited as envisaged in CPR 52.3(7), there seemed to me to be much connection between the broader Grounds of Appeal upon which the Appellants relied and the points specifically mentioned by Briggs J in his order granting permission, and the parties had come to the hearing fully prepared to deal with all matters arising on all of the Grounds mentioned in the Appellants' Notice. It was therefore appropriate and convenient to deal with all matters raised in the Notice. At the hearing of the appeal, I therefore heard submissions on all matters relating to all the Grounds in the Appellants' Notice, save for those conceded, or abandoned, by the Appellants as explained above.

24. Finally, I must mention that it was common ground between the parties that in hearing this appeal my task is limited to a review of the Decision (pursuant to CPR 52.11); neither party submitted that it would be in the interests of justice to hold a rehearing.

25. I intend to consider the matters pursued on this appeal in the order in which they arise for consideration under paragraph 6 of the Schedule.

THE POSSESSION ISSUE

The deputy adjudicator's findings

26. The deputy adjudicator's findings with regard to possession of the Fell were as follows:

> (i) There was evidences, from the village meeting book and the parish council minute book covering almost the entire period from 1894- 1986, that the Fell had been administered by the meeting or parish council, or an informal committee of grazers. (Paragraph 33)
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> (ii) An enquiry was conducted by Mr George Squibb QC, the Commons Commissioner, at Lancaster Castle in 1978, as to whether anyone owned the Fell. He recorded that the chairman of the parish council had no evidence as to its ownership, and that he was not satisfied that any person was the owner. He held that it should remain subject to protection by the local authority under section 9 of the Commons Registration Act 1965. By that provision (now replaced by section 45 of the Commons Registration Act 2006), such authority may take any steps to protect the land against unlawful interference that could be taken by an owner in possession of it. (Paragraphs 35-37)
>
> (iii) Shortly after the Respondents were registered as proprietors of the Fell in 2005, they took control of it, by the following August putting up a sign indicating that they were proprietors in possession. Since then, they had regulated the use of the Fell, by granting grazing and shooting rights as they felt appropriate. (Copies of the sign and the licences were put in evidence below.)
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> (iv) He accepted the evidence of Mr Burton as to the incurring of expense and spending time, and found that he had taken an active and responsible role in

managing the Fell.

The Appellants' submissions

27. Mr Stafford submitted that the deputy adjudicator should have found that the Respondents were not in physical possession of the Fell; alternatively, if in possession, the time and expense incurred was modest in comparison with the financial benefit they derived from its exploitation and that there were no strong countervailing factors to make it unjust to alter the register and close their title.

28. He argued that possession depended upon overt acts and not intention, and that there must be an appropriate degree of physical control. He relied upon the judgment of Slade LJ (with whose judgment Nourse and Butler-Sloss LJJ agreed) in *Buckinghamshire County Council v Moran* [1990] Ch 623, where (at pages 640-641) the learned lord justice adopted the test in his earlier first instance judgment in *Powell v McFarlane* (1977) 38 P&CR 452, at pages: 470-471:

> "Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession ... Thus an 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."

29. Mr Stafford maintained that it was necessary to have regard to three possible dates for the purposes of considering whether the Respondents were in possession of the Fell. These were:

(i) The date of the application to close the title, namely 9th May 2007.

(ii) The date when the registrar referred to case to the adjudicator.

(iii) The date of the hearing itself before the deputy adjudicator.

He submitted that on any view it would be wrong to take the last of these, as it would then be open to a respondent facing an application to take further steps so as to prejudice the position. The same could be said of the second date also. Mr Stafford correctly submitted that the deputy adjudicator did not specifically address the issue of the appropriate date for consideration, and this could be highly material, he argued, since some of the licences were not granted until after May 2007. The shooting rights were not granted until August of that year.

30. Any steps that were taken by the Respondents, Mr Stafford argued, had to be assessed in the light of all the circumstances which included the fact that the Fell was registered as common land, and consisted of hundreds of acres of open moorland, with shrubs, trees, and boundaries delineated by stone walls. The Respondents could, he submitted, have done many things to demonstrate control and possession, including putting up gates and structures, maintaining paths and surfaces, and exercising sporting rights, but they did not, or did not to any significant extent.

The Respondents' submissions

31. Mr Littman mostly developed his submission in relation to this point when making his preliminary applications to which I have referred above. Very sensibly, later in the course of the hearing before me when *he* made his substantive submissions, he did not repeat what he had said earlier, but simply asked me to treat the relevant parts of his preliminary submissions as repeated.

32. Mr Littman began his submission with regard to the possession issue by emphasising that the 2002 Act fastens upon physical possession as what determines whether a person is in possession. It provides, in s131(1), that:

> "For the purposes of this Act, land is in the possession of the proprietor of a registered estate in land if it is physically in his possession, or in that of a person who is entitled to be registered as the proprietor of the registered estate."

33. He submitted that it was not open to the Appellants, on the appeal, to dispute that the Respondents were in possession of the Fell at the material times. He developed this argument by reference to the pleadings, the manner in which evidence had not been challenged below and in which submissions had been made below, and even in relation to seeking permission to appeal:

> (i) The deputy adjudicator gave detailed directions for the conduct of the case in November 2009. These included, at paragraphs 3 and 4, directions for consolidated pleadings, whereby the Appellants were required to set out their case on the Fell.
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> (ii) The Respondents had, by their consolidated pleading, at paragraph expressly asserted that they were in possession of the Fell. This was not disputed in the Appellants' pleadings.
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> (iii) Mr Burton's witness statement asserted that he had taken physical possession of the Fell, and that the Respondents had, since taking possession, incurred expense and expended time upon it. He said that they had entered into commitments upon which others relied, and used the Fell for their own enjoyment and amenity. In evidence before the deputy adjudicator, Mr Burton mentioned that he had entered into grazing, shooting and sporting agreements in relation to the Fell from which the Respondents had derived income. None of this evidence was challenged, and as I have noted above, the deputy adjudicator accepted it.
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> (iv) The Appellants' written submissions dated 30th July 2010 ("On Discretion"), before the deputy adjudicator, whilst addressing other issues arising under the Schedule, did not suggest that the Respondents were not in possession. The Appellants' submissions of 13th August 2010 stated in terms (at paragraph 32) that the Respondents had the protection of paragraph 6(2) of the Schedule, and (at paragraph 34(4)) that the Respondents had been in control of the Fell since the registration (of the Lordship) in 2005.
>
> (v) When permission to appeal was sought from the deputy adjudicator, no permission was sought in relation to the possession issue.

34. Further, Mr Littman submitted, this same material, and especially the unchallenged evidence of Mr Burton as to the control of the Fell, was ample to justify the deputy adjudicator's finding in favour of the Respondents as to their being in possession of the Fell.

Conclusions on the Possession issue

35. I accept Mr Stafford's submission that for the Respondents to demonstrate that they were in possession they must prove on a balance of probabilities that they exercised an appropriate degree of physical control. However, in this regard, I take into account the passage in the judgment of Slade J in *Powell* v *McFarlane* which followed (at page 471) immediately upon the passage cited above, which was relied upon by Mr Stafford:

> "In the case of open land, absolute physical control is normally impracticable, if only because It is generally impossible to secure every part of a boundary so as to prevent intrusion. "What is a sufficient degree of sole possession and user must be

measured according to an objective standard, related no doubt to the nature and situation of the land involved but not subject to variation according to the resources or status of the claimants": *West Bank Estates Ltd.* v. *Arthur,*[2] *per* Lord Wilberforce. It is clearly settled that acts of possession done on parts of land to which a possessory title is sought may be evidence of possession of the whole. Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession. On the particular facts of *Cadija Umma v. S. Don Manis Appu*[3] the taking of a hay crop was held by the Privy Council to suffice for this purpose; but this was a decision which attached special weight to the opinion of the local courts in Ceylon owing to their familiarity with the conditions of life and the habits and ideas of the people[4] . Likewise, on the particular facts of the *Red House Farms* case,[5] mere shooting over the land in question was held by the Court of Appeal to suffice; but that was a case where the court regarded the only use that anybody could be expected to make of the land as being for shooting[6]: *per* Cairns, Orr and Waller L.JJ. 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."

36. The land in question was open moorland. To take physical possession of such land required a lower degree of control than might be expected in relation to actively farmed land, or a site in an urban area. Permissions and licences were granted in some cases over the whole of the Fell, and in other cases over part only. The evidence demonstrated several such instances before May of 2007. There was, in addition, evidence that the Respondents had used and enjoyed the Fell for their own purposes. All of this tended to support the view that, to paraphrase the words of Slade J in *Powell* v *McFarlane*, the Respondents had been dealing with the Fell as occupying owners might have been expected to do, and that no-one else had done so.

37. In my judgment there was ample material before the deputy adjudicator which entitled him to make the findings which he did as to the Respondents' having taken possession. He was entitled to accept the evidence of Mr Burton as to the grant of licences, many of which pre-dated May 2007 (which is the earliest of the three potentially relevant dates identified by Mr Stafford), and the application to close the title. Similarly there was evidence as to the sign, and the use that the Respondents themselves made of the Fell. In the light of the evidence before the deputy adjudicator, I agree with the conclusion which he reached on this issue. The evidence demonstrated that by no later than May 2007 the Respondents were in control, and had taken possession, of the Fell.

38. Before moving on from this part of the case, I must add that I consider that given the pleaded cases below on this issue, the lack of challenge to Mr Burton's evidence, and the concessions made in the written submissions for the Appellants, the deputy adjudicator would have been well justified in concluding that the matter of possession was not in issue. In those circumstances, I would have found it difficult to justify interfering with any decision which proceeded on that basis. In the event, the deputy adjudicator made the

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[2] [1967] AC 665, 678-679, PC
[3] [1939] AC 136, PC
[4] *Ibid.,* pages 141-142.
[5] *Red House Farms (Thorndon) Ltd v Catchpole* (Unreported). Court of Appeal (Civil Division) Transcript No. 411 of 1976.
[6] *Ibid.,* pages 6G, 12B, G.

findings which I have noted, and in all the circumstances, nothing more was required of him, or was to be expected.

THE LACK OF CARE ISSUE

39. Although neither the Appellants nor the Respondents challenge the Decision to the effect that the title to the Lordship was never acquired by the Tatham or Marton families, but was merely assumed by the Martons in the late 18th or early 19th centuries (paragraph 217), which finding was determinative of the case as to the Lordship against the Respondents, it was necessary to consider, for the purposes of this appeal, to some considerable extent the evidence, or the absence of it, which had been relied upon before the deputy adjudicator as to the Lordship case. This was because the Appellants maintained that the inadequacies of the evidence in support of transmission of the Lordship, from the late sixteenth century or early seventeenth century to the Martons, demonstrated that the registration of the Lordship, and in consequence of the Fell, was brought about wholly or partly by the Respondents', or their solicitors', lack of care.

40. The history of the Lordship, and the evidence concerning its transmission, was reviewed with great care by the deputy adjudicator, particularly in paragraphs 163- 226 of the Decision. It is unnecessary for me to say a great deal about the history of the Lordship before the period around 1600. There was ample historical material to justify a conclusion that until around the early seventeenth century there had existed a manor of Ireby. The deputy adjudicator referred to conveyancing transactions as early as 6th October 1279, and 12th November 1317 which demonstrated this. (These early transactions were by way of feet of fine, which the deputy adjudicator explained were collusive court actions in respect of which three copies of the document concerned were made on a single sheet of parchment; both parties retained a copy, and the third, at the foot of the sheet, was retained by the court; hence the description "foot of fine".) He referred also to the fact that originally the manor of Ireby was held in conjunction with the manor of Tatham from which it was separated in 1317. Consideration of evidence as to the boundary of the manor in 1317, and the present parish boundary suggested to the deputy adjudicator that the Fell formed part of the manor in 1317.

41. The history of the Lordship from the early 17th century was much less clear. The *Victoria County History of Lancashire* (1914) ("the VCH"), at page 253, having briefly described its origins, said of the Manor:

> "It falls out of sight till the 16th century, when the lordship was held by Redmayne and Claughton. It was purchased by Christopher Stockdale in 1598, and descended in part to another Christopher in 1617. Since that time no manor appears to have been claimed."

42. The deputy adjudicator fairly observed (at paragraph 165) that the VCH entry in respect of Ireby was short and at times guarded, and at paragraph 203, and a footnote thereto that the editors appear not to have seen the Stinting Agreement to which I refer below. This said, the Respondents accepted below, rightly, that the 1598 purchase was the last documented reference to the Manor until the Marton family era two centuries later.

43. Another important text is Colonel W H Chippindall's *History of the Township of Ireby* (1935). The work was clearly the product of much historical research, and the text is supported by many Appendices. Colonel Chippindall referred, at pages 13-14, to the Stockdale purchase in 1598, and to the succession of his son Leonard in respect of the Manor upon his death. However, he recounted that, shortly before the death of Leonard's son and heir, Christopher in 1678, "the capital messuage and various quantities of land" were sold to Richard Tatham. Upon this transaction, Chippindall relates (identifying his

sources), no mention of a manor was made, and he continued:

> "... as the lands had been much divided and sold into freeholds at various times, any manorial dues would be scarcely worth collecting. From this time all mention of a manor ceases until in 1836, when Mr Oliver Marton claims, in a deed [the Stinting Agreement mentioned below] to be lord of this manor."

44. A little later, at page 22, Chippindall referred to sales of land at Lancaster Assizes in March 1605, and said of them that they appeared to be the final break-up of the Ireby estate which had been owned by the Redmayne family.

45. Colonel Chippindall's work, as its name suggests, is about the history of the township, and not merely the Manor of Ireby. However, he revisited the subject of the Manor at page 70, where he specifically dealt with the Stinting Agreement, passing the comment that Oliver Marton's style of "Lord of the Manor of Ireby" "seems to have been assumed".

46. In the light of this background, two important conveyancing principles were the subject of considerable attention before the deputy adjudicator. These were, first, that if a manor is to be passed on a conveyance, then it must be expressly conveyed; *Rooke v Lord Kensington* (1856) 2 K&J 753,772, a decision of Sir W Page-Wood, V-C. This principle was challenged by Mr Littman before the deputy adjudicator. It was argued, on the authority of Lord Hardwicke's decision in *Norris v Le Neve* (1744) 3 Atk 82 that general words would be sufficient to pass title to a manor, but the deputy adjudicator held (at paragraph 223) that the case was only authority for the proposition that general words would suffice when land was being settled, rather than conveyed in the modem sense. The principle identified in *Rooke v Lord Kensington* (the Vice-Chancellor's decision was not expressed in terms that any new rule was being established) was therefore held to be applicable at all times material to this case. There is no appeal in respect of that point.

47. The second important principle considered was that until 1st January 1882, when the Conveyancing Act 1881 took effect, the conveyance of a reputed manor did not pass the freehold interest of the grantor in the waste of a manor, unless express words to that effect were used; *Doe d Clayton v Williams* (1843) 11 M&W 804, 807-808. This principle, too, was not questioned on the hearing of this appeal.

48. These principles were of significance in the light of the history of Over Hall, and in connection with the asserted Lordship for the two centuries or so from the time of the Stockdales' dealings mentioned above. Again, I am grateful to the deputy adjudicator who set out the relevant background in the Decision. The Hall was built by Robert Tatham in about 1634. The Tatham family remained at the Hall through several generations, until it was sold on 4th May 1737 by William Tatham to Oliver Marton. By chance, both William Tatham, and Oliver Marton were barristers. The conveyance made no reference to the Lordship, something which the deputy adjudicator considered significant, given the two principles mentioned above; he observed, at paragraph 222 that it was highly unlikely that the parties to the conveyance of 4th May 1737 would not have included a reference to the Lordship if it were intended to be the subject of the transaction; the purchaser in particular would have wished to include it if he believed that he was buying it.

49. The deputy adjudicator considered other evidence, including as to the appointment of gamekeepers, and a letter from Rear Admiral Sandford Tatham written to his cousin in 1830, which referred to Robert Tatham as the Lord of the Manor of Ireby, and mentioned his building of Over Hall. He considered also, in support of the Respondents' assertions for upholding the Lordship title, the presumption of continuity, and that it is not necessary to prove a manor's existence that manorial court, or other documentary evidence of the holding of such a court, be produced. He reminded himself that evidence of reputation alone

was admissible.

50. Having weighed the evidence and arguments carefully, the deputy adjudicator concluded, on the balance of probabilities, that title was never acquired by the Tatham or Marton families, but was assumed by the Martons in the late 18th or early 19th centuries. He rejected as speculation the contention for the Respondents that when the Hall was built the Tatham family moved the manor house of the Lordship to the waste land of the Manor, and emphasised that there was no contemporaneous documentary evidence that the Tatham family had title to, or claimed that they owned, the Lordship. He rejected as speculative the suggestion that the Marton family acquired the Lordship by virtue of a lost document.

51. Before I come to the deputy adjudicator's findings which are the subject of appeal on this issue, I need to say a little more as to the background. The earliest dated document submitted in support of the application for the registration of the Lordship ("the Lordship application") was a lease 10th August 1895.

52. In support of the application for the registration of the Fell in February 2005 the earliest document of title submitted was a Marton family settlement of 23rd January 1892 ("the 1892 Settlement"). (The Stinting Agreement of 1836 was not a document of title.) The 1892 Settlement was made between George Blucher Heneage Marton of Capernwray Hall, Lancashire, of the first part, George Henry Powys Marton of the same place, of the second part, and Viscount Ashbrook and others of the third part. It was a resettlement of the Capernwray and other estates under a previous settlement of the 18th April 1866 made in contemplation of the marriage of George Blucher Marton to the Honourable Caroline Flower, youngest daughter of Viscount Ashbrook. Under its terms a life interest in respect of the Manor of Ireby or the reputed manor of Ireby (at that time described as being in the County of York), and Over Hall, together with other interests; and properties was conferred upon George Henry Marton and to the use of his first and every other son.

53. George Henry Marton died in 1942, and was succeeded by his brother, Richard, who died in 1945. These two deaths, with consequent liabilities in respect of estate duty, caused the Marton family to sell all its estates. In July 1947 Richard Marton's special personal representatives conveyed Over Hall and the Lordship to the then occupying tenant, Mr Harry Fawcett, and the history of the purported transmission of the Lordship thereafter I have mentioned at paragraph 9 above. There was no express conveyance of the Fell in the 1947 conveyance, in the 1953 assent, or the 1995 conveyance, although the last did include a conveyance of 43 sheep gaits appurtenant to the land thereby conveyed. (A gait is a right to pasture sheep on common land, and those concerned were exercisable on the Fell.)

54. By the time that the Respondents applied, on 21st February 2005, to be registered as proprietors of the Fell, a Stinting Agreement made on 16th May 1836 ("the Stinting Agreement") had come to light. This agreement set out by way of compromise the respective grazing rights of various owners or occupiers of land who were parties thereto. It described Oliver Marton as "Lord of the Manor of Ireby", and included a recital whereby it wars admitted by all those parties thereto "that the right of Commonage on the said Fell is that of Pasture only and not of Turbary and that the Freehold and Inheritance of and in the Soil of the said Common or Fell is vested of right in the Lord of the Manor of Ireby aforesaid."

55. Oliver Marton was a lunatic, and therefore the Stinting Agreement was executed on his behalf by his nephew and heir George Marton. Many of the other parties to the agreement were people of some substance, including a clergyman, and others described as Gentlemen or Yeomen. The deputy adjudicator described the agreement (at paragraph 30) as "an impressive document", and observing (at paragraph 31) that "at the time it was made, the Fell was firmly under the control of the Marton Family and that such control was or

purported to be an incident of the Lordship". Having considered the Stinting Agreement, I consider that the deputy adjudicator's description of it was fully justified.

56. The subsequent history, as described in the Decision at paragraph 33, showed that control of the Fell as an incident of the purported Lordship ceased many years ago. Consideration of the village meeting book, and then the parish council minute book for the period from 1894 to 1986 (with a gap only for the years 1951-1953) showed that the affairs of the Fell had been administered either by the village meeting, the parish council, or an informal committee of grazers for over a century before the Respondents were registered as proprietors of the Fell in 2005.

57. The deputy adjudicator said, at paragraph 123 of the Decision that it was not clear to him when Mr Burton first became aware of the Stinting Agreement, but that it must have been no later than 24th December 2004 when the Respondents relied upon it when lodging a caution against first registration of the Fell. It had not been relied upon in support of the Lordship application in 2003. At the time of the 2005 application, the Respondents stated in a certificate accompanying it that they had been registered as Lord of the Manor of Ireby, and that due to information contained in the Stinting Agreement they believed that they had title to the Fell.

58. Following the making of the Fell application, the Land Registry allowed until 21st April 2005 for objections to be filed, and local people were notified of the application. The subsequent events are described in paragraphs 130-133 of the Decision. Mr and Mrs Walker expressed their opposition in writing to the chairman of the parish council in April 2005. On the 19th April 2005 an extraordinary parish council meeting was held, and the application discussed, but the parish council decided that it did not object to the application, and the Land Registry was so advised by letter. None of the villagers made an objection to the Land Registry, although the deputy adjudicator was satisfied that Miss Scott and Mr and Mrs Walker were aware of the application and had the opportunity to make objection.

59. In May 2005 the Land Registry completed the Respondents' application to be registered as proprietors of the Fell ("the Fell application") and backdated it to the time that it was received.

60. In paragraphs 134-144 of the Decision the deputy adjudicator described the subsequent doubts entertained by the Land Registry concerning title to the Fell; in particular he mentioned the doubts expressed by Miss Wallwork, the then Lancashire district land registrar. He recorded, at paragraph 137, that Miss Wallwork had taken the view that whilst there was every likelihood that the Fell had vested in Richard Oliver Marton under the terms of the 1892 Settlement, there was no evidence produced as to its being conveyed to Mr Fawcett by the 1947 conveyance. She appeared to accept that the Stinting Agreement showed that Oliver Marton had good title to the Fell, but was concerned that title thereto was not deduced from the Marton family in subsequent deeds. The deputy adjudicator did, however, go on to observe at paragraph 143 and 144 of the Decision, that if proper weight had been attached to section 62(3) of the Law of Property Act 1925 it would have been concluded that unless there had been an express disposition of the Fell at some time between 1892 and 1947, the Fell would have passed with the Lordship by virtue of the 1947 conveyance and later dispositions, with the result that if the Lordship had vested in the Marton family in 1947, the Fell was ultimately conveyed to the Respondents.

The deputy adjudicator's findings

61. The deputy adjudicator (at paragraph 234 of the Decision) observed that the Respondents had only been entitled to be registered as proprietors of the Fell because they were proprietors of the Lordship. He stated in terms that since he had determined that the

Respondents were not entitled to be proprietors of the Lordship, it followed that they had no title to the Fell, and their registration as its proprietors had been a mistake. However, at paragraphs 238-239, he rejected the submission advanced by Mr Stafford that the Respondents had caused or substantially contributed to the mistake by lack of proper care. His reasons were as follows:

> (1) By the time that the Respondents applied for first registration of the Fell, the Lordship had been, expressly conveyed to them, and they had been registered as its proprietors. He considered that the Stinting Agreement of 1836 had rightly been seen at the time of the Fell registration "as compelling evidence" that the Fell belonged to the lord of the manor.
>
> (2) He considered that Mr Burton made the 2005 statutory declaration in good faith believing himself to be the owner of the Fell by virtue of being owner of the Lordship, and that at that time the belief was not only honest, but also reasonable and based upon a careful and proper assessment of what was then known to him. Further, the deputy adjudicator considered that it would have been unreasonable to have expected Mr Burton "at that stage to have gone beyond the 1836 stinting agreement".

The Appellants' submissions

62. Mr Stafford referred to the history of the transmission, or purported transmission, of the Lordship and of the Fell, and emphasised that at the time of registration of the Lordship, the 1895 Lease was the earliest document relied upon, and that there was no evidence, and no finding to suggest, that any earlier document had been submitted in support of the application to register. The Stinting Agreement of 1836 and the 1892 Settlement had been available in support of the Fell application, but not the Lordship application.

63. Mr Stafford submitted that the deputy adjudicator ought to have held that there was a causal chain linking the Lordship application with the grant of the registration of the Fell, and that the mistaken registration of the Fell could not have happened without the mistaken registration of the Lordship. He developed this, maintaining that the Land Registry's mistake was the consequence of the Respondents' application through Henmans who held themselves out as competent to practise in property and manorial law. Those solicitors had, however, he asserted, failed to investigate what information was available about the Lordship in the period prior to the date of the 1892 Settlement, and to provide such information to the Land Registry. The failure of the solicitors to make such investigations (which must be attributed to the Respondents) was, Mr Stafford submitted, something which demonstrated a lack of proper care because for the Lordship to exist it must have been created before 1290, and so reasonable enquiries needed to be undertaken in respect of the period between 1290 and 1892. He argued that no such enquiries appeared to have been undertaken, having regard to the limited evidence relied upon in support of the Lordship application.

64. The deputy adjudicator's findings, which I have mentioned above, Mr Stafford argued, overlooked the connection between the Lordship application and the Fell application, and the fact that the former had been granted without consideration to the position before the 1890s, reflecting an assumption that what had become a lordship in gross had been properly transmitted to that time since 1289. (A manor in gross is one which in the course of time has ceased to have any demesne lands annexed to it; see Scriven's *Law of Copyholds and Manors* (7th ed. 1896). The error, now established as determined by the deputy adjudicator, Mr Stafford submitted, had been caused, or contributed to, by the lack of information provided by the Respondents and their solicitors in support of the application, and their failure to make proper enquiries as to the period before the 1890s.

65. Mr Stafford drew attention to the well known passage in Megarry and Wade on *The Law of Real Property*, 6th edition (2000) page 30, to the effect that after 1289 the number of mesne lordships could not be increased, evidence of existing lordships gradually disappeared with the passing of time, and so most land came to be held directly of the Crown. (He referred also to Cheshire and Bum's *Modem Law of Real Property* 16th edition (2000) page 15, which is to the same effect.) This Manor, Mr Stafford argued, was extinguished either when it vested in the Crown in 1558, or when its assets were sold off in 1605, or when, thereafter it became a lordship in gross, and there was no documentary evidence to show that the requirements for conveyance (by deed) of such a lordship had been met.

66. In the course of his submissions, both written and oral, Mr Stafford placed a great deal of emphasis on what would have been revealed by considering the VCH and Chippindall. The extinguishment of the Manor, or the lack of conveyancing documentation required for its transmission, would, he argued have been indicated by consideration of those sources alone.

67. Mr Stafford submitted that the manner in which the Respondent's solicitors dealt with registration fell below the standard to fee expected of a reasonably competent solicitor specialising in property law and the registration of title, including manorial law. To identify this standard as the yardstick, he relied on *Jackson & Powell on Professional Liability* 6th edition (2007) at 11-097. As to what this would require in a case such as the present, he referred me to the June 2002 edition of Ruoff and Roper on *Registered Conveyancing,* which would have been current when the Lordship application was made. The relevant passage stated that applications for first registration of a manor must be made according to the normal rules applicable to corporeal land and be proceeded with in the usual maimer, subject only to such modifications as the nature of the case may require and the Chief Land Registrar might direct. (At this point I should note that it is no longer possible today for new registrations of manors to be made.)

68. In suggesting that the Respondent's solicitors had failed properly to investigate title, and that this had led to mistaken registration of the Lordship, Mr Stafford submitted that the decision of Lightman J in *Prestige Properties Ltd v Scottish Provident Institution and another* [2003] Ch 1 was a helpful guide. In that case the official search certificate from the Land Registry erroneously indicated that a small parcel of land purchased by the claimant was unregistered, but the claimant failed to apply for its first registration. In the belief that it had title to the parcel concerned, based upon the certificate, the claimant sold land to the first defendant on terms that the first defendant should be entitled to retain a sum of £450,000 of the purchase price if it could not register title to the entirety of the parcel within six months. This could not be achieved because of the error contained in the plan, and the first defendant refused to pay over the retention. The claimant sued the first defendant for the monies retained, and in the alternative, claimed indemnity from the Chief Land Registrar, as second defendant, in respect of the loss of the retention. The claim against the first defendant was compromised for £50,000, and the claimant gave credit for that sum in its claim against the registrar.

69. The claim to compensation was governed by s83(1) of the Land Registration Act 1925, which provided that where the register was rectified under the Act then any person suffering loss by reason thereof was entitled to be indemnified. However, sections 83(5) and (6) provided respectively that no indemnity should be payable where loss was suffered wholly as a result of a claimant's own lack of proper care, or that where loss was suffered partly as a result of such lack of care then any indemnity should be reduced to what was just and equitable having regard to the claimant's share of responsibility for that loss.

70. Lightman J, in a detailed analysis of the statutory provisions at paragraph 36 of his judgment, said:

> " ... (g) the language of section 83(5) and (6) is apt to embrace consideration of the claimant's lack of proper care in respect both of the occurrence and quantum of loss. Accordingly it is open to the registrar to maintain a challenge to the claimant's entitlement to an indemnity on grounds both that the claimant was negligent in failing to exercise proper care in preventing the occurrence of the loss and that the claimant failed to exercise proper care to mitigate and limit the loss; (h) if the registrar is to take either or both of these defences, he must clearly and distinctly raise them at an early stage in any proceedings and, in particular if the proceedings are to be tried on pleadings, in his defence; (i) the claimant's lack of care under consideration refers to lack of care to prevent the loss or occasion for the loss arising or the loss being greater than it need be. In respect of the occurrence of the loss the investigation may require consideration of the extent to which the claimant may have taken steps which would have revealed the existence of the error or prevented the error having the impact which it did; (j) the extent of the ordinary duty of care owed by a solicitor to his client on the conveyancing transaction in question, as opposed to the duty provided for in a particular retainer which may extend or restrict that duty, may provide a yardstick as to the care to be expected of the claimant...."

71. Lightman J went on to consider, at paragraph 46, the duties of a purchaser's solicitor in the investigation of title. The duties which he described were applicable and relevant to cases concerned with the examination of office copy entries and the description of land to be acquired, but the duties which were relevant in that case do not have direct application to such duties as existed in the present case. In the event, Lightman J held that the claimant was possessed of an honest belief that reliance could be placed on the certificate and that proper care did not require its correctness to be checked. He held further, however, that proper care would have required the claimant to seek first registration of the parcel concerned, which could have resolved the problem. He held that the indemnity recoverable by the claimant should be reduced, but only by ten per cent.

72. Mr Stafford argued that the Land Registry had relatively little experience of manorial registration, as the *Land Registry Practice Guide 22* of March 2003 drew attention to the fact that registration of manors was voluntary and most did not seek to register a lordship title. Given the Land Registry's suggested relative inexperience, Mr Stafford submitted that the Respondent's solicitors needed to bring to bear on the Lordship application a sound grasp of the substantive law in relation to manors, and they should have consulted the VCH and Chippindall. The VCH, he pointed out was available at Lincoln's Inn Library. He drew attention to the requirements of the Land Registration Rules 1925 in respect of requirements as to manorial registration; he accepted that his case did not involve an assertion of the breach of those Rules, but he maintained that this was not sufficient to excuse Henmans' lack of investigation because compliance with those Rules was necessary, but not sufficient, and because otherwise the burden of investigation would be thrown on the Land Registry, whose suggested limited experience in this regard, he maintained, was relevant.

73. Mr Stafford relied, further, on the absence of any manorial documents as a strong indication that no manor existed or had been transmitted to the Respondents. In this regard he relied upon the provision of section 144A of the Law of Property Act 1922, as inserted by section 2, Schedule 2 and paragraph 2 of the Law of Property (Amendment) Act 1924. In particular section 144A(2) provided that "manorial documents shall remain in the possession or under the control of the lord for the time being of the manor to which the same relates and he shall not be entitled to destroy or damage wilfully such documents." The very absence of such records, Mr Stafford submitted, was an indication that the Manor

had ceased to exist, or had not been transmitted to the Respondents, and a solicitor exercising proper care should have been alert to this point.

74. Then, on the last day of the hearing before me, Mr Stafford, in reply, submitted that since the Stinting Agreement related only to a reputed manor, then the Fell would, before 1882, have been subject to the requirement that it be conveyed expressly; see *Rooke* v *Lord Kensington.* He emphasised that the Stinting Agreement was not a document of title, but accepted that it had evidential value. Thus, he argued, even if it had been reasonable to rely on the Stinting Agreement, since there was no express conveyance of the Fell before 1882 and after the date of the Stinting Agreement, it had not been demonstrated to be conveyed to a predecessor in title of the Respondents. This submission, I considered, gave rise to the need to consider the position in respect of conveyances before the provisions of the Land Transfer Act 1897 ("the 1897 Act") came into effect. Prior to that time real property vested without more in the deceased's heir at law, subject to proof of title. As both counsel wished to consider this point further, I directed that both counsel could put in additional written submissions to address the matter.

75. I am grateful to both counsel for the thorough and comprehensive additional submissions which they provided to me, the last of them being received during the second week in February. Mr Stafford, referred in detail to the provisions of the 1897 Act, and the Inheritance Act 1833 ("the 1833 Act"), and also to commentary in Williams' leading textbook *Principles of the Law of Real Property.* (I was referred altogether to three editions of this work by counsel; to the 1845 and 1901 editions by Mr Stafford, and the 1892 and again the 1901 editions by Mr Littman.) Williams, in its various editions, is extremely helpful both in its commentary upon the statutory provisions concerned, and also in explaining the law applicable before those provisions were enacted. In reliance upon the statutory provisions mentioned, and upon the commentary in Williams, Mr Stafford submitted that following upon the death of Oliver Marton in 1843, his heir at law was George Marton MP, the second party to the 1866 Deed of Settlement. In the absence of a will to devise the land to George Marton MP, it was, he submitted in the light of sections 2 and 3 of the 1833 Act, only possible for George Marton to have taken as heir at law in circumstances in which the Marton family title could be traced back to a purchaser for the purposes of section 2 of that Act. This in turn would have required investigation which should have led to the discovery that the first such Marton purchaser was Oliver Marton in 1737; he was the ancestor of Oliver Martin the lunatic who died in 1843. Thus it would have been revealed that since the 1737 purchase did not extend to the Lordship or to the Fell, for reasons explained above, the Oliver Marton who purchased in 1737 could not be shown to be a purchaser for the purposes of section 2 of the 1833 Act. Thus, he argued, under the law as it was before 1897, there would have been no automatic devolution in respect of the Lordship or the Fell. This, Mr Stafford, submitted should have been discovered by competent solicitors, who should have realised that they could not establish a purchaser for the purposes of the 1833 Act. I think that this could be fairly summarised as a submission that if the Marton family had never acquired title to the Lordship and to the Fell, then no member of the Marton family was ever in a position to transfer title to either, irrespective of whatever requirements there were for the transmission of title, however they might have been modified by the 1833 and 1897 Acts, and that any competent solicitor dealing with the application to register the Lordship or the Fell should have appreciated this.

The Respondents' submissions

76. Mr Littman began his submissions on this point, first, by reminding me that in his judgment in *Baxter* v *Mannion* [2010] 1 WLR 1965, a case concerned with an application to rectify the register under paragraph 6 of the Schedule, Henderson J said at paragraph 62 of his judgment:

> "... I think it is important that any finding of fraud or lack of proper care under the first limb of paragraph 6(2) should be clearly articulated, and that no such finding should be made unless the alleged fraudulent or negligent conduct has been clearly pleaded (or otherwise drawn to the attention of the registered proprietor) and he has had a proper opportunity to respond to it. Natural justice and procedural fairness require nothing less."

I respectfully entirely agree with this passage, and keep it firmly in mind when considering the allegation of lack of *care* in this case. (Henderson J's decision was affirmed in the Court of Appeal [2011] 2 All ER 574.)

77. Mr Littman submitted that despite the directions for consolidated pleadings given by the deputy adjudicator, and the Respondents' express pleaded reliance on paragraph 6(2) and the absence of fraud or want of care, the Appellants had not, in their pleadings sought to suggest that there had been fraud or want of care. Mr Littman fairly accepted, however, that the matter had been raised in closing submissions, but only after the Respondents had closed their case. Mr Stafford addressed this point in reply before me. He did not suggest that Mr Littman's analysis of the pleadings was wrong, but he did argue that the question to be considered was whether the case had been fairly put, and whether the way the issue was raised would cause an injustice, and for this he too relied on the passage cited above from *Baxter v Mannion.* Mr Littman, anticipating this response, pointed out, amongst other things, that the suggestion of lack of care raised before the deputy adjudicator at the submission stage, was based, in part, on Mr Burton's knowledge, from his alleged presence at a village meeting, of a challenge to the Lordship title; a point upon which Mr Burton had not been cross-examined. Similarly, reliance had been placed on a letter dated 2nd May 2002 sent to Miss Geraldine Smith MP by Mr Peter Collis, then Chief Land Registrar at the Land Registry, which letter it was suggested that Mr Burton was likely to have seen. He had not been cross-examined about this matter. Mr Littman maintained that, in all the circumstances, no criticism of the way that Henmans handled the application to register the titles concerned could fairly have been judged to be well founded, and that therefore the deputy adjudicator was right to reject the suggestion.

78. Secondly, Mr Littman submitted that *Prestige Properties*, concerned as it was with Schedule 8 of the 2002 Act, was not helpful in providing guidance in relation to what might amount to a lack of care for the purposes of Schedule 4 with which this case is concerned. He drew attention to the words "the conveyancing transaction in question" in the passage cited above, and submitted that there would be difficulty in applying them to a case such as the present. Importantly, he argued, this is because under the former there is required to be a proportionate response to a lack of care, whereby the degree of blameworthiness in respect of a loss sustained can be reflected, as it was in the *Prestige Properties* case, by a percentage reduction in the indemnity to be provided. Under Schedule 4, he pointed out, the position is much more stark; the register is rectified or it is not. It is a case of all or nothing. He drew my attention to the fact that Ruoff and Roper do not suggest that *Prestige Properties* is of relevance to Schedule 4 cases; see their work at paragraph 46.016.

79. Mr Littman, thirdly, addressed the suggestion implicit in Mr Stafford's submissions, that the duty upon a solicitor who acted for an applicant for the registration of a manorial title might be higher because of supposed lack of experience or expertise at the Land Registry. He drew attention to the letter sent to Miss Smith MP, mentioned above, and fairly observed that this was completely inconsistent with any suggestion of lack of the relevant expertise. The letter is well reasoned, and demonstrated a clear grasp of many of the issues relevant to the present case, including the distinction between entitlement to a lordship and entitlement to land which once belonged to the lord of the manor concerned, stressing the need to scrutinise an applicant's title to land very carefully.

80. Fourthly, Mr Littman submitted that Henmans had not demonstrated a lack of care in relation to the applications concerned. They had lodged, in support of the Lordship application, the conveyances going back to 1947. He argued that at no time before registration of the Lordship had they been put on notice that any serious question arose as to the existence of the Lordship. Moreover, if they had investigated the position further with the Lancashire Records Office, then they would have come across the 1892 Settlement, which was supportive of the case for the Respondents. Had the Stinting Agreement come to light at that stage (as opposed to the time by which the Fell application was made) this too would have provided most powerful support for the case. Thus he argued, as a matter of causation, it could not be said that any lack of care would have led to a different result, since further investigation would have been likely to reveal documents which supported, rather than detracted from, the case for registration.

81. Mr Littman developed the point as to causation further, relying on the fact that when Henmans submitted the Lordship application, which identified all documents lodged in support, they expressly indicated in Box 13 of the First Registration Application Form FR1 that they were unable to certify that they had investigated the title in the usual way on their clients' behalf on a transaction for value. This Mr Littman submitted was a complete answer to the suggestion that a lack of care by Henmans had caused or contributed to the mistaken registration of the Lordship. The Land Registry cannot have relied upon there having been investigation of title in the usual way on a transaction for value.

82. In this connection he relied, further, on the decision of Mann J in *Sainsbury's Supermarkets Ltd v Olympia Homes Ltd & others* [2006] 1 P&CR 17. In that case land had belonged to British Gas ("BG") who sold it to a Mr Hughes in 1998. The sale was subject to compulsory registration, but Mr Hughes' application to register was cancelled because he failed to respond to requisitions. Mr Hughes later sold the land to Sainsbury's who sought to protect its interest by cautions. In 2000 Westpac Banking Corporation obtained a charging order over Mr Hughes' interests in the land, and pursuant to an order made in June 2000 under section 90 of the Law of Property Act 1925 and an order for sale, Westpac subsequently sold the land to Olympia. Salisbury's had lost the benefit of its cautions by not responding to Land Registry enquiries in time. Sainsbury's argued that the register should be rectified, relying on Schedule 4 of the 2002 Act; it alleged that the registration of Olympia as proprietor had been brought about by a mistake caused by lack of proper care on the part of Olympia's solicitor, Mr O'Hara, and it argued also that it would be unjust for the alteration not to be made to the register. Mann J acceded to Sainsbury's application on the second of these grounds, but he rejected the application made on the basis of lack of care. The lack of care was alleged to consist of Mr O'Hara's failure to bring to the Land Registry's notice concerns as to the effect of the June 2000 order, and the fact that it was apparently made under a misapprehension as to Mr Hughes' title, and other matters. Mann J said at paragraph 86:

> "The purchase was then completed, and Mr O'Hara submitted all the relevant documents [to the Land Registry], with the exception of the deed of novation. These documents included copies of the relevant orders, from which their efficacy could be judged by the Land Registry. I fail to see how this can be said to have been contributing to the mistake in any meaningful sense. The potential problems arising out of the legal estate were flagged up for the Registry in advance. The only sense in which it might theoretically be said at this stage that Mr O'Hara contributed to the Registry's ultimate mistake was in failing to point up in terms the fact that it could be argued that the order was not capable of justifying a conveyance of the legal estate. But the Land Registry would have been capable of identifying that for itself, or at least identifying that there was an arguable point. I do not accept that a solicitor

> who flags up a potential problem, gets a favourable answer and who then submits documents from which additional aspects of the problem might be seen by a competent conveyancer, but who fails to point up those additional aspects, is somehow guilty of contributing to the mistake if it turns out that the conveyancing effect is not all that was thought or hoped for. The only contribution in any sense of the word was the submission of the application with supporting documents, but the Act must require something more active or significant than that. Put another way, nothing that Mr O'Hara did up to this stage was causative of the Land Registry's mistake in any sense other than a *causa sine qua non* sense, and I do not think that that is sufficient. He caused or contributed to the registration; he did not cause or contribute to the mistake."

Later Mann J continued in paragraph 87:

> "I am not convinced that on the facts of this case Mr O'Hara should have been expected to do anything more than submit the title documents with which he had been supplied so that the Land Registry could make up its own mind on what sort of title they entitled his client to, but in any event he did more than that in his discussions with Mrs Gibson, knowing that the points had been raised by Herbert Smith."

83. Applying this approach to the present case, Mr Littman argued that Henmans submitted documents to the Land Registry, and that the limitations upon what was provided were self-evident, and *per* Mann J in *Sainsbury's Supermarkets* "the Land Registry could make up its own mind".

84. Finally, in oral submissions, Mr Littman emphasised that it had taken some two years of work in the course of the litigation for all of the documents which ultimately were available in the litigation to be unearthed, and this included the 1737 conveyance which had obviously been very influential in the deputy adjudicator's reasoning. This amount of work could not reasonably be required to be undertaken before a solicitor could be said to have investigated title properly.

85. Dealing with Mr Stafford's arguments in respect of the 1897 Act and the 1833 Act, Mr Littman in his later written submissions, contended that:

> (i) On a proper analysis of the pleadings before the deputy adjudicator, there had been no challenge (assuming that the Lordship and the Fell were vested in Oliver Marton, the lunatic, at the time of the Stinting Agreement in 1836) to the Respondents' expressly pleaded case that the Lordship devolved successively through the Marton family to Harry Fawcett and other successors in title and ultimately to the Respondents. Similarly, and on the like assumption, he argued, Oliver Martin's title to the Fell in his right as Lord of the Manor, was not challenged, and was thus admitted.
>
> (ii) The 1833 Act changed the law, requiring the tracing of descent from the person last entitled (rather than the person last in possession), who did not inherit, but took by purchase. However, if the starting point for the analysis is the position of Oliver Marton at the time of the 1836 Stinting Agreement, the person from whom he inherited was the Reverend Dr Oliver Marton, who according to an obituary notice in the *Lancaster Guardian* died in 1794 whereupon he was succeeded by Oliver Marton, the lunatic. Thus the 1833 Act was irrelevant to his succession. Oliver Marton lacked capacity to transfer the Fell *inter vivos*, and it is improbable that there was, and there was no evidence of, a valid disposition by him by will. (On the facts as found in the Decision, this scenario, of course, did not arise because neither the

Lordship nor the Fell had been acquired by the Marton family.)

(ii) Upon the death of Oliver Marton, George Marton was his heir and various manors and lands were said to be the subject of a settlement in 1866, including the Lordship. On the premise that the Fell had belonged to Oliver Marton in accordance with the Stinting Agreement, either the Fell was included in the 1866 Settlement, as the 1892 Settlement suggested, or it vested automatically in George Marton's heir at law, George Blucher Heneage Marton, who declared his ownership of the Fell in the 1892 Settlement, by virtue of which it ultimately came to be conveyed to the Respondents.

Conclusions on the Lack of Care issue

86. The burden of proving that lack of proper care caused or substantially contributed to the mistaken registration lies upon the Appellants; see *Sainsbury's Supermarkets* at paragraphs 84-89, and Ruoff and Roper at 46.016. As a matter of principle this must be correct, since it is for the Appellants to establish that the power to rectify exists; see also *Baxter* v *Mannion* at paragraph 52 of Henderson J's judgment.

87. It is important to keep in mind that what is now under consideration is whether the registration of the Fell was brought about by a mistake. The Lordship registration was an important part of the background, but by the time that the Fell came to be registered, the available evidence had extended to the Stinting Agreement, and to the 1892 Settlement, both of which documents were very significant.

88. Mr Stafford was able to identify many points which, when weighed in the balance, suggested, that the Lordship title had not been made out, and that its registration was mistaken. The matters upon which he relied below in this respect ultimately prevailed on that question. However, this does not, in my judgment, demonstrate that the Respondents or Henmans, necessarily caused or contributed to the mistaken registration as a result of lack of care on their part, or indeed that there was any such lack of care at all. By the time that the deputy adjudicator came to decide this case, very considerable attention and resources had been devoted to the investigation concerned, and this work had been undertaken on an adversarial basis, so that each item of evidence and each document was scrutinised for how it might assist the case one way or the other. When considering the Decision, it becomes clear that the deputy adjudicator very properly felt it necessary to weigh a considerable volume of evidence, much of which conflicted with other evidence, before him. He reached his conclusion, as he said, in terms at paragraph 217, on a balance of probabilities, and was clearly influenced by the terms of the 1737 conveyance from William Tatham to Oliver Marton. It was only in the course of the litigation that this document came to light, and even then it was only with the benefit of carefully researched legal analysis mentioned at paragraph 223 of the Decision, and in paragraphs 46-47 above, that the full significance of the terms of the 1737 conveyance could be appreciated. It is unrealistic to require that a solicitor, even one retained to investigate title to a Manor, should in the exercise of proper skill and competence, undertake factual and legal research to the extent necessary to enable the title issues which arose in this case to be discovered and resolved. Henmans, of course, were retained to submit an application for registration, but there was no evidence that they had been retained to carry out an exhaustive investigation into title to the Manor, and their completion of Box 13 on Form FR1 suggested that their retainer did not extend that far. I entirely agree with the deputy adjudicator's assessment, expressed at paragraphs 238 and 239 of the Decision, namely that the Stinting Agreement was rightly seen at the time of the Fell registration as compelling evidence that the Fell belonged to the Lord of the Manor, and that it would have been unreasonable to have expected the Respondents, at the time of the Fell application, to have gone beyond the Stinting Agreement. I accept Mr Stafford's

submission to the effect that different considerations apply to the investigation of manorial titles, as opposed to titles which have to be investigated for ordinary domestic conveyancing, but issues of proportionality of costs to the subject matter still have to be kept in mind.

89. Further, having regard to the manner in which the case developed before the deputy adjudicator, I do not consider that it would have been properly open to him, on the material available, to have come to any conclusion, on this issue, other than the one which he reached. There had not been raised, prior to the hearing before the deputy adjudicator, any suggestion of a lack of proper care on the part of the Respondents or Henmans, and the issue was not raised until after the evidence had closed. If the suggestion had been raised, and pursued, in the manner in which it has subsequently been developed, the Respondents and Henmans might well have wished to explain (or attempt to do so) why the application was dealt with in the manner in which it was, and to have asserted, that the manner in which the matter had been handled was consistent with the exercise of proper care, and to have sought to justify such an assertion. I do not consider, on the material available before the deputy adjudicator, that he could fairly have reached the conclusion that a want of proper care by the Respondents or Henmans had been demonstrated, or that it had been shown to have caused or contributed to any mistaken registration.

90. The conclusion expressed in the preceding paragraph is sufficient to dispose of this issue on the appeal, but out of respect to the submissions skilfully advanced before me by both counsel, I shall deal specifically with other important aspects of this case which were advanced by them respectively.

91. Whilst the VCH might have been fairly readily available to anyone undertaking research into the history of Lancashire (though I do not find that the Respondents or Henmans consulted it), it deals with the history of the Manor only briefly, and clearly had its limitations, for example in not mentioning the Stinting Agreement, which as Mr Littman suggested, might well have been unearthed and found persuasive if more research had been undertaken. The VCH was written without the advantage of knowledge of the 1892 Settlement. As for Colonel Chippindall's history, I am not satisfied that this ever came to the attention of the Respondents or Henmans. Colonel Chippindall's conclusion that the Lordship was assumed by the Marton family was vindicated by the Decision, and was reached without the benefit of the 1737 conveyance and the legal analysis concerning it. However, Colonel Chippindall's history might well not have caused a different conclusion to have been reached by the Land Registry, even if a copy of it had been provided. Indeed, in the light of the Stinting Agreement, and absent the 1737 conveyance, I very much doubt that the Land Registry would have reached a different conclusion from that that which it did upon the Fell application even if Chippindall's *History* had been provided to it.

92. I am not persuaded that the absence of manorial records should have caused a competent conveyancing solicitor experienced in manorial law to reach the conclusion that title to the Lordship could not be established, and therefore I do not accept that this feature of the case is as significant as Mr Stafford contends. Mr Stafford accepted, when I raised the point with him in the course of his submissions, that the decision of Lawrence J, as he. then was, in *Beaumont v Jeffery* [1925] Ch 1, is authority for the proposition that prior to the enactment of the amendment to the Law of Property Act 1922, there was no obligation on the lord of a manor to retain the manorial records in his possession. It. was to reverse that decision that the amending legislation was introduced. It therefore follows that any records could have been destroyed, or parted with, long before 1924.

93. Next I shall consider Mr Stafford's submission that since the Stinting Agreement purported only to relate to a reputed manor, the absence of evidence of later conveyances

from Oliver Marton and other documents of title until 1892, necessarily defeated the devolution of title in an unbroken chain which the Respondents needed to establish. I consider that Mr Littman's analysis of the pleadings in this case is correct, and that this matter had not been properly put in issue previously. In any event, in my judgment, Mr Littman is correct in his submission with regard to the devolution of title if it had been the case that Oliver Marton had title to the Lordship and the Fell at the time of the Stinting Agreement. He would have inherited from his father who died before the 1833 Act was applicable, and his estate would have devolved according to the law as it was before the 1897 Act. On balance, it would have been likely therefore that Oliver Marton's interest, had it existed, would have become the subject of the 1892 settlement, and a competent solicitor investigating title, with the benefit of the Stinting Agreement could properly have so concluded.

94. I reject also Mr Stafford's submissions based upon the premise that the Land Registry lacked experience in dealing with the registration of manors. I do not consider that there is any evidential basis for such a finding; rather, all the material before me suggests that the Land Registry, as a body, did have the requisite experience. Further, I do not see how the duty incumbent upon an applicant or his solicitor, in applying for registration, can become more onerous as a result of any supposed lack of expertise on the part of the Registry.

95. As to Mr Littman's submission which invited a comparison between Schedule 8 and Schedule 4 provisions (his "all or nothing" point), I cannot entirely accept it. If a lack of proper care by a solicitor, or his client, does substantially contribute to a mistaken registration then the rectification provisions are engaged. It does not matter for this purpose that this will lead to the proprietor's loss of his entire interest, even though he may not have entirely caused the mistake concerned. However, the rigour of this interpretation is mitigated by the requirement that the lack of care in question must have made a substantial contribution to the mistake, and I accept the proposition in the passage mentioned in Ruoff and Roper to the effect that this requirement should not be read narrowly, and that the protection afforded to a proprietor should not be lost if the mistake were barely above the *de minimis* level. Ultimately, whether a lack of care substantially contributed to a mistake will be largely based on impression gleaned from all the circumstances.

96. In my judgment *Prestige Properties* is helpful in identifying the standard of care to be expected when a solicitor handled a transaction which has to be considered under Schedule 4. It does not matter that the present case did not concern a conveyancing transaction. Whether or not there was a lack of proper care is to be decided, in my judgment, by the standard of the ordinary, competent solicitor, undertaking work of the kind concerned. That is what Lightman J held in *Prestige* Properties, but it was hardly a novel point; it has been the yardstick for assessing professional liability for many years; see *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582.

97. In assessing whether proper care has been exercised, it is, however, essential to consider the task by reference to which that care is required to be exercised. Here the task was to apply to register title. If a solicitor undertaking such a task, through lack of proper care, were to mislead the Land Registry as to what documents were available, or as to the existence or non-existence of certain facts, and in consequence registration were to be procured for the solicitor's client, then this would potentially engage the jurisdiction to rectify the register under the provisions of Schedule 4. Whether or not the register should be rectified would depend upon the causative potency of the misleading conduct concerned.

98. On an application for first registration of title, pursuant to Rule 20 of the Land Registration Rules 1925 (which governed the application for the registration of the Manor), an application for first registration of title was to be accompanied by various documents,

including "all such original deeds and documents relating to the title as the applicant has in his possession or under his control, including opinions of counsel, abstracts of title, contracts for or conditions of sale, requisitions, replies and other like documents, in regard to the title". This provision applied to the application for the first registration of the Manor because Rule 50 of the 1925 Rules provided that such an application was to be made "according to the rules above prescribed, and shall be proceeded with in the same manner, subject only to such modifications as the nature of the case may require and the Registrar may approve". If, therefore, the Respondents, or Henmans as their agents, had, at the time of the application concerned, been in possession of other documents of title which were not submitted, but which had tended to cast doubt upon the merits of the application made, this might well have amounted to a want of care; but this is not suggested by the Appellants. The Respondents and Henmans did not mislead the Land Registry in any way. An application was submitted, supported, as required under the Rules, by documents which the Respondents possessed, and Henmans made the fact that they were unable to certify investigation of title in the usual way perfectly clear on the in Box 13 on Form FR1. There was therefore no suggestion made to the Land Registry that what had been submitted was the product of exhaustive research. Henmans were retained to make an application for registration of the Lordship, and they did so, in accordance with the Rules. I do not see how it can be suggested that the Respondents, or Henmans, on their behalf, brought about the registration though a lack of proper care, or that what they did, or allegedly failed to do, caused the mistaken registration. I reject Mr Stafford's submission as to the suggested irrelevance of the Box 13 entry because the Appellants and the Crown were unaware of it. This misses the point. The issue is whether lack of care caused or contributed to the mistaken registration; where the Land Registry has been told that the applicant's solicitor cannot certify investigation of title in the usual way on a transaction for value, no reliance could reasonably be placed on an assumption or belief that such an investigation had been undertaken. The Land Registry had to make up its mind on the material provided, and it did so.

99. In my judgment, the approach adopted in the *Sainsbury's Supermarkets* case is to be applied. The Land Registry was capable of identifying for itself the limitations of the documents which had been provided, and could see that they did not demonstrate a transmission of title to the Lordship dating back to 1290, or anything like it. Henmans, like the solicitors in the *Sainsbury's Supermarkets* case, did nothing more than submit the title documents which they had, and left it to the Land Registry to make up its mind as to whether this was sufficient to warrant registration. I do not consider that Henmans were under any obligation to suggest to the Land Registry that such documents might be considered to be inadequate having regard to the principles of manorial law, or to develop any reservations that they might have entertained in this regard. I do not accept Mar Stafford's contention (made in a supplemental written submission dated 9th February 2012) that in paragraph 87 of his judgment in *Sainsbury's Supermarkets*, Mann J decided that it was incumbent on a solicitor making an application to do more than submit the title documents, and alert the Land Registry to a problem The learned judge stated that he was not convinced on the facts of the case that it was necessary to do more than submit the title documents; he noted, however, that more than that had been done in discussions with a Land Registry official. He did not suggest that the additional steps had in any sense been an essential requirement. Of course, if a document submitted was known to be misleading without further explanation, the matter might be different, but that was not the case here. The Land Registry could assess, just as well as any solicitor, whether the documents submitted were adequate for registration purposes.

100. In the circumstances, I do not consider that there is any basis for differing from the deputy adjudicator's conclusions reached on the Lack of Care issue.

THE CROWN'S INTEREST ISSUE

101. As explained above, there is no appeal by the Respondents against the Decision that the Lordship Title be closed, and the Respondents concede that but for the effect of section 58 of the 2002 Act the ownership of the Fell would be vested in the Crown (directly or through the Duchy), from which it follows that prior to the registration of the Respondents as proprietors of the Fell, it was so vested so that the effect of the registration of the Fell Title in favour of the Respondents was to deprive the Crown, or the Duchy, of the Fell. Despite this, Mr Stafford was critical of the Decision in that the deputy adjudicator did not make a finding as to the date and manner of extinction of the Lordship, although he had canvassed two possibilities at paragraph 204 of the Decision; these were either that the assets of the Manor were sold off in 1605, and the Lordship was then extinguished, or that after 1605 it remained a reputed lordship in respect of which there is no evidence as to conveyance thereafter. Mr Stafford identified a further possibility which the deputy adjudicator did not address, which was that after 1558 the Lordship remained vested in the Crown, a possibility, Mr Stafford observed, inconsistent with the finding that the Lordship had been held by the Redmayne and Claughton families in the second half of the 16th century. There was no evidence of a re-grant of the Lordship by the Crown after 1558, and the Decision did not address this point. On the basis that on any view the Fell had vested in the Crown before the registration of the Respondents as proprietors, and because that registration was mistaken, it is the Appellants' case that it would be positively unjust not to rectify the register.

102. It is, in my view, unfortunate that before the deputy adjudicator handed down the Decision, the Crown and the Duchy were not made aware of the proceedings, and invited to indicate whether they wished to be added as parties or to make any representations. However, following the Decision, the Appellants' solicitors made contact with the solicitors acting for the Duchy and the Crown respectively. On the hearing of this appeal, I was invited by both parties to consider exchanges of correspondence between the Appellants' solicitors and solicitors acting for the Duchy (Messrs Farrer & Co), and the Crown estate (Messrs Burges Salmon). A copy of the Decision was provided, or made accessible, to both of them. The initial exchanges took place with the Duchy's solicitors. After studying the Decision, and other related material, on 6th May 2011, by e-mail to the Appellants' solicitors, Farrer and Co, first, expressed the view, that they were dubious of any argument that the Fell escheated to the Duchy at any point, and secondly they stated that that if the Lordship had been owned by the Knights, and was the subject of statutory vesting under the 1558 Act, then the lands concerned would have vested in the Crown and not the Duchy. Their expressly stated position was that the Duchy "will be bound by the decision of the Court in this matter and will not contest the issue of ownership."

103. The Crown estate's solicitors adopted a similar position. They informed the Appellants' solicitors, by e-mail on 25th May 2011, that they had had the opportunity of discussing the matter in detail with their client, and asked to be informed as to the outcome of the appeal. As to the Decision, they said that the Crown did not wish to take a position and would await the outcome of the appeal in due course.

104. Prior to the hearing of this appeal, the Appellants' solicitors informed the solicitors for both the Duchy and the Crown of the listing arrangements for the hearing, and provided copies of the parties' respective written submissions. Neither the Duchy, nor the Crown, appeared at, or made any representations upon, the hearing of the appeal, thereby following the course which they had previously indicated that they would take.

Submissions for the Appellants

105. Mr Stafford submitted that the deputy adjudicator's approach to the exercise

of his powers under Schedule 4 was inconsistent with his factual finding that the Lordship was extinct and had thus vested in the Crown. The Fell, he maintained, inevitably also had vested in the Crown on that basis. From this premise, he argued that it followed that the Crown had not been divested of ownership and was accordingly the rightful owner the Fell in 2005 at the time of the Fell application. These important matters, Mr Stafford submitted, were never considered by the deputy adjudicator. He drew attention to various passages in the Decision which he suggested supported that contention. In the Decision the deputy adjudicator said at paragraph 73 that if the Respondents' title to the Fell were closed the "it will revert to being unregistered land owned by no one." At paragraph 243 he said "... it is far better that the fell should be owned than left in limbo". Mr Stafford fairly accepted that in the course of argument the deputy adjudicator had expressed the view that the Crown had shown no interest in the Fell, and that this had been reflected in his written reasons for declining to grant permission to appeal.

106. The deputy adjudicator's understanding, Mr Stafford submitted, appeared to be that if the Fell title was closed, then the Fell would be owned by no one; such a conclusion would be wrong in law because the Crown cannot, as a matter of principle, abandon land. He referred me to *Scmlla Properties Ltd v Gesso Properties (BVI) Ltd* [1995] BCC 793, a decision of Mr Stanley Burnton QC, as he then was, sitting as a deputy judge of the Chancery Division for the uncontroversial principle that land cannot be without an owner, for if there is no tenant and no mesne lord, the land will return to the Crown. He reminded me, relying on the Law Commission Report 271 *Land Registration for the Twenty-First Century* (2001) at paragraph 11.22, for this purpose, that until the coming into force of the 2002 Act, where land escheated to the Crown, it could not be registered, so that the Crown's interest could not have been protected, historically, by registration. Further, he pointed out that the deputy adjudicator had not considered inviting the Crown to make any representations in the proceedings.

107. Mr Stafford submitted that had the deputy adjudicator recognised, as he should have done, that the Crown was the owner of the Fell, it would have materially altered the factual matrix which he had to consider when exercising his powers under paragraph 6(2) of Schedule 4. The deputy adjudicator, he submitted, approached the question of injustice by weighing the matters set out in paragraphs 240-243 of the Decision, which were matters only between the Appellants and the Respondents, but no reference was made to the Crown's interest. Mr Stafford then went on to develop his submission by reference to how it would be unjust to deprive the Crown of its interest, a factor which the deputy adjudicator did not consider. At this stage I consider it more convenient to confine myself to the question of whether the deputy adjudicator did indeed overlook, and give inadequate consideration to, the Crown's interest, and to deal with any issues relating thereto as to injustice when I consider the matters relating the Injustice issue later in this judgment.

Submissions for the Respondents

108. Mr Littman's principal submission on this issue was that once the deputy adjudicator had reached the conclusion that the "true owners" of the Fell were not the Respondents, then it became immaterial to the task before him whether hypothetical injustice would be suffered by the Crown or anyone else. Further he submitted that the Appellants had not pleaded a case as to the identity of the true owner. He submitted, further, that it stretched credulity too far to suppose that the deputy adjudicator, who had set out in his decision a full summary of the whole manorial scheme, including a passage from the judgment of Lewison J in *Crown Estate Commissioners* v *Roberts* [2008] 2 EGLR 165 referring in terms to the maxim *nulle terre sans seigneur* (the maxim at the heart of the Appellants' case on this point), was unaware that if a freehold estate escheats the land comes into the hands of the Crown.

Conclusions on the Crown's Interest issue

109. There can be no doubt that, as has been conceded, but for the registration of the Respondents as proprietors of the Fell, its ownership would be vested in the Crown, or the Duchy of Lancaster. The Fell would have remained so vested but for the registration in favour of the Respondents (which the deputy adjudicator did expressly find to be a mistake). The deputy adjudicator did not record findings in such terms. Despite Mr Stafford's criticism of the Decision on the basis that it did not resolve the issue as to the timing and manner of extinction of the Lordship, or address the question of a re-grant following 1558, in my judgment those matters would not have a bearing on the issues of whether the Crown's (or the Duchy's) conceded interest should have been considered, or upon the suggested injustice in not altering the register. What matters is that the Crown (or the Duchy) did have the interest now conceded, and that such interest and the effect of the Respondents' registration upon it should have been considered when exercising powers under the Schedule.

110. I cannot accept Mr Littman's submission that once it was decided that the "true owners"' of the Fell were not the Respondents, it was immaterial to the task of the deputy adjudicator whether, as Mr Littman put it, "a hypothetical injustice" would be suffered by the Crown or anyone else. Deprivation of an interest in land is always liable to be at least potentially material when considering the question of whether it is unjust for an alteration of the register not to be made for the purposes of paragraph 6(2)(b) of Schedule 4. Whether or not it is the decisive consideration will, however, depend on all the circumstances of the case under consideration; the question of injustice I address later.

111. As for Mr Littman's submission to the effect that it is unrealistic to suppose that the deputy adjudicator was unaware of the principle that no land can be without an owner, so that the land must have been vested in the Crown until the Respondents' registration as proprietors, I must keep in mind that even an experienced tribunal can at a critical stage in a reasoning process fail to be alert to, and thereby fail to take into account, some fact or principle otherwise well known to him or her. The passage in the Decision, at paragraph 73, in which it was said that if the present title were closed the Fell would revert to being unregistered land owned by no one is certainly supportive of Mr Stafford's argument that the position of the Crown as rightful owner was not considered. The other passage Mr Stafford highlighted, at paragraph 243 as to the desirability of the Fell being owned rather than left in limbo is, in my view, rather more equivocal. Earlier in the decision, at paragraphs 35 and 37, the deputy adjudicator had recorded that in 1978 Mr George Squibb QC, the Commons Commissioner, had conducted an enquiry at Lancaster Castle as to whether anyone had owned the Fell, and had recorded that in the absence of evidence "he was not satisfied that any person was the owner of the fell". It seems to me that the deputy adjudicator may well have been using the phrase "in limbo" consistently with lack of satisfaction as to anyone's ownership, rather than a finding that there would be no owner.

112. In fairness to the deputy adjudicator I must make it plain that I have no doubt that he was familiar with the relevant legal principles encapsulated in the maxim *nulle terre sans seigneur* (demonstrated by his reference to the same in the Decision). However, in my judgment it was necessary, in considering the exercise of powers under Schedule 4, to have specific regard to the fact that the Fell, but for the mistaken registration, would have been vested in the Crown. In the light of the terms of the Decision, I cannot be satisfied that the deputy adjudicator had regard, or sufficient regard, to the Crown's interest as a factor when he weighed, in paragraphs 234-244, the considerations relevant to closing the Fell title. This is therefore something which I must take into account when reviewing whether the deputy adjudicator's disposal of the Appellant's application should be affirmed.

THE INJUSTICE ISSUE

113. The deputy adjudicator considered the question of whether the Fell title should be closed at paragraphs 234-244 of the Decision. He began by expressly reminding himself that the Respondents were only entitled to be registered as proprietors of the Fell because they were proprietors of the Lordship, and that since they were not entitled to the latter, it followed that their registration as proprietors of the Fell was mistaken. He then identified the relevant provisions of Schedule 4 of the 2002 Act. Thereafter he described the case for the Appellants, namely, that it would be unjust for an alteration not to be made to the register because the Respondents were obtaining a windfall in that for £1 of consideration, in respect of the 2004 conveyance, they had gained 362 acres of Fell. This argument he rejected on the basis that it would be inequitable to close the title for the following reasons:

> (i) Ownership carried responsibilities as well as privileges, and the Respondents had incurred expenditure in taking and maintaining control of the Fell.
>
> (ii) The Appellants had notice of the application to register the Fell but failed to object at that time, nor did they take any step to apply to close the title for a further two years, during which time the Respondents arranged their affairs and spent money in reliance of their title.

114. The deputy adjudicator then made a number of observations in paragraphs 242 and 243 of the Decision. First, he said it was a striking feature of the case that the Appellants did not make any claim to have title to the Fell themselves, and that their case was that no one owned the Fell as Mr Squibb QC had found in 1978. He said that the Appellants' desire to remove the Respondents as proprietors, whilst understandable in the light of the breakdown of the relationship with them which he had mentioned earlier in the Decision, did not cany much weight with him. (I refer to what I have mentioned above as to Mr Squibb's findings in this regard. Mr Stafford's written submission to the deputy adjudicator, dated 13th August 2010 made reference to Mr Squibb's enquiry, and to the absence of any evidence before him to contradict that of the parish council chairman that the Fell was "unclaimed common land". Mr Stafford's submission, I should note, went on specifically to argue that if the Knights' case were to be rejected, then the Fell would go to the Crown to be held by the Duchy of Lancaster, and there was no reason to think that it would not be a suitable owner.)

115. The deputy adjudicator decided that there was no reason why it would be unjust for the alteration to the register not to be made, and rather that it would be unjust and serve no useful purpose for the alteration to be made. He recorded that the parish council did not support the application to close the title, and, as already noted in this judgment, he expressed the view that "it is far better that the fell should be owned than left in limbo." He therefore directed that the application to close the Fell title should be cancelled.

The Appellants' submissions

116. Mr Stafford submitted that there was nothing unjust about altering the register because the mistake about the registering of the Fell was consequential upon the mistake about registering the Lordship. The Fell, Mr Stafford submitted, should have been dealt with in the same way as the Lordship, because registration of the Fell was obtained on the sole ground that the Respondents were registered as proprietors of the Lordship and in reliance on the Stinting Agreement.

117. He argued that "simple justice", a phrase taken from Henderson J's judgment in *Baxter* v *Mannion* (above) required that in the absence of strong countervailing

factors, the party deprived of title should be able to regain it. For this proposition he relied heavily on the decisions of Henderson J and the Court of Appeal in that case, which concerned a claim to rectify the register against a proprietor whose registration as such had been procured on his assertion of an adverse possession claim. Mr Stafford placed particular emphasis upon what Henderson J said at first instance at paragraph 63:

> "... In the light of the adjudicator's unassailable findings of fact on the issue of adverse possession, it is clear that Mr Baxter was never entitled to be registered as proprietor of the field, and in my view simple justice requires that, in the absence of strong countervailing factors, Mr Mannion should now be able to regain title to his property. I can discern no countervailing factors which would make it unjust for Mr Baxter to be deprived of his adventitious title to the field, and on the contrary I see every reason why he should...."

118. He argued, further, that despite the positions adopted by the Crown and the Duchy, the Appellants had concerns that what should be a Crown or Duchy asset had found its way into the hands of the Respondents. There was, Mr Stafford maintained, an issue of accountability, with the Crown and Duchy having a public responsibility and the Respondents not having the same. For this purpose, he argued, relying on the decision of the General Regulatory Chamber's First Tier Tribunal decision in *Bruton v Information Commissioner* (EA/2010/01820 3rd November 2011, [2011] UKFTT EA_2010_0182 (GRC);), to the effect that the Duchy of Cornwall is a public authority for the purposes of the Environmental Information Regulations 2004.

119. Further, Mr Stafford contended that there was no basis in law for the Respondents to remain proprietors. He drew attention to paragraph 6(3) of Schedule 4 and the requirement that if there was power to make an alteration, an application in that regard must be approved, unless there are exceptional circumstances which justify not doing so.

The Respondents' submissions

120. Mr Littman submitted that even if, contrary to his submissions, the deputy adjudicator had overlooked the Crown's (or Duchy's) interest, this did not matter because there was nothing wrong with the decision that it was not unjust not to alter the register. Whoever had been the owner of the Fell prior to the Respondent's becoming its registered proprietors, they had done nothing to manage it. He drew attention to paragraph 243 of the Decision and to the express finding that there was no reason why it would be unjust for the alteration not to be made, contrasted with the conclusion that it would be unjust and serve no useful purpose for the alteration to be made. (This finding was followed by the passage concerning the absence of parish council support for the application to close the title, and its being better for the Fell to be owned rather than left in limbo.)

121. Considerable reliance was placed by Mr Littman, on the Crown's and the Duchy's expressed policy of not becoming involved in this dispute.

122. As to *Baxter v Mannion,* Mr Littman submitted that it was significant that, on the findings in that case, registration had been procured by putting forward a false case. Further, in that case, the person seeking the alteration was the previous owner of the land, whose registration as such had only been defeated because of the false case advanced by a person asserting adverse possession. This was to be contrasted with the present case in which the persons seeking alteration had no interest in the land, and never had had any such interest.

Conclusions on the Injustice issue

123. The burden of proving that it would be unjust for the alteration not to be

made lies upon the Appellants for reasons explained under paragraph 86 above. It is the Appellants who assert that the power to alter the register exists because it would be unjust not to alter it. They must demonstrate that such an injustice exists.

124. I keep firmly in mind that but for the mistaken registration of the Fell, it would have remained vested in the Crown, or the Duchy, and the effect of such registration, unless the register is altered, will be to continue to deprive one or other of those bodies of the land concerned. Therefore I must consider afresh the question as to whether it would for any other reason be unjust for the alteration sought not to be made. Neither of the parties suggested to me that such question needed to be remitted to the deputy adjudicator for fresh consideration in the event that I should find, as I have done, that the Crown's or the Duchy's interest, and the effect of the mistaken registration upon either, was something which expressly had to be considered when exercising the powers conferred under paragraph 6 of Schedule 4. Furthermore, I have regard to the fact that such interests are conceded as explained above, so that no further factual enquiry in that regard need be entertained.

125. Dealing first with Mr Stafford's "simple justice" point developed by reference to the decisions both at first instance and in the Court of Appeal in *Baxter* v *Mannion,* it is necessary to examine carefully the decision in that case, and the reasons that led both. Henderson J and the Court of Appeal to reach the conclusions that they did. In *Baxter* v *Mannion,* Mr Mannion bought a field in 1996 and was registered as its proprietor. Subsequently, Mr Baxter made some use of the field by keeping horses on it. In August 2005 Mr Baxter applied to the Land Registry, under Schedule 6 of the 2002 Act, for registration of the field in his name, asserting that he had been in adverse possession of the field since 1985. He supported his application with a statutory declaration to this effect. The Land Registry sent a notice, pursuant to paragraph 2(1) of the Schedule to Mr Mannion, in February 2006. It contained the standard warning to the effect that if he objected, or wished to give a counter-notice to the Chief Land Registrar, then he must do so before 8th May 2006. Mr Mannion received the form, but failed to complete and return it with the prescribed time; there were personal circumstances which had affected him. By the time that Mr Mannion's solicitors asked the Land Registry to extend time to deal with the notice (something which the Registry did not have power to do), Mr Baxter had been registered as proprietor of the field. The Registry advised Mr Mannion that it was too late for him to object, and that he would need to apply for rectification under Schedule 4 if he wanted to pursue the matter. Mr Mannion did so, asserting that the alteration which he sought would be for the purpose of correcting a mistake. The application came before a deputy adjudicator who held that Mr Baxter had not been in exclusive possession of the land as he alleged, decided that the requirements of both limbs of Schedule 6 (2) were satisfied, and she ordered rectification as sought by Mr Mannion. In reaching this decision, she expressly rejected parts of Mr Baxter's evidence, including evidence as to access to the field and his regular seeding of it, and the locking and bolting of a gate. She accepted Mr Mannion's evidence about gaining access to the field. Henderson J, at paragraph 51 of his judgment, made reference to the fact that she had plainly found Mr Baxter to be an unreliable witness.

126. Henderson J, in dismissing the appeal from the adjudicator's decision, held that she had misdirected herself on the burden of proof, saying that the issue was whether Mr Baxter had shown that he was in adverse possession, rather than upon Mr Mannion to prove that there was a mistake in the register. However, he held that though this was a significant error, it had not played any part in the review and evaluation of the evidence, and therefore it was not necessary to remit the matter for reconsideration. Further, he was critical of the adjudicator's decision in failing to identify which of the tests under the first limb she considered to be satisfied, and in failing to identify the "other reason" that she relied upon in the second limb of paragraph 6(2). In paragraph 62 of his judgment he said that he

considered that the treatment of issues arising under paragraph 6(2) had been flawed and inadequate. In paragraph 63 he explained that in. those circumstances it was necessary for him to consider the question afresh. He felt unable to make a finding about fraud or lack of proper care, but he upheld the adjudicator's decision, explaining his conclusion at paragraph 63 in the terms cited above.

127. In considering the Court of Appeal's perception of what was at stake in *Baxter* v *Mannion* it is helpful to have regard to the introductory remarks of Jacob LJ at paragraph 1:

> "Mummery LJ gave permission for this second appeal because he considered it raises an important question of principle. And so it does. It is this: can a man who has got his name registered as the proprietor of a parcel of registered land by wrongly claiming that he had been in adverse possession for ten years hang on to that title if the original proprietor, within 65 days of its being posted to him, failed to fill up and return a form posted to him by the Land Registry? Or can the original proprietor apply to the registrar to have the register of title rectified by "correcting a mistake"? Does the machinery of the Land Registration Act 2002 allow a party to take someone else's land by operation of a bureaucratic machinery which trumps reality?"

128. The leading judgment was delivered by Jacob LJ; Mummery and Tomlinson LJJ agreed with it. Jacob LJ held, first, at paragraphs 25 and 26, that he could see no reason for limiting the correction of a mistake to a mistake made through some official error in the course of examination of an application, and that any such construction of the provisions concerned would be an invitation to fraud. Secondly, he held that whilst the adjudicator had been wrong as to the burden of proof, Henderson J had been right not to remit the matter for further consideration because the findings made had not turned on the onus. Thirdly, as to paragraph 6(2) of Schedule 4 he said:

> "Putting aside sub-paragraph (a), the question which the judge assessed for himself was this: would it be unjust not to put Mr Mannion back as registered title holder. He held it would be, saying that it was a matter of "simple justice". And so it was. Mr Baxter had made an unjustified attempt to get himself title. Mr Mannion would otherwise lose his property."

129. In my judgment, the present case is significantly different factually from *Baxter v Mannion.* First of all, there is no question in this case, unlike in *Baxter* v *Mannion*, of the Respondents' having put forward material evidence which was rejected. (I am conscious of the fact that the deputy adjudicator did not accept Mr Burton's evidence as to his assertion in his statutory declaration of 6th October 2003 in respect of the Lordship application to the effect that when the Respondents purchased the Hall in 2000 they believed that the title to the Manor was transferred to them. He did, however find that such a belief was entertained at the time that the declaration was made. In the circumstances, the limited aspect of Mr Burton's evidence which was not accepted was not material.)

130. Secondly, and perhaps more importantly, as Mr Littman points out, the present case is not one concerning an application by a "dispossessed" but otherwise rightful owner. The Crown and the Duchy have, with the benefit of legal advice from eminent solicitors, adopted a position of non-intervention, but in the face of knowing what the deputy adjudicator decided. They are therefore aware that if the appeal is dismissed the position will remain as before, and the registration of the Respondents as proprietors of the Fell will continue. Neither the Crown nor the Duchy has intimated a desire to claim back an interest which either might otherwise have had. There is no suggestion that they would have taken different stances if they had been asked to intervene or comment in the proceedings before the deputy adjudicator. Unlike in *Baxter v Mannion*, the court is not being asked by the

Respondents to decline to alter the register in the teeth of opposition from a previous rightful proprietor whose interest has been lost because of failure to complete and return a form within the time allowed. Once such opposition from a "rightful" owner is manifest, it becomes a significant factor in weighing whether or not there would be injustice in not making an alteration, but that factor is absent here, though was very much to the fore in Baxter v Mannion. In this case there is no question of bureaucratic machinery trumping reality, which was clearly a concern for the Court in Baxter v Mannion.

131. In the circumstances, I do not consider that this is a case in which the fact of a mistake, and consequent registration of the Respondents which caused the Crown or the Duchy to lose an interest, without more, demonstrates that simple justice requires the register to be altered.

132. I take into account next all the other factors identified by Mr Stafford, including his point as to accountability. The deputy adjudicator was not impressed with these points, and I am not. It does not seem to me to be a proper basis for altering the register that the Appellants object to "the windfall" of the acquisition of the Fell for a consideration of £1 upon the supposed transfer of the Lordship from the Browns. The Crown or the Duchy might have had a better basis for such an objection, but have refrained from making it. The concern as to loss of accountability seems to me to be more imagined than real. No one objected on that basis when the application to register the Fell was made, and no objection to the Fell registration was made for more than two years. The loss of accountability point only seems to have surfaced recently.

133. I consider also the factors identified by the deputy adjudicator as to the relative justice or injustice of the Respondents' registration as proprietors. They have taken possession of the Fell, and incurred time and expense in managing it. They have entered into agreements with third parties as to the use of the Fell, at least one of which is for a term of several years, subject to termination provisions. I take into account that they have derived some financial benefit, extending to in time to some thousands of pounds each year from doing so.

134. I agree with the deputy adjudicator's decision that it would be inequitable now to close the title, and I do not consider that the case for alteration has been made out.

DISPOSAL

135. For the reasons mentioned above, I dismiss this appeal. It will, however, be necessary, as Mr Littman conceded in argument, for the description of the Respondents in the Fell Title as Lord of the Manor of Ireby to be removed.

136. For the future I consider that it would be appropriate in any case of this kind which comes before an adjudicator or the court, in which a potential interest of the Crown, or a similar body, might be affected, for the Crown or that body to be given timely express prior notice of an application, so that proper consideration can be given at any stage of the dispute to any representations which might be made.

137. I express my gratitude to both counsel for the very careful submissions which they have both advanced in this complicated case. Their diligence in ensuring that points were thoroughly, and conscientiously, researched has been admirable.

138. I shall hand down this judgment on 17th April 2012. On that occasion no-one needs to attend. All consequential matters can be dealt with at a later date to be arranged in the usual manner.