PP 2016/0078

REPORT OF THE SELECT COMMITTEE ON THE REGISTRATION OF LAND (PETITION FOR REDRESS) 2015-16

REPORT OF THE SELECT COMMITTEE ON THE REGISTRATION OF LAND (PETITION FOR REDRESS)

On Wednesday 21st October 2015 it was resolved –

> *That a committee of three Members be appointed with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and to report to Tynwald by June 2016 on the Petition for Redress of John Ffynlo Craine and Annie Andrée Jeannine Hommet presented at St John's on 6th July 2015 in relation to the registration of property.*

The powers, privileges and immunities relating to the work of a committee of Tynwald are those conferred by sections 3 and 4 of the Tynwald Proceedings Act 1876, sections 1 to 4 of the Privileges of Tynwald (Publications) Act 1973 and sections 2 to 4 of the Tynwald Proceedings Act 1984.

Committee Membership

Mr M R Coleman MLC (Chair)

Mr G G Boot MHK (Glenfaba)

Mr A L Cannan MHK (Michael)

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All correspondence with regard to this Report should be addressed to the Clerk of Tynwald, Legislative Buildings, Finch Road, Douglas IM1 3PW.

IN TYNWALD
6th July 2015

To the Honourable Members of Tynwald Court

The humble petition of John Ffynlo Craine and Annie Andrée Jeannine Hommet of Mwyllin Squeen, Ballaugh.

Sheweth that

currently an erroneous or malicious property registration can be carried out covertly without any need to inform the owners of neighbouring properties. This is in direct contrast with Planning procedure where any application legally requires advertisement and a conspicuous public notice to be posted at the property concerned, thus ensuring transparency.

Once a property has been registered, there is no provision for rectifying any error in the registration other than by the provisions of section 65 of the Land Registration Act, which requires that an application be made either to the Registrar or the Land Commissioner as circumstances dictate.

Some time ago your petitioners discovered by chance that part of their property and of the occupation road leading to it had been registered as part of a neighbour's property. Upon application under Section 65, the Land Commissioner ultimately agreed that the registration in question was defective. As they received no notice at the time of registration, your petitioners had no possibility of pointing out at an early stage that the registration was defective, when it could have been corrected without the years of stress and considerable expense that actually ensued.

Notice to persons desirous of objecting is dependent upon the discretion of the Registrar, but in turn depends upon disclosure by the registering Advocate to the Registry. The provisions for Cautions against First Registration are ineffective in such cases as they expect persons desirous of objecting to have anticipated a defective registration before one is lodged. Any objector is therefore at a serious procedural disadvantage.

Wherefore your petitioners seek that

the Land Registration Act 1982 and/or the Land Registration Rules 2000 be amended so that applications for the First Registration of property are advertised in a similar manner to Planning Applications and that a more efficient and equitable complaint handling procedure be established regarding such First Registrations.

Signed John Ffynlo Craine :

Annie Andrée Jeannine Hommet :

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To: The Hon Clare M Christian, President of Tynwald, and the
Hon Council and Keys in Tynwald assembled

REPORT OF THE SELECT COMMITTEE
ON THE REGISTRATION OF LAND (PETITION FOR REDRESS)

I. THE COMMITTEE AND THE INVESTIGATION

1. This Committee was established by the following resolution of Tynwald on 21st October 2015:

> *That a committee of three Members be appointed with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and to report to Tynwald by June 2016 on the Petition for Redress of John Ffynlo Craine and Annie Andrée Jeannine Hommet presented at St John's on 6th July 2015 in relation to the registration of property.*

2. The Members elected to the Committee by Tynwald were Mr Boot, Mr Cannan and Mr Coleman. At our first meeting Mr Coleman was elected chair.

3. We have met on three occasions and have taken oral evidence on one occasion. We have obtained written evidence from the petitioners, from the Land Registry, and from Mrs Canipa, a member of the public. The oral and written evidence we have gathered is included in this Report.

II. BACKGROUND: THE REGISTRATION OF LAND IN THE ISLE OF MAN

4. It was resolved in Tynwald on 15th February 1966:

> *That His Excellency the Lieutenant-Governor be respectfully requested to set up a Commission to examine existing legislation on conveyancing and the registration of deeds, to investigate whether the practice and procedure adopted under such legislation may be simplified and improved and to determine whether it would be feasible to develop therefrom a system of land registration which would reduce the financial burden on all parties to the sale. purchase or incumbrance of land arising from legal or other charges.*

Work arising from this resolution led to the enactment of the Land Registration Act 1982. Before the Act was implemented it was amended by the Land Registration (Amendment) Act 1995. It was eventually brought into force in 2002. Since then some 14,000 titles have been registered.[1]

5. The Land Registry explains on its website:

> *The historic system of examining deeds recorded in the Deeds Registry under the Registration of Deeds Act 1961 in order to deduce the title or ownership of land is being replaced by a modern system requiring the registration of title to the land on a separate electronic title register created and maintained under the Land Registration Act 1982 (as amended) and the Land Registry Rules 2000 as amended by the Land Registry (Amendment) Rules 2002.*
>
> *Land registration was phased in across the Isle of Man as successive parishes were designated as areas subject to compulsory registration:-*
>
> - *1st May 2002: Andreas, Ballaugh, Bride and Jurby*
> - *1st May 2003: German, Lezayre, Maughold, Michael and Patrick*
> - *1st September 2005: The whole of the Island except for Braddan and Onchan*
> - *1st December 2009: Braddan and Onchan*
>
> *Registration of title to a freehold or leasehold estate in land is compulsory on a conveyance on sale, the grant of a lease for more than 21 years or the assignment of a lease where there is more than 21 years left to run. Alternatively, title may be*

[1] Appendix 6, Tab F, paragraph 8.1

voluntarily registered at any time. All applications for first registration must include a certificate by an Advocate practising on the Island in the form included in Form 1 (Application for First Registration).

Once registered, the current details of a property will be found in the Land Registry. For records of unregistered property, please refer to the Deeds Registry.

The benefits of land registration include:-

- *Registration of title gives finality and certainty by providing an up-to-date official record of land ownership*
- *Ease of accessibility to up-to-date official records of ownership and other registerable interests of land*
- *Proof of ownership can be readily and speedily obtained, unlike searches of unregistered land where you may need to know the name of the owner*
- *Registered titles are guaranteed because, subject to normal insurance principles, indemnity is paid should any person suffer loss through any error in, or omission from, the title register. No such guarantee exists for unregistered property.*
- *Each title includes an extract from the survey map called a Filed Plan showing the extent of the land comprised in the registered title, although the boundaries are not conclusive unless a formal application has been made to do so. These plans are based on digital surveys of the Island. In unregistered conveyancing, there is no requirement for any deed to include a plan*
- *Dispositions of registered titles are effected by means of simple prescribed forms which are available to the public. In unregistered conveyancing, there are no prescribed forms.*[2]

III. THE PETITION AND THE PETITIONERS' PROPOSALS FOR REFORM

6. The dispute which led to the petition was decided by her Honour Deemster Roberts sitting as the Land Commissioner in the Land Court, judgment being delivered on 12th August 2014. Deemster Roberts' judgment is included within the written evidence of the Land Registry and sets out the circumstances of the case in full.[3]

[2] https://www.gov.im/registries/General/Land_Registry/ (accessed 11th April 2016)
[3] Appendix 6, tab L. The judgment is also available via the Judgments Online service at www.courts.im

7. The petitioners summarised the case in their petition for redress as follows:

> *Some time ago your petitioners discovered by chance that part of their property and of the occupation road leading to it had been registered as part of a neighbour's property. Upon application under section 65 [the process for rectification of errors under the Land Registration Act 1982], the Land Commissioner ultimately agreed that the registration in question was defective. As they received no notice at the time of registration, your petitioners had no possibility of pointing out at an early stage that the registration was defective, when it could have been corrected without the years of stress and considerable expense that actually ensued.*

8. In their written evidence to this Committee, the petitioners estimated the quantifiable cost of the dispute as slightly over £10,000.[4]

9. This Committee is not called upon to reconsider the merits of the dispute itself but to consider whether the case has any wider implications and in particular to consider the proposals for reform made by the petitioners. Those proposals are:

> *that the Land Registration Act 1982 and/or the Land Registration Rules 2000 be amended so that applications for the first registration of property are advertised in a similar manner to planning applications and that a more efficient and equitable complaint handling procedure be established regarding such first registrations.*

IV. OBJECTIONS TO THE PROPOSALS

10. During the course of our investigation the Land Registry submitted to us a note which had been prepared by HM Acting Attorney General for the information of the Council of Ministers in preparation for the debate on the petition in October 2015. HM Acting Attorney General did not support the petitioners' proposal. He wrote:

> *The Petition of Redress asks that consideration be given to requiring that Land Registry Applications be published for a period akin to that of planning applications prior to the registration application being processed by the Land Registry. It is very likely that this proposal would result in delay to the conveyancing process as it is unlikely that an advocate acting for a purchaser or any lending institution would agree to proceed to the exchange of contracts prior to the end of the notification period. Unlike the current situation where an advocate/lending institution is able to examine the extent of any registered caution, having to await the end of any*

[4] Appendix 3, Question 2

notification period following a publication requirement would mean that it would be impossible to create the certainty that buyers/advocates/lending institutions require prior to committing to purchase by exchange of contracts. This delay may impact upon the property market on the Island in particular where, as is common, many conveyancing transactions are part of a chain

As detailed above, the 1982 Act does include provisions which enable individuals to protect against the wrongful registration of their land by another and it may be that making these options to protect ones land better known to the wider public would achieve a similar aim as the Petitioner seeks.[5]

11. In its written evidence to us, the Land Registry itself also did not support the petitioners' proposal, listing 22 reasons why it thought the proposal would not represent an improvement to the current system.[6]

V. DISCUSSION AND RECOMMENDATIONS

General comment on the objections to the proposals

12. Having considered the arguments put forward by HM Acting Attorney General and by the Land Registry, we accept that there could be some disadvantages to introducing a notice requirement for all first registrations. We do not, however, think that the Land Registry has given sufficient weight to the cost and inconvenience suffered by the petitioners; and we think it underestimates the likelihood of such difficulties arising again in other cases.

Refining the petitioners' proposal

13. We do not think that the proposed notice requirement needs to be imposed in all cases. In circumstances where land has recently been sold by a vendor represented by one advocate to a buyer represented by a different advocate, we do not think there is any need for notice of the proposed first registration to be served or advertised. This is because we think that between them the two advocates are very likely to have identified and resolved out any potential boundary issues before the sale is completed. The Land Registry has pointed out that it is only the buyer's advocate who is involved in the registration process itself.[7] We nevertheless regard the recent involvement of a vendor's

[5] Appendix 1
[6] Appendix 6, Tab F, paragraphs 8.1 to 8.22; see also Appendices 7 and 8
[7] See Appendix 7

advocate as a safeguard in relation to the process of registration by a recent buyer's advocate.

14. We do believe that there are two sets of circumstances where a notice procedure as suggested by the petitioners should be introduced. The first is that which arose in the petitioners' case, namely where a landowner voluntarily registers land for the first time in the absence of any sale or other disposition. In these circumstances there is only one advocate with recent knowledge of the title. Although we note that in the petitioners' case the Land Commissioner was careful not to level any criticism at the registering advocate,[8] we nevertheless think that a requirement to serve notice on interested parties – and hence potentially to involve another advocate who can look independently at the circumstances – can only help to improve the accuracy and integrity of the register. The Land Registry has argued that a notice procedure might precipitate a dispute which might not otherwise arise. Our view is that it is better for a dispute to be precipitated early and resolved, than for people to proceed on the basis of an erroneous registration only to have it challenged years later.[9]

15. The second set of circumstances in which we believe that a notice period would be of value is where registration is compulsory because of a sale or other disposition but where there is only one advocate involved, for example in the case of a sale where the same advocate represents both buyer and vendor. This is because in these circumstances the recent involvement of a different advocate, which we consider to be a useful safeguard, is lacking.

Administrative costs

16. When the representatives of the Land Registry were asked in oral evidence what protection was already in place to prevent a problem similar to the circumstances of the petition, they advised putting a "caution" on the deeds at a cost of £75. Thus when someone tries to register adjacent land those of the surrounding landowners who have paid to have a "caution" put on their deeds will be advised as per Section 60 of the Land Registration Act and have the opportunity to oppose the registration as per Section 60(2).

[8] See paragraph 99 of the judgment included in Appendix 6 at tab L.

[9] This happened in the Land Commissioner case of *Barnes Developments v Callister* (case reference 201301735; judgment delivered 1 September 2014).

17. The Land Registry does not know how many unregistered titles remain in the Isle of Man. It has been advised by the Post Office that the number of "delivery points" is approximately 44,000, and it has said that the total number of registrable titles in the Island could be greater than this.[10] As 14,000 titles have already been registered, it follows that there remain at least 30,000 titles still to be registered. If the owners of all of these were to enter a caution against first registration, this would give the Land Registry a potential further income of over £ 2 million.

18. The policy of of encouraging cautions against first registration may represent an income stream for the Land Registry but the circumstances of the petition demonstrate that this policy simply has not worked.

19. We do not believe that our proposals would result in any significant additional cost to the Land Registry. After giving oral evidence the Land Registry submitted written evidence to the effect that the number of voluntary applications per month was 4. The cost of notifying the public of these and dealing with any objections received would in our view be negligible.

Further consultation

20. The Land Registry has suggested that before legislation is changed in this area it would be appropriate to consult the Acting Attorney General, the legal profession and other stakeholders.[11] If our recommendations are approved by Tynwald we would expect such consultation to follow as a matter of course.

Recommendations

21. Accordingly we make the following recommendations:

Recommendation 1

That legislation be introduced to require that before any land is voluntarily registered, notice should be served on any interested parties who can be identified and advertised on the land concerned in the same way as a planning application.

Recommendation 2

That legislation be introduced to require that where any land is subject to compulsory registration triggered by a transaction where the parties are represented by the same advocate, notice should be served on any interested

[10] Appendix 8
[11] Appendix 7

parties who can be identified and advertised on the land concerned in the same way as a planning application.

M R Coleman

G G Boot

A L Cannan

April 2016

ORAL EVIDENCE

29th January 2016: Evidence of Dr John Ffynlo Craine and Ms Annie Andrée Jeannine Hommet; and Mr Garth Anderson, Assistant Chief Registrar and Legal Officer (Land), Land Registry, Mr Edward Clague, Deputy Director, Central Registry and Mr Nigel Lewney, Registries Section Manager

SELECT COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT

RECORTYS OIKOIL
BING ER–LHEH TINVAAL

PROCEEDINGS
DAALTYN

REGISTRATION OF PROPERTY (PETITION FOR REDRESS)

HANSARD

Douglas, Friday, 29th January 2016

PP2016/0019 **ROP, No. 1**

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Published by the Office of the Clerk of Tynwald, Legislative Buildings,
Finch Road, Douglas, Isle of Man, IM1 3PW. *© High Court of Tynwald, 2016*

Members Present:

Chairman: Mr M R Coleman MLC
Mr A L Cannan MHK

Apologies: Mr G G Boot MHK

Clerk:
Mr J D King

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The Committee adjourned at 4.26 p.m. 37

Select Committee of Tynwald on Registration of Property (Petition for Redress)

The Committee sat in public at 2.30 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas

[MR COLEMAN *in the Chair*]

Procedural

The Chairman (Mr Coleman): Good afternoon. Welcome to this public meeting of the Select Committee on Registration of Property, Petition for Redress. I am Michael Coleman MLC, and I chair this Committee. With me are Mr Alfred Cannan MHK and we also have with us Mr Jonathan King, our Clerk who will also be acting as a part of this Committee.

Please ensure that your mobile phone is off or on silent so that we do not have any interruptions. For the purpose of *Hansard* I will be ensuring that we do not have two people speaking at once.

The Committee was established by Tynwald on Wednesday 21st October 2015 with a remit to consider and report by June 2016 on the Petition for Redress of John Ffynlo Craine and Annie Andrée Jeannine Hommet.

Today we are going to hear first from the Petitioners and later from representatives of the Land Registry.

Is everyone content with that? Okay.

EVIDENCE OF
Mr John Ffynlo Craine and
Ms Annie Andrée Jeannine Hommet (Petitioners)

Q1. The Chairman: Welcome, and firstly let me thank you for bringing this Petition to Tynwald Hill and thank you for your written submissions to the Committee.

For the record, please would you each state your name.

***Dr Craine*:** I am John Ffynlo Craine.

***Ms Hommet*:** I am Annie Andrée Jeannine Hommet.

Q2. The Chairman: Okay.

You have described yourselves as Manx residents and not concerned with law in any professional capacity. But what is your legal background, because you have obviously done an awful lot of research here? And either you have studied very quickly to go through all this – and I know you have a vested interest, but …

***Dr Craine*:** Yes, I am thrown in at the deep end. I am a chartered engineer and an academic. I worked at a major UK university until I took early retirement.

I am also very keen on Manx history. I have been chair of the local heritage trust, so I am familiar with the history of the area and I am familiar with the history of our property because it has been in the family for several centuries.

Regarding the law, I am complete beginner thrown in at the deep end.

Q3. The Chairman: Would you like to make a general opening statement?

Dr Craine*:** Okay, do you want to leave it to me? (Ms Hommet:*** Yes.)

I have got notes here, if you do not mind me more or less going from them?

Basically we have been brought here, really, by a particular case – our case – but it has exposed a weakness in the system and essentially a way in which we feel that the registration process can be abused.

It depends upon an advocate certifying that all the requisite searches and things have been done when he registers a property. But of course the advocate is also acting for a client so he has a conflict of interest; and the system is dependent, essentially, upon the advocate not attempting to exploit any strange avenues, quirks of law, and so on.

So the problem is of course that he *does* have a conflict of interest. He is pulled in two directions and, as I said, it allows him to exploit any inaccuracies or tolerances on maps, any ambiguities in the law, any lacunae which he thinks maybe in the law, to try and get the best deal for his client. But that is, in a sense, natural. The trouble is that allows the Registry to be used as an instrument for the acquisition of land … put simply.

We found ourselves in a situation where a boundary of our property had been registered incorrectly, and effectively what it did was to take on board a ransom strip across our entrance. So it was part of our land that was taken over, but also the entire width of the access lane at the entrance to our property. As I said, my background is such that I am quite sure of where the boundaries are in these places, but we found nevertheless that this was basically a *fait accompli*; and we thought that it would be a fairly straightforward matter to seek to rectify.

Suffice to say that we first discovered the situation in 2012. It took two years and many thousands of pounds essentially to get back to where we thought we were at the outset – that is with the boundary in place where it always was. So we found there was a vast amount of work involved – but also a lot of expense, *through no fault of our own*.

So that, basically, is what brings me here.

Just a last thing that I would like to say is that I do not really want to imply any criticism of the Land Registry here, they have been courteous and efficient all the way through in the handling of this matter.

Q4. The Chairman: You say in your Petition that:

> Some time ago your petitioners discovered by chance ...

that this registration had occurred.

Can you describe how that 'chance' occurred?

***Dr Craine*:** Yes, my wife and son were there … do you want to talk or shall I? *(Interjection by Ms Hommet.)*

The first I heard of it was actually I was in work and I received a phone call to say that the neighbour was building a wall across the road. And I said, 'No, you mean alongside the road?' – because he had previously demolished one – and she said, 'No, out into the road!'

And essentially what he was doing was building a wall out into the road, which was at that point narrowing the entrance to our property. Obviously this was quite an inflammatory

situation, the police were called and it was agreed that nothing would be added or removed … Oh, I am sorry that was a later incident, I am conflating two issues here –

Q5. The Chairman: Are you talking about the incident in 2010?

***Dr Craine*:** I am talking about 2010, I am sorry, my brain is ...

***Ms Hommet*:** Yes, you are getting confused here.

In 2010 he was building a wall into the road. We interfered and then Ffynlo sent him a letter to express to him that he could not block the road – it was our road of access and he could not block it.

There then ensued an exchange between Ffynlo and our neighbour's lawyer and it lasted for a while. It was not very productive because they said unless we come to some agreement – meaning they could take some of our land and they would let us pass through – they would have to take it to court.

Q6. The Chairman: Can I just ask a question at this point? You had correspondence with the Cleators' lawyer ... was that the same lawyer that submitted – ?

***Dr Craine* and *Ms Hommet*:** Yes.

Q7. The Chairman: Okay. So that advocate was aware that you had had some problems previously?

***Dr Craine*:** That is right. There was an exchange of letters – the last one really was from Mr Cleator's lawyer and he said … I am trying to think of the words … 'if such agreement can be reached this will of course preclude any necessity to apply to court for a declaration.'

We were absolutely sure of our situation and so we basically left it at that time – we had other major distractions going on at the time, so in truth this was left to lie. The next thing that happened was we discovered … again it was you, wasn't it? Mr Cleator's gardener was erecting a wire and post fence in very much the same place where the wall had been built before. And when they went off to see what was happening they were told, 'Oh no, this belongs to Mr Cleator'.

Q8. The Chairman: Okay. I do not think we want to go back over the decision of the Land Commissioner, (***Dr Craine*:** No, no, no.) because I think that came out at least reasonably favourably for you. We really cannot do that.

Was the dispute which you took to the Land Commissioner fundamentally about boundaries or access?

***Ms Hommet*:** It was about de-registering what Mr Cleator and his lawyer had registered. They had registered part of our land and they registered the whole width of road as an absolute title – and obviously you cannot do that. You cannot register part of a road as an absolute title.

The registration they made took part of our land. It was completely different from his conveyancing when he bought the property. Even though he had said in the application form that it was the same map as the conveyancing, it was really different because it included a road – and a road was inserted as part of the absolute title.

The Chairman: Okay, I would like now to move on. We asked you the six questions and we had a very full response to each one of them.

Q9. The Clerk: Sorry, Mr Coleman. May I just ask for the record?

Dr Craine, Mr Coleman has mentioned the judgment of the Land Commissioner. Were you satisfied with the outcome of that judgment?

***Ms Hommet*:** Yes.

***Dr Craine*:** Essentially, yes. There were certain things which we think were not strictly accurate in the determination, but we sought a rectification of the boundary back to the way it had been before all this started and that is basically what she determined was the true boundary.

We submitted … in fact my son, who is an architect, drew a line and on the same page underneath was an explanation of what the physical feature was which defined each part of that boundary line, which were the physical features which had been in place … certainly from agreements involving my 'four greats' grandfather, two-and-a-bit centuries ago.

So we know exactly where the line is and it was put back to where the line was always understood to be. So to that extent we are content with the decision of the Deemster.

What we are far less content about, of course, is the fact that it took a Herculean amount of work and expense to get back to the status quo, which was exactly the situation before all this blew up – and *we* had not done anything.

Q10. The Chairman: Okay.

Did you consider with reference to the cost issue, the ability in the case of a rectification to actually try and get some compensation?

***Ms Hommet*:** Well, the Deemster judged that it was not applicable in this case.

***Dr Craine*:** She found that essentially he had exploited … There is a legal presumption – and I am sure the gentleman here can explain more clearly than I – about the ownership of the subsoil under a road. Unless anybody knows different, the adjacent landowner owns the road up to the centreline. And in this case he had made a rather creative use of this rule –

Q11. The Chairman: The Kenyon?

***Dr Craine*:** The Kenyon rule, yes that is right, which came into Manx law.

Now, this was the first time that this had really been tested from the point of moving the general boundary of the property out to the centreline. It could not be done under English law but it had not been tested over here.

So that basically, as I understand it, is how he was allowed to do this within the decision of the Deemster.

Q12. The Chairman: And was this the reason why the Deemster felt that you could not claim compensation?

***Dr Craine*:** Well, I do not know. I have not gone back to the Deemster to say, 'Hold on …' – she did not award costs either way. Our costs, as I said, they are several thousand pounds – and it would have been a lot more thousands of pounds if I had not done a lot of research.

I know how to use the document systems in the library and the Land Registry, and I have been in and out of there quite a bit. *(Interjection by the Chairman)*

Q13. The Clerk: I think the question is: did you, or were you advised to, consider a claim for compensation under section 66 of the Land Registration Act 1982? Which is not a claim against

your opponent, because it was not really a normal civil action – you against your neighbour – but it was a rectification process under statute.

And the statute says:

> In any case of the rectification, pursuant to section 65, of an error, the costs reasonably incurred by the claimant in obtaining the rectification shall be deemed to be a loss …

for which you can claim compensation.

***Ms Hommet*:** We tried to approach this at the meeting we had previously with Mr Anderson, and I was told that it was not the time to talk about this – and it seemed that there never was a time to talk about it, so it never went to that.

***Dr Craine*:** You see, there are two issues: one certainly is that there is a big monetary loss and it is perhaps something we should address. The other is, as I understand it, more the reason that we are here today, which is the fact that there is a system which allows somebody to be dragged into an enormous amount of expense, stress and use of time, when possibly … Maybe a less formal system at the beginning might have prevented this happening; or maybe if things had been published in the way that they are for Planning, so that neighbours who *might* be affected – owners of contiguous properties – might be aware that something is happening, then a lot of this could have been short-circuited.

Q14. The Chairman: After the 2010 incident did you give any consideration to registering a caution against the registration?

Dr Craine*:** We did not know until recently that there was such a thing as a caution. We became aware of it once the legal proceedings started, but prior to being informed by Mr Anderson in a meeting … 2½ years ago? (Ms Hommet***: Yes.) We really did not know about this.

Q15. The Chairman: And you have one now?

***Dr Craine*:** Oh, yes, we immediately took one out! As soon as we knew we could do, we did – and I think it was number 28. They are not widely used, as far as I understand.

The Chairman: FC00028.

***Dr Craine*:** Yes.

So are there 36,000 properties or something within the Island? So there are not many cautions per property, anyway.

Q16. The Chairman: Have you registered your own land now?

***Dr Craine*:** We are in the middle of doing it; we have been for some time.

It is extraordinarily complex because it is an old water mill and there are rights to do with the water supply coming out of the mill, and there are very complicated boundaries. Some of these boundaries were arbitrated in the 18th century and we have had to get a whole audit trail that was missing altogether.

And it is pretty much together now and I hope we are going to move, actually, within the next few weeks.

Q17. The Chairman: Okay.

The process you had to go through to get rectification, we are interested in that simply because … well, obviously because of your Petition, but if this happens again we would like to know just what people have to go through.

It took from … what? November 2012 to August 2014 for it to be sorted out?

***Dr Craine*:** No, some of that I must say was our exchanging letters with Mr Cleator and his advocate saying, 'For heaven's sake, can't we talk about this?'

And we wrote to Mr Bramhall and he said, 'I can only suggest that you or your advocate contact the firm who acted in the first registration with the evidence supplied.'

So we wrote to Mr Cleator's advocate and he wrote back saying, 'We have registered our client's title in good faith.'

So that took a few months of exchanges before we then had to invoke the procedure. But it was rather more than a year that the Land Registry were directly involved.

Q18. The Chairman: Were you surprised that on that first registration document it stated there were no disputes going on, when you had been in communication with that lawyer over the 2010 incident?

***Dr Craine*:** As far as they were concerned it was an unresolved dispute.

Q19. The Chairman: Okay. But you obviously see the thrust, because section 27 could come into play of the Land Registration Act? Anyway ...

***Dr Craine*:** Well, yes, I mean I do not want to push things too far ... but yes, I understand.

Q20. The Chairman: Were there any cautions or anything in place for your neighbours – or anything like that?

You are in the process of registering yours now – they have not put a caution on their land have they?

***Ms Hommet*:** They have put a caveat on *our* land.

***Dr Craine*:** Yes, the neighbour who said Mr Cleator has registered his property … and of course you would take a precaution against first registration. So as I understand it, there is no need there.

What has happened, though, is that Mr Cleator has registered a caution on part of *our* land, simply stating that he claims an interest. But we claim he does not because I can see absolutely no basis whatsoever in 250 years of documents that could possibly support such a claim.

Q21. The Chairman: Do you get a sense of *déjà vu* at the moment, then?

***Dr Craine*:** All over again, I am afraid, yes!

Q22. The Chairman: Did your lawyer ... well, he obviously *has* advised you because you do have a caution against registration. (***Dr Craine*:** Yes.)

I am going through your questions here – and your responses.

Regarding your proposal, there *has* been previous consideration of that in the Isle of Man; the Attorney General was asked in 1981 how adjacent landowners were to know if someone was registering a 'lump of land'. And he said:

> theoretically, Mr. President, I agree that it would be a marvellous idea if on every registration the neighbours were notified and then the boundaries were positively identified down to the nearest inch, but I think quite obviously that would enormously complicate the procedure and would make it very much more expensive ...

What would you like to comment about that statement?

***Dr Craine*:** I understand the point of view. I also understand that it could delay the processing of first registrations in some cases. The fact is though, that it is like not treating a wound early and if you leave something to fester it becomes that much worse.

In *our* case we discovered this registration within some months of it having happened. What I have not really got a clear answer to is what would happen if it were not addressed for 21 years – or whatever the limitation would be?

Q23. The Chairman: It becomes adverse.

***Dr Craine*:** Yes.

So there is a real issue here: if you were out in the country … I mean, after all, our property went for centuries without any legal documentation because it was in the same family – or it had passed by succession, but it was not conveyed in any sense. So the boundaries were never tested, shall we say.

What I have had to do, in checking that our boundaries did not move over the years, is to go round all the adjacent properties and look at all *their* deeds for the last 200 or 300 years to make sure that nothing had moved. And they had not.

So in a lot of cases, giving them warning at the beginning ... I mean, for the average house on an estate which was built, let's say, 30 years ago, the boundaries are probably very well defined and I doubt that there is an issue.

I suspect that there could be a lot of nasty surprises lurking out in the countryside, where boundaries like ours have probably been arbitrated and determined and will either appear on maps, or in some cases will simply be verbal descriptions. In those cases, yes, they would be very difficult to deal with upfront; but maybe they need to be.

Q24. Mr Cannan: Can I ask? One thing I have never really been entirely clear on is, we are talking about a *very* small piece of alteration here.

What in your view, Dr Craine, would have been the implications for you …? You have vaguely alluded to hidden possibilities. But what would have been the implications were this piece of small change in registration actually gone unnoticed, do you think, in terms of what could have happened in terms of Mr Cleator's plans for the future?

What would have changed fundamentally to have made a difference to your lives?

***Dr Craine*:** I think the first thing is that – somewhat by stealth – he had been reducing the width of the access to our property. We first *really* became aware of this in 2010 when we were having building work done and the builder was saying, 'I can't get a wagon in here.'

And it was actually so bad that when we had concrete delivered for the footings they could not bring the concrete wagon in, and they were having to run a shuttle with one of these little dumper trucks to where the footings were. And that was getting worse.

We found, for example, that we could not get deliveries with furniture vans because it was so restricted. So the effect of that would have been – maybe over time – to establish a more and more *serious* ransom strip, and more and more restricting access to our property.

Sorry, have you got something to say? *(Interjection by Ms Hommet)* I am leading on to that.

So that was the ransom strip across the entrance, but he also took in a section of the ford leading to our property. Mr Cannan is familiar with the property ... and as you come onto our property there is a river ford, and that is governed by agreements going way back to the very

beginning of the 19th century – so we know where the boundary is and we also know whose responsibility it is to maintain it, and suchlike.

To the downstream side of that ford there is a weir, and that weir is basically a whole mass of Manx stonework which supports the fabric of the ford; and our boundary is at the edge of the weir and that allows us to maintain that weir. And of course if we could not maintain the weir then, with the natural effects of the river, Mr Cleator would not have to do anything else – because over a period of time there would be attrition of that weir and it would cut back into the ford and even more effectively cut us off.

So that is why, basically, we needed to reclaim control of that land, right up to the line of the weir.

Q25. Mr Cannan: So I think the point I am trying to establish is: albeit for anybody looking outwardly in, this is a very *small* change that has affected you; nevertheless it would have been – and *could* have been – hugely significant, (***Ms Hommet*:** Yes.) had it gone on and been allowed to stand for a period of years. Or been used by Mr Cleator for other uses, perhaps?

***Ms Hommet*:** Yes, I think there was more to it than that because he registered, as part of his property, a triangular shape in the ford and on the rest of that area he put a caveat. So that means he would have got hold of the *whole* of this section of our property – funnily enough, the section that would seem to lead to the field beyond. (**Mr Cannan:** Right.)

So he would actually be in possession of the whole of this if we had not noticed what was happening.

Q26. Mr Cannan: So fundamentally it would change the whole dynamics of access into your property, (**Ms Hommet:** Exactly.) and potentially access to land that may have directly affected your property?

***Ms Hommet*:** In fact in his statement for the registration this is the point he concentrated on … not his boundaries at all, but the fact that he owned half the ford –

***Dr Craine*:** The whole tenor of his point of view was that it was the access across our property that mattered. He asserted, essentially, ownership of the full width of the drive as it came onto our property.

The piece of land which he registered looks *very* strange, like a slightly peculiar jigsaw piece; but it is when you look at the caveat and you find another strange-looking jigsaw piece, that you suddenly realise something when you put them together – and we were lucky enough, through the Deemster, to get the GPS co-ordinates of both shapes – they are a perfect fit!

And although each of them is a strange shape, when you clip them together they make a rectangle, and it is a piece of our road that comes through the ford – which is part of our property – and then the beginning of our drive as it lands on the west side of the river.

Q27. The Clerk: Thanks, Mr Coleman.

Can I go back, please, to the time of your initial dispute in 2010?

You have already told the Committee that you did not register a caution against first registration at that time, because you had never heard of it –

***Dr Craine*:** Because we were unaware that such things existed, that's right.

Q28. The Clerk: But you are aware of it now – ?

***Dr Craine*:** Oh yes, and we have done it. Yes.

Q29. The Clerk: So, when and how did you become aware of that procedure?

***Dr Craine*:** At a meeting with Mr Anderson which I think was April 2013 or 2014? Yes, 2014. *(Interjection by Ms Hommet)* I think so, yes.

I can find out … But anyway it was from Mr Anderson, who spoke about cautions – we did not know about such things. I think the very next day we put it in motion.

Q30. The Clerk: Do you think that your lawyer *should* have advised you in 2010 to enter a caution against first registration?

***Dr Craine*:** In 2010 we were not *really* dealing with the lawyer, we discussed with him –

***Ms Hommet*:** No we were not, we did it ourselves.

***Dr Craine*:** – and things had stayed at low key.

There was a dispute and then really nothing had moved forward from that point of view. And possibly he should have informed us once things gathered momentum, once we discovered this registration.

But the fact is that I suspect that ... if this *really* was FC – a lot of zeros – 28, they are really quite rarely-used things. When we investigated, most of them seemed to have been taken out by property development companies rather than by individuals seeking to protect their land.

Now, these gentlemen over here may know better, of course.

Q31. The Clerk: And you told the Committee that you are now in the process of registering your own land? (***Dr Craine*:** Yes.)

When did you decide to do that – and why?

***Dr Craine*:** We decided a long time ago. We decided actually in 2010 that this would be a good idea; and for various reasons it stopped then. It was partly because we were having a property built and it had gone wrong with the builder; we had to take on another builder and I had to take out an unexpected loan secured on the property.

And I thought we would simply wait. It was a year for that loan to be paid back and when I had that done, *then* we would progress the matter. So I put the registration on hold.

We then discovered that one or two documents … and given the very aggressive response that we had had from the other party I thought, 'Well, we had better make *absolutely* sure of everything.'

So we have had every inch of the boundary surveyed – and it must be about a kilometre of it – to know exactly with GPS where everything is, and get the relevant deeds from however far back in time to cover that particular boundary. And it is extraordinarily complicated, there is a whole wad of this stuff.

So it has taken a long time to do.

Q32. The Clerk: When you decided in 2010 that it would be a good idea to register your land, was that because of the incident with the wall, or was it for some other reason?

***Dr Craine*:** Really because of the wall.

We thought, 'Well, fair enough, all our deeds are …' They are fine if you understand what is going on, but they cover a long period of time and a lot of them are very old – before people had literally drawn maps, for example. So we thought it would be better if we proved everything and got an established line.

And being a computer type – I used to manage computer degree programmes at university – I thought, 'Yes, the computer is the answer; let's get it on the Land Registry mapping.'

Q33. The Clerk: You have been in the property for something like 250 years, as a family, so you were there when registration was invented, and you were there when compulsory registration was instituted.

Did it ever occur to you to register when the idea first came along?

***Dr Craine*:** Not really. I believe I was aware of it happening and again I think one side of me thought, 'This is a good idea.' And the other side of me, being a cynic, thought, 'Well let's get all the bugs out of the system first.'

And it was never quite at the top of the list of jobs to be done. So it was something that was at the back of my mind, but there was never any urgency about it in my estimation.

Q34. The Chairman: Has anyone else ever spoken to you, other than the Land Registry, about this ability to be able to put this caution on registration, or on your land?

***Dr Craine*:** Do you mean a caveat? (**The Chairman:** Yes.)

It seems very strange to me that apparently – and again I have not researched it very closely – but it seems that one only has to assert an *interest* and this could be attached to a property, and it becomes essentially a *slur* on the property.

And it only really matters if you are going to sell – and as you will gather, that is not something that has gone on on this property very often. It has changed family about twice in 500 years.

So it is not something that really engaged our attention, shall we say.

Q35. The Chairman: I just wondered whether anyone else had *ever* mentioned to you the ability to do this?

***Dr Craine*:** No, I do not think so.

Q36. The Chairman: I am trying to ascertain whether this particular facility is widely known amongst ordinary people.

***Dr Craine*:** I wonder whether … and again the Land Registry, I am sure, can advise it far better than I can. But it may be that during conveyancing and things like that it may be a technique that is used by advocates to nail things down a bit.

I do not know, but I am sure you can ask these gentlemen later.

Q37. The Clerk: Could I just ask one more?

If you *had* been notified of the first registration of your neighbour's property would it have cost you any less to prevent him registering his boundary in the way that he did?

***Dr Craine*:** I think if we had been able to make representation at the beginning …

The thing was, we were faced with a *fait accompli*. We had to, essentially, then go and prove against all that had gone before that we were right, rather than coming from a level playing field and saying, 'Alright, Party A says this, Party B says that; let's try and find out where the true line is.'

We have come along where we have appeared out of the woodwork, as it were, and said, 'No, hang on, that stuff you did months and months ago – and or it could have been years and years ago – is wrong.' So I think that put us at a disadvantage, actually.

***Ms Hommet*:** Yes, because the onus was put on us to prove that his boundaries were wrong. He did not have the onus by registering to say why he had registered that part of the land, it was up to us to find out –

Q38. The Clerk: Well, quite so, but the judgment of the Deemster is long and complex and it involves a new area of law. The Deemster finds that the Kenyon judgment is all very well but does not entitle you to register a piece of land halfway across a road.

That would still have had to have been established – whether before or after a registration – wouldn't it?

***Dr Craine*:** It might have raised concerns or maybe forced somebody to take a step back at the outset.

I think had we been in that situation we probably would have researched, for example, the situation in other common law administrations, and so on, and said, 'Okay, it has not been proven in law in the Isle of Man, but we do not think the chances are very good' – because you could not do it in English law, for example.

But I take the point. And I am not competent to estimate what the relative cost would have been taking one route versus another. My feeling is that it would have been substantially cheaper.

Q39. The Chairman: My understanding is that if you have one of these cautions you then have the ability to object to the registration. Yes?

***Dr Craine*:** Well, I imagine that is why he has put it there, yes. And we are going to have to go back to court with this matter.

Q40. Mr Cannan: Can I just be clear, Dr Craine, about your views on the outcome that you are actually seeking here?

I think it would be helpful if you could – obviously, we have got your Petition – just verbalise what you felt was going to be the right outcome that would prevent this from happening again.

***Dr Craine*:** What I essentially think – and I simply put up the suggestion as a comparison – the idea of Planning; because we are all familiar with the yellow notices that go up in Planning and the fact that neighbours are aware that something is afoot. And it is published by the Government, or by the Planning Department, so that people in the area know that something is going up and it is up to them, then, to decide, 'Am I an interested party, do I feel like objecting?' And so on.

In the case of the registering of a property, where there is a contiguous neighbour involved, of *course* I am an interested party … if nothing better than just going and checking, and maybe drawing out a copy of the application, or something, to make sure that the boundary has been drawn in the right place. And we hope that 95% of the time that would be the case, that everything would be above board and that would not be a problem. So I cannot see it generating work.

In the few cases where there *is* a problem … yes, that may delay matters, but on the other hand, as I said before, it is allowing something to be dealt with there and then rather than leaving it to fester maybe for years – and maybe to the point where things like adverse possession and limitation come into operation.

And just a note that was passed to me, that somebody circulated from the Planning Department *last week*, 19th January, and it simply says, 'May I remind all agents of the importance of the timely display of a Planning Application Site Notice. It is a legal application, applicants must clearly display the site notice and ensure it remains on display. The late erection of a Planning Application Site Notice recently resulted in a decision being made before neighbours had the opportunity to comment.'

Okay, so the whole point about putting a sign up … the other side is that the neighbours are in a position to comment about something. If you are a neighbour whose property ownership was affected, I think you should have the right comment – at the *beginning*, not at the end of

years of litigation. And that is at the heart, really, I think, of what we are doing here – find a specific point of law that was exploited by an advocate.

And in a sense I cannot blame the advocate, because any advocate will try to do the best for his client, because there is a conflict of interest. The fact is though that these things can be pushed under the carpet for so long that they could become very *major* issues – sometimes decades in the future.

Q41. Mr Cannan: You have come up with, I would suggest, a pretty reasonable outcome that you are seeking. One that I think is, on the face of it, fair.

Do you accept that even *doing* that type of process around boundary registration *might* lead to increased problems for the Land Registry in terms of administration?

Is it actually feasible to conduct this process and guarantee a successful outcome? And is there potential for other complications?

Do you accept that as an argument or do you think that is false?

***Dr Craine*:** I understand the argument. And I can understand that it could mean increased work in terms of checking things maybe, and increased work in terms of footfall in the Land Registry front office – increased extraction of deeds, people checking boundaries and so on. But to some extent I hope that the extraction costs are covered by the extraction fees, so that aspect should be manageable.

As I said before, in the overwhelming majority of cases there will not be a problem. In a small number of places there *will* be a problem. And it always seems to me that problems are best nipped in the bud rather than leaving them.

The Land Registry have been involved in a lot of work because of us and our neighbour, I regret to say; and we thank them for their service. But maybe they would have been involved in a lot *less* work if it had been dealt with at the beginning.

Q42. The Chairman: If we were, at the end of our deliberations, not to recommend your proposal to Tynwald, is there an intermediate position that you might have thought about? A halfway house?

***Dr Craine*:** It is difficult to imagine what it might be. Maybe –

***Ms Hommet*:** This is the most basic solution.

***Dr Craine*:** This is the most straightforward solution – the most basic solution, as my wife says. It could be, for example, that there might be some metric you could apply that says, 'Fine, that is a rubberstamping job – these are all properties where all the adjacent properties have already been registered, so there should not be a problem.'

It is really a problem which only arises with first registration, in principle. And that is a problem which hopefully in time goes away, because you only have a first register of a property once.

Q43. The Chairman: In fact, really, it is only a problem on *voluntary* first registration, isn't it?

I am sure that if someone started building a house near you, you would go and have a look at what they were doing – have a look at all the plans? (***Dr Craine*:** Oh yes.) And you would know what was going on – whereas in this case things happened and you did *not* know what was going on.

***Dr Craine*:** The whole point at the moment is that somebody can be absolutely covert about this. They can do a registration, they can go and sit tight for 5 or 10 years, 21 years, or however

long, to gain title to what they got covertly. And I do not know what the aggrieved party would do at that stage.

Q44. The Chairman: Is there anything you would like to say that you have not managed to say thus far?

***Dr Craine*:** I could hold court at length on this, but I think I have said everything that matters probably.

Anything else, Annie? (***Ms Hommet*:** No.)

No, I think we have probably taken enough of your time at this stage.

Q45. The Chairman: If your neighbour *had* had to advertise their first registration it would have had a rather large impact on what happened, wouldn't it?

***Dr Craine*:** Yes.

Q46. The Chairman: Because you would presumably have objected right at the *very* beginning.

What the Land Registry say about this is:

> The point remains that even if notice of the first registration of The Squeen had been given to the petitioners, the dispute between the parties would not have been prevented and would have continued as it does to this day for the reason that this is a dispute about access and not about the position of a boundary. The position of the boundary has been fixed but we understand that the question of access on the ground remains an issue.

***Ms Hommet*:** No!

***Dr Craine*:** No, it is rather the converse, actually.

The neighbour has a rather free interpretation of the Deemster's decision, which basically means he has got a map with a red line on, *(Interjection by Ms Hommet)* but he essentially has refused to acknowledge that the red line represents physical features on the ground. And by suitably sliding the red line across a map he has managed to convince himself that actually a part of the ford and the weir area is his property still – to the extent that there is a heavy metal chain dragged across, and he has sprayed orange fluorescent paint over everything. He has put a barbed wire entanglement across it.

When we attempted to put a fence in the right place, a party of six people turned up at night and trashed it.

We have had 30 other occasions to refer matters to the Police since the Deemster's decision, because he is now in a very … he has dug himself into a position and a mindset, and is very aggressively defending something which is indefensible. But we will have to go through legal machinations to get this sorted, I am afraid.

Q47. The Chairman: But there are maps at the back of the judgment.

***Dr Craine*:** The map shows a red line –

The Chairman: A, B, C and D!

***Dr Craine*:** Yes, I know, my son drew that and it is a very nice red line. And on the same page there is a description of what each of the segments – AB, BC and CD – represent in physical terms. And what he has done is take only the map, without the physical interpretation, to the Police and said, 'Look, this is the line.' He has taken a survey and put the red line on to the survey –

***Ms Hommet*:** And he has built a wall on the road, that this was indeed the proper boundary.

***Dr Craine*:** Oh yes, he has demolished a wall which was the old boundary wall, and started to build a new one on where he deems it is *his* boundary wall!

The Chairman: This sounds like the beginning of yet another case in front of the …

***Dr Craine*:** It is either that, or Channel 4!

The Chairman: Oh, no, maybe you can't get hold of it.
Okay, do you have any questions for us?
Or Alf, do you have any?

Mr Cannan: I have no further questions at the moment, thank you.

The Chairman: Do you have anything for us?

***Dr Craine*:** No, I think that is all, thank you.

The Chairman: Can I thank you for coming.

***Dr Craine*:** Okay, and thank you for your attention

The Chairman: Okay, that's lovely, thank you very much.

EVIDENCE OF
Mr Garth Anderson, Legal Officer (Land), Land Registry,
Mr Edward Clague, Deputy Director, Central Registry and
Mr Nigel Lewney, Registries Section Manager

Q48. The Chairman: Good afternoon, thank you for coming.
For the record, would you each state your name, job title and how long you have been doing that job.

***Mr Anderson*:** My name is Garth Anderson. I am the Legal Officer (Land) in the Land Registry and I have been in position since September 2010.

***Mr Clague*:** I am Ed Clague, I am the Deputy Director of the Central Registry, and I have been in position since September 2013.

***Mr Lewney*:** Nigel Lewney, I am Registry Section Manager, and I have been in post since January 2013.

Q49. The Chairman: Can I ask what legal qualifications you may have?

***Mr Lewney*:** Speaking for myself, I have none.

***Mr Clague*:** Me neither.

***Mr Anderson*:** I have a Bachelor of Commerce and Bachelor of Law – that is B.Com., LL.B.

Q50. The Chairman: How does the Land Registry fit in with the other registries?

***Mr Anderson*:** The Land Registry and the Deeds Registry are part of the General Registry. We have several registries: we have the Civil Registry and the Deeds Registry, the Land Registry, the Probate Registry. Recently we have moved from the General Registry into the Department of Economic Development.

Q51. The Chairman: Thank you for your very comprehensive submission to us.
Would you like to make an opening statement?

***Mr Anderson*:** I think the views of the Land Registry are really set out in quite a lot of detail in the answers to questions 1 to 7.

Our view is that the Land Registration Act, which was first mooted in 1969, and has been through several commissions and has been debated and discussed in Tynwald – and finally promulgated in 1982 – is fit for purpose; and if members of the public use it properly and apply the procedures that are in place it should be able to deal with their problems.

With regard to the dispute which gave rise to this Petition, it has been dealt with in some detail by Her Honour Deemster Roberts. She has taken submissions from both parties, she has inspected the property, she has made a comprehensive and lengthy decision about the matter and I do not think it should be reopened in another court.

The Chairman: We do not intend to reopen the case –

***Mr Anderson*:** I understand that.

Q52. The Chairman: And I think we have tried very carefully to actually look at the Petition and not what went behind it. Okay?

***Mr Anderson*:** Yes, you cannot avoid doing that, because some of the questions obviously relate to a specific instance.

Which brings me onto the dispute itself. The dispute really – and it has two aspects to it – is the boundary dispute, and there is the access dispute. The Deemster has made a number of findings in her decision.

The boundary issue itself is relatively minor and if you look at the rectification map proposal contained next to the Deemster's decision, it is from points A, B, C and D. We have made submissions in our answer to question 1 about that.

So when the Petitioners talk about boundary disputes and changing the boundaries, in essence it is only from point A to C – and arguably only from point A to B; and even *that* is arguable because the Deemster says she makes no decision about title onto the land, between points A and B. And the application for first registration of the Petitioners' land has not been received by the Land Registry, so we do not know what their title is – it has not been investigated by an advocate, it has not been certified, so we do not know at this stage what the title is to the Petitioners.

I mean, their boundary could only be between A and B, or B and C.

Q53. The Chairman: In many ways a lot of the information ... we decided that the Petition is something which we need to look at in isolation and only for background information we looked at the stuff. I have actually read through the judgment and quite frankly I thought that it was almost the judgment of Solomon, ignoring Kenyon and basically saying no one owns it – it is just an access road and no one owns it and has rights to it. Okay?

***Mr Anderson*:** Yes, I understand.

Q54. The Chairman: I thought it was ... who am I to say? But I thought it was a fair outcome.

I think the thing which concerns us is that you have been very stringent in saying that the recommendation in the Petition would cause an immense amount of work within your Department. Can you explain that, please?

***Mr Anderson*:** Not only our Department, I think, but amongst the legal profession and amongst other professions as well if we are going to have to advertise … I do not know how it is going to be proposed that notice of the first registration application is going to be given. It could be advertised in the newspapers; it could be served by the Coroner?

I do not know what could be proposed. So however the notice is going to be given, that is going to cause practical issues.

Then somebody is going to have to prove that notice *was* given and somebody is going to have to certify that it was given. And once that has been done, only then can the application be lodged and the application of first registration proceeds.

Q55. The Chairman: Can I ask, roughly, how many applications for first registration you get every month?

***Mr Lewney*:** Around about 90 per month.

The Chairman: About ...?

***Mr Lewney*:** About 90.

The Chairman: About 90?

***Mr Anderson*:** The average number of applications we receive is approximately, I think, 250 –

***Mr Lewney*:** Yes, 250 per month, 90 of which are first registration.

Q56. The Chairman: Okay, so there are 90 first registrations. And how many of those are voluntary first registration – because that is what we are looking at here?

***Mr Lewney*:** That is what we are looking at here, but –

***Mr Anderson*:** Sorry, I did not realise that this Petition was only to address voluntary applications –

Q57. The Chairman: Well, no, what we are doing is we are looking at the situation of where people are maybe using the registration process to encroach upon other people's land, and those other people not knowing that that is going to happen. In that situation, in both of these cases, they were originally unregistered land so therefore it was a voluntary registration on behalf of the person who was doing the registration – the Cleators.

How many of those do you get?

I accept your point totally that if you are having a situation where a first registration is due to a conveyance, then I think that people in the surrounding area would be looking at the fact that a building is going up, and there would probably be a yellow sticker up somewhere as well from the Planning people to say you can do this, and it would get noticed simply by the fact that this is going on. But in the case of voluntary registrations it seems to me that is not the case.

Mr Lewney: But, sir, can I add it is not just in the case of where buildings are going up. Say, for example, a property development in the country – which is already developed – it may be a private sale, it may not be advertised on the estate agent's website, but it is still coming into us. I do not see what the difference is.

Sorry, were you saying there is not any new development defined to anyone, that is changing hands?

***Mr Anderson*:** The assignment … the first registration of leasehold – a flat in the Spectrum Apartments, for instance – that is a first registration.

The Chairman: This was the first registration of a leasehold, in this particular case –

***Mr Anderson*:** So, this is a freehold?

Q58. The Chairman: Yes, this particular one was freehold, yes.

I am trying to whittle down to see whether that 90 can be looked at for a situation whereby someone perhaps was incorrectly specifying the boundaries.

***Mr Anderson*:** The fact remains that an application for first registration whether it is compulsory – in other words, it is triggered by the events that are referred to in Schedule 2 of the Land Registration Act – or whether it is voluntary, must be lodged in terms of the Rules, and must comply with Rule 17 ... so copies of the abstracts of title, or reference to the abstract of title, an epitome of title, survey maps ...

The procedure is exactly the same for a compulsory or voluntary; and it must also be signed by an advocate – the Form 1, which is the Application for First Registration, is likewise to be signed by an advocate.

Q59. The Chairman: So, are you saying that you have no way of determining whether a first registration is being caused by a conveyance or – ?

***Mr Anderson*:** We can, certainly, yes –

***Mr Lewney*:** We would know that information, yes. We have a breakdown of that information.

***Mr Anderson*:** Because they will disclose the date of acquisition. Normally it would be so, because we have to lodge it within three months of the date of acquisition.

The Chairman: So the 90 –

***Mr Anderson*:** You see that it is 14th December 2015, so he has brought it within three months. If it was 1998, then he is doing a voluntary first registration.

Q60. The Chairman: So your 90 … if you said, 'Right, I just want the ones which are *not* involved in a conveyance or a transfer'; but is simply someone saying, 'I want to register my land' – ?

***Mr Anderson*:** But they already have title to the property – it was already conveyed to them. So there is a conveyance already, there is a deed of assignment – it might be dated 1998 –

The Chairman: No, I think you are missing my point –

***Mr Clague*:** Mr Chairman, I think we have not got the figures here at the moment to say how many applications we get each month of *voluntary* first registration; as in ... me, I have got my field in Kirk Michael and I want to register it. And first registration is part of a transaction where I am selling my field in Kirk Michael to somebody else.

So we will break down those figures and we will get those figures to you as quick as we can.

But there is another important thing to bear in mind, which is sometimes we do get conveyances which come across, where I own a property and I want to convey it in my personal capacity to my firm or to my business, and it goes from one legal entity to another. So a first registration can be voluntary ... I have got property, I want to register it in my own name and I want to take it from the Deeds Registry into the Land Registry.

It can occur when party A sells a property and sells it onto party B. But it also can be a transaction between bodies which are essentially the same people, so it can be sold from Ed Clague, individual, to Ed Clague Limited – in which case that would be a first registration. It would not be a *voluntary* first registration because there would be an element of a transaction involved in that.

But we will provide those figures to you fairly quickly.

Q61. The Chairman: But would you agree with me that the number of those would be far less than the ones which are caused by conveyance – ?

***Mr Clague*:** Yes, absolutely.

***Mr Lewney*:** Definitely.

***Mr Anderson*:** We agree with you.

Q62. The Chairman: And it is the ones in the category that I am looking at where I am saying, these are the ones where the potential could arise with the boundaries.

Do you accept that?

***Mr Anderson*:** It could arise in either case.

The Chairman: It might –

***Mr Anderson*:** I do not know why voluntaries have to be singled out.

Q63. The Clerk: May I ask this question in a slightly different way?

The Petitioner says in the Petition, 'Why don't you just advertise every time something is going to be registered?' And you have given in your written submission a long list of reasons why not.

Among those reasons are: 'If you had to do this every time a property was transferred it would have a chilling effect on the property market.'

So the Committee is saying: how bad would it be, or what would the implications be if, instead of doing what the Petitioner says, you institute a system where only when someone applies for first registration voluntarily you then put up a yellow notice around the property and say, 'Someone has just applied to register this voluntarily' – before you register it?

***Mr Lewney*:** Can I just add, I understand that thinking ... but say, for example, I bought a property 10 years ago, but when I come to register it *now* and if I put a notice and if people come forward to object, I have already been through a full conveyance process 10 years ago and had a guarantee from my advocate, and had lending from my bank as surety as to what borders and what boundaries I had.

How would it help the situation now, 10 years later, when I come to voluntarily register?

The Clerk: Well, I do not think it helps *you*. I think the argument is that it helps the neighbour to avoid finding out in an unorganised way and getting a nasty shock –

***Mr Anderson*:** I do not understand how it would help.

The fact of the matter is that whether it is compulsory or voluntary it is a matter of timing. If it is a compulsory registration you must lodge your application for first registration within three months of the date of acquisition of the leasehold or the freehold.

If it is voluntary you can lodge it at any time, but the application itself is exactly the same.

Q64. The Clerk: I think the difference is that if you have an advertising process, then the neighbour gets to know that it is *going* to be registered rather than finding out later that it *has* been registered.

Dr Craine, who you heard this afternoon, would have preferred to have known before the Cleators' property was registered rather than after it was registered.

***Mr Clague*:** Can I just put it in context maybe? If we are in a property chain, and if you are buying a property at the moment –

The Clerk: We are not talking about people *buying* properties –

***Mr Clague*:** Okay, but if we are conveying –

Q65. The Clerk: We are talking about someone who has owned a property for 250 years and he decides one day for no reason at all, of his own volition, that he wishes to register it.

Why should he not put up a sign on his boundary so that it will alert his neighbours, 'I am going to register this'?

***Mr Clague*:** Okay, I appreciate that.

Now, we have trigger points in the Registry, etc, which state you must register your land in the Registry. You can do it voluntarily – so you have owned a property for 50 years, you may choose of your own volition to enter it into the Land Registry.

The next event is if you have owned this property for 50 years and you subsequently want to sell it – on conveyance it must be registered in the Land Registry.

So I suppose the first position we are seeing is: that first registration, whether it is triggered voluntarily or as part of a conveyance, it is essentially the same process for us. So if we were to say okay, if you want to make a first registration as part of a conveyance, that is excluded – why would you make that differentiation?

So if I have owned a property for 50 years and I am selling it on to party B, there could be a dispute between the boundaries in that case. But if you are saying that if it is a first registration where I am selling it on, I do not have to advertise; but if it is a first registration where I am just going off my own volition to put it on to the Registry for whatever reason, I *would* have to advertise.

So you are making a differentiation there, because of the trigger event, you are changing –

Q66. The Clerk: Well there *is* a difference, because in the case of a transfer you have got a vendor, and the vendor is going to make it his business to be absolutely clear where the boundaries are –

***Mr Anderson*:** And you had a vendor in 1998, or in 1954 you had a vendor, or in 1910 you had a vendor – the fact that they have decided to register it *now* … What is the difference if your vendor is in 2015?

***Mr Clague*:** Can I just add … sorry, Garth. Can I just add?

I suppose the other thing is, then, the challenge would be for us … because we do get occasions where essentially a property is being sold on to the same person, or an entity under their control. So if I owned a property and I said I am going to do first registration, and you said I had to advertise that … but if I sold it on to my company I did not have to do first registration. Does that resolve your problem, or the problems that have occurred in this instance?

So, Ed Clague has a property and I want to do first registration and I am going to have to advertise it. But Ed Clague who wants to sell it on to Mrs Clague, he does not have to advertise it.

Q67. Mr Cannan: There are a few points that are coming out here; but first of all I just want to go back to Mr Anderson and your opening remarks.

I think we have got to try and keep focused on the issue here so we, I think, as a Committee, are trying to put away all these issues of disputes and everything else; and irrespective of the fact of who this chunk of land actually belongs to, the point is I think from our perspective a piece of land was registered erroneously – according to the judgment – and as a result Mr Cleator had to amend his registration. Yes?

***Mr Anderson*:** May I interrupt?

I do not think it is correct for you to say that it was an *erroneous* registration. The fact that the boundary was rectified; and the aspect of the Kenyon case was the first application of that nature in the Land Registry; and the Deemster – the Land Commissioner – recognised that this had never been presented to the Land Commissioner before … so that was a new area of the law.

And the Deemster held that the registration of the ownership of that land is not to be registered in the Land Registry, but he still owns it. He is still *presumed* to own that half lane by virtue of the Kenyon assumption. All she held was that you do not register it in the Land Registry and that the general boundaries drawn will incorporate that half of the lane. So I am not sure whether the use of the word 'erroneous' is correct –

Q68. Mr Cannan: Okay, alright then. I am not going to get drawn into technicalities because I am not legally qualified, so I do not know.

But basically, from a layman's perspective, Deemster Roberts said at the time she ordered 'rectification of the title of the property so that the southern boundary of the property is as shown on the rectification map'.

In other words, she awarded that boundary line which had been submitted first of all … she basically said, 'The boundary line you submitted is incorrect, as far as I am concerned; that boundary line should be redrawn and that piece of land should not be included within the boundaries of Mr Cleator's title.'

Yes? Correct?

***Mr Anderson*:** Yes.

Q69. Mr Cannan: Okay, so just focusing on that and the general issue: what mechanism is there to protect an ordinary member of the public from somebody else registering – and I will use the word 'erroneously' – *their* land under their boundary?

What mechanism is there?

***Mr Anderson*:** When the Commission looked at this, and Tynwald looked at it, it was decided that it would be done by way of an advocate certifying title.

So an application for first registration cannot be lodged by a member of the public, it must go through an advocate. So it is up to the advocate – when he prepares his Form 1 – to investigate the title properly, produce the survey map extract and to certify those items referred to in box 14 of Form 1. That provides us with our comfort and security.

Q70. Mr Cannan: Right. So the comfort and security blanket is not a check that you will undertake once that title, or boundary change, or first registration, is lodged? That is an acceptance of the fact that the papers that you have been provided with are in good faith –

***Mr Anderson*:** Yes, yes, we have to rely on –

Mr Cannan: – because they have been signed off by an advocate?

***Mr Anderson*:** – by an advocate, yes.

Q71. Mr Cannan: So going back to the original point then – the original point that Mr Coleman and Mr King have just raised. As part of that process, particularly when we are discussing a voluntary first registration, in other words there is only one party involved … because when you are talking about *conveyancing* there are two parties involved, there is a seller and there is a purchaser. Yes?

And two advocates who are both basically conducting checks on each other.

Sorry, hang on a second.

In this particular case there was only *one* person effectively – or one group – and that was Mr Cleator's advocate. There was no double-check and there was nothing else there. So why in that particular case specifically, would Dr Craine's suggestion – that simply putting up a notice of some sort around the boundary, or in a suitable place, where members of the public could clearly see that an application had been processed – not be relevant as a double-check for you, given what has happened in this case? And accepting the arguments that you have given about conveyancing and all the rest – but also asking you to accept *my* argument that there are multiple parties involved in that particular transaction.

***Mr Anderson*:** When you say that there are multiple parties involved, there were multiple parties involved when this property was bought in 1910. There are multiple parties involved when this property was bought in 2015. The vendor and the purchaser are represented by advocates.

On the date of completion of the acquisition of that property the vendor falls out of the picture, (**Mr Cannan:** Yes.) and it is the purchaser's advocates who lodge the application for first registration. So when you talk about multiple parties the vendor is no longer involved, it is the purchaser's responsibility to lodge the application for first registration just as it would be the owner's responsibility to lodge the application for first registration.

On the question of notice, I think we have dealt with that in reasonable depth.

Q72. Mr Cannan: I am still just not following the train of thought here, I do not understand what you are saying to me.

What we are talking about, irrespective of whether the land has been previously registered, conveyed or bought and sold in the past – the fact is a boundary line was being altered.

Dr Craine, in this particular case, had no way of knowing because Dr Craine and his family were not involved in the transaction that was taking place.

What I am arguing to you now is that in a conveyancing situation … I accept your argument that if we go to that length there is going to be possibly pandemonium. What I am saying here is

there was no safety net check to ensure that the information that you were receiving was accurate; because, as you just said, you were accepting it at face value from the solicitor, given all the rules and regulations that they abide by – and I am not attaching blame to the solicitor …

However, the bottom line was that a member of the public has been faced with an *erroneous* change of boundary that could have fundamentally affected their quality of life – possibly the value of their property, possibly their access rights. Why shouldn't *we* here agree with Dr Craine's principle, and say that actually in the case of a new registration of a boundary line, or an alteration to an existing boundary line, a notice has to appear – or a recommendation on similar lines?

The Chairman: Where only one person is involved.

Mr Cannan: Where one party is submitting.

***Mr Clague*:** Leaving the legal side aside for a minute, the Land Registry is keen to encourage the population of the register – actually, the nirvana we are looking for is when 100% of the land in the Isle of Man is registered. I think I saw a statistic the other day that property changes hands every six years on average, but in some cases land does not change places for centuries.

So if you put a hurdle in the front of voluntary registration, that is going to discourage people from doing voluntary registration. But that is okay, it is a relatively small part of our turnover.

I think if the thought pattern is to say, by saying voluntary registrations have to be advertised to prevent fraud and people land-grabbing, whereas first registration as part of a conveyance does not have to be first registration, where there *is* malicious intent involved, the popular thing would be to sell it to yourself, wouldn't it?

Am I making myself clear on that? No?

Q73. The Clerk: I think Mr Clague has made the point that if the policy of advertising was accepted but was only applied where you voluntarily register, then you can get round it by selling it to a company called Jonathan King Ltd. (***Mr Clague*:** Yes.)

I am sure it is not beyond the skills of legal draftsmen to find ways of countering that risk, don't you think?

The Chairman: But there would still be two parties involved.

***Mr Clague*:** There would be two parties involved.

Q74. The Chairman: There would still be two parties involved and what we are saying is where there is just one party.

***Mr Clague*:** What I am saying is if I wanted to ... at the moment, I can do voluntary first registration and make one party. And if our trigger event is where there is one party we advertise it, and where there are two parties involved we do not have to advertise it – by having structures or whatever way you are doing it – one party could split themselves in two.

Q75. The Chairman: Let's go off on another tack just for a minute.

You say you have registered 14,000 titles: prove to me they are all right.

***Mr Clague*:** I can't.

Q76. The Chairman: You can't?

***Mr Clague*:** No.

Q77. The Chairman: You have *absolutely no idea* how many of those could be flawed?

***Mr Clague*:** But we have registered land in the Isle of Man since 17 –

Mr Anderson: Since 2nd May 2002.

***Mr Clague*:** I cannot prove –

Q78. The Chairman: But how many of those could be flawed for a similar reason to the Petitioners' situation?

***Mr Clague*:** Very few. I think we have found that this is a *very* unique set of circumstances.

Q79. The Chairman: We have had another case sent to us, okay? And it is only when people come to take an action that they might realise that it has actually happened.

***Mr Clague*:** And that problem has existed for centuries, hasn't it?

The Chairman: Only since we started registering, I would imagine.

***Mr Lewney*:** No, I think the problem is, in the past unregistered land … the problem was just hidden in the Deeds Registry because nobody went to search for the deeds. You do not get any notice, you cannot find it on a public register.

The beauty of the Land Registry is when you come into the Land Registry now it is a one-stop shop – you can look at a map, you can find out who owns it, you can see the boundaries, or general boundaries, you can see –

Q80. The Chairman: And why would I come in, if I do not know that something is happening?

***Mr Lewney*:** But why would you have come into the Deeds Registry? It has changed, it is only Land Registry, the Deeds Registry.

If the same issue happened in the Deeds Registry it was hidden, basically. Land Registry is bringing stuff out into the open, I would say; and I would like to think that is why, when it was discussed in Legislative Council in 1981 it was supported so strongly.

And certainly, when we had our visit to England and Wales … is it 80 million? No, 24 million – 80% of the property in England and Wales is registered; but likewise they are in the same situation when we raised the question, they cannot guarantee whether everything is correct or whether there are any mistakes.

Q81. The Chairman: So any mechanism that you might be able to employ to initiate a check would be a good thing, then?

***Mr Lewney*:** Yes, certainly –

Q82. The Chairman: Even if it sorted 1% of potential errors out?

***Mr Lewney*:** Well, from an operational point – and, as I say, not speaking as a legal person whatsoever – I think in Dr Craine's Petition, one of the things it brings home perfectly to me is that we do need to raise awareness about cautions on the Isle of Man. Allowing people –

Q83. The Chairman: How many registered properties are there in the Isle of Man?

***Mr Lewney*:** Just over 14,000 titles.

Q84. The Chairman: Okay, 14,000 titles. And it costs £75 to put a caution on?

***Mr Lewney*:** Yes.

Mr Anderson: Yes.

Q85. The Chairman: Are you seriously suggesting that every owner of unregistered property puts a caution on to prevent themselves … Okay, it is wonderful income for the Registry!

***Mr Lewney*:** No, no, no, not at all! What I would like to think is the vast majority of people on the Isle of Man living as neighbours probably will not have any disputes.

Q86. The Chairman: But in these situations we are looking at a lot of rural land. And it is like I said, you do not *know*.

***Mr Lewney*:** Sorry, sir, with all due respect in this case in 2010 it was known; it was known that there was a dispute, and that is clear.

Q87. The Chairman: Then can I ask why you did not query it when the form was submitted by –

***Mr Lewney*:** No, sorry, it was known between the *parties* that there was a dispute. Both parties were clearly in dispute in 2010; both parties sought legal advice.

The land application that was made to us did not reveal any dispute. But both parties were aware at that stage obviously they were in dispute, so there was already a mechanism where either party could have taken steps to protect their interest.

Q88. The Chairman: But the application for the registration had no indication on it. And presumably what the advocate says is, 'Well, I was not *told* that we'd had a dispute in 2010'.

***Mr Lewney*:** I cannot comment what the advocate would say, I can only tell you the application did not highlight any issue.

Q89. The Clerk: The Committee needs to be careful not to attempt to duplicate questions that have already been looked at by the Land Commission.

Can I ask a question about the significance of the maps in the Registry – or the significance of the Land Register itself?

It says in section 11 of the 1982 Act:

> Save as is otherwise provided by or under this Act, the title register shall be conclusive evidence of the titles shown on that register.

Does that mean that if I am in a part of the Island where there is a lot of unregistered land and my neighbour decides to go to the Registry and register half of my garden as if it was part of his land – and say he has a bent lawyer and they tick the box and certify that this is correct, and it is *not* correct – does that mean that my neighbour now owns half of my garden?

***Mr Anderson*:** Yes. Section 11 provides certainty of title, it is a Government guarantee of title.

Q90. The Clerk: And if I spot this I can go for a rectification under section 65?

***Mr Anderson*:** Yes.

Q91. The Clerk: Is there any time limit as to when I can go for rectification?

***Mr Anderson*:** No.

Q92. The Clerk: So although you have said that my neighbour owns half of what I thought was my garden, if I can convince the Registrar or the Commissioner that this was a mistake, then I own half of my garden and I would get back what was mine?

***Mr Anderson*:** The title would be rectified to you in accord with what your legal title is, yes.

Q93. The Clerk: So, in these circumstances where somebody has gone to the Registry and drawn a line around my garden, section 11 says he now owns my garden. But section 65 says I can have it back, as long as I ask nicely and go through the process.

The Chairman: And you find out about it.

The Clerk: I am sorry I am not trying to be flippant, I am trying to understand how significant is it?

***Mr Anderson*:** It would be significant, certainly. (**The Clerk:** Okay.) But it would be unusual in those sorts of circumstances.

I mean, you are talking about fraud and nobody can guard against fraud.

Q94. The Clerk: Yes, it is unusual but something like this happened to Dr Craine and his family.

Well, okay, he was faced with circumstances where a line had been drawn in the Registry which it turned out was not right.

***Mr Anderson*:** The Deemster decided that Mr Cleator was quite entitled to apply for registration. She decided against what he submitted. (**The Clerk:** Yes.)

He owns the land by virtue of the presumption in Kenyon's case, half the way up to the middle of the road. All she decided was that was not registrable –

Q95. The Clerk: That is right, that is what it says.

Have you got any other cases since you started registering land in 2002 which have gone to the Land Commissioner?

***Mr Anderson*:** This was the first.

Q96. The Clerk: And I think you have already answered this, but section 65 allows you to seek rectification of the register at any time?

***Mr Anderson*:** Yes.

Q97. The Clerk: I think Dr Craine made reference to a time limit of 21 years? Is that correct?

***Mr Anderson*:** The 21 years would be in terms of the Limitation Act, which would be for adverse possession.

Q98. The Clerk: So if my neighbour draws the line round half my garden and uses the land and lives in it for 21 years –?

***Mr Anderson*:** You could apply for possessory title to registered land or unregistered land, yes, certainly.

Q99. The Clerk: But that is a separate issue to the registration?

***Mr Anderson*:** Yes, a separate issue. He would have to prove that he is in adverse possession of that piece of land, whatever it is.

Q100. The Clerk: Okay.

While I have the floor could I just ask a question which Mr Boot raised earlier – and unfortunately he was not able to stay for this public part of the meeting.

Mr Lewney has alluded to the policy of the Land Registry, I think, that he would like to raise awareness of cautions against first registration. Is a caution against first registration, as Dr Craine described it, 'a slur' against a property?

***Mr Anderson*:** Could I hand you a copy of – *(Interjection by Mr Lewney) … [Inaudible]*

The Clerk: Hang on a minute we cannot hear – we will have to go somewhere where we can still use the microphones …

If I come round there … *[Inaudible]*

***Mr Anderson*:** This is the Index and Ordnance survey map she produced showing the boundary features of the area. This is the property of The Squeen; this is the disputed boundary, the disputed area; this is the occupation road.

The Petitioners have now raised a caution against first registration. They have said that they have an interest in ... *[Inaudible]*

And it has very large ... *[Inaudible]* and there are symbols on it, first registration, first registration.

So if any person in adjoining properties had to apply for first registration of their land we would have to give notice.

This happened. And to prove that this procedure works, when this property was first registered – this is River Cottage – the owners of this property lodged an application and this boundary here overlapped with the caution. So we were required to give notice to Dr Craine, and Dr Craine was obliged to consent to the first registration of this property.

So the system works.

The dispute arose, and according to the decision of the Land Commissioner it was around about 15th June 2010. There is documentation and references to the fact that the advocates acting for The Squeen wrote to the Petitioners and explained to them what they were doing, this boundary, that they did not deny access to the Petitioners over the occupation road, but what they were doing was claiming half of this road by virtue of presumption in the Kenyon's case. They had told them on 19th July 2010.

On 27th July 2010 the Petitioners consulted with their advocate. The Petitioners could at that stage have registered their caution against first registration, which they have now done – after the event – and what they have done is included the whole of the ford area in their caution. Had they done that at the time, we would have had to have given notice to them under section 60.

So they had the caution raised on that title and if any of these adjoining properties were to apply, and the boundary overlapped the caution area, we would have to give notice to them.

Q101. Mr Cannan: Sorry, just to be clear. Are you saying that the system works because … was that River Cottage, or something? (***Mr Anderson:*** Yes.) You informed Dr Craine that River Cottage wished to make a first registration that strayed onto their land?

***Mr Anderson*:** River Cottage lodged a survey map which showed that they were claiming part of what was cautioned –

Q102. Mr Cannan: And because it was under caution you wrote to Dr Craine? (***Mr Anderson:*** Yes.)

But the system only worked because the land was under caution. Had that land *not* been under caution and River Cottage had put in an application which strayed into this land, then again we would have had a situation –

***Mr Anderson*:** Yes, I take your point.

Mr Cannan: – that Dr Craine would have lost his land.
So what I am saying –

***Mr Anderson*:** I take your point.

Mr Cannan: – is that the system works if everybody's land is under caution!

***Mr Anderson*:** We are reliant on the advocate certifying the title, certifying that he has investigated the title and producing a survey map which shows the title of the owner to the land.

Q103. The Clerk: May I just resume the point made by the absent Mr Boot, which is: is there anything in place within the legislation or policy to deter malicious or vexatious cautions against first registration?

***Mr Anderson*:** Section 60 deals with cautions against first registration; section 61 deals with cautions against registered dealings; and Schedule 9 will ... if you lodge a vexatious caution and the person suffers damage then you can claim compensation – Schedule 9 to the 1982 Act, paragraph 5:

> If any person lodges a caution to which this Schedule applies without reasonable cause, he shall be liable to pay compensation, recoverable as a simple contract debt, to any person damaged thereby.

The Clerk: Thank you.

Q104. The Chairman: But this is all contingent upon the caution being there?

***Mr Clague*:** Can I just go back to Mr King's point, sorry.
You mentioned before about somebody drawing a line across your back garden. Now, mistakes will happen inevitably in anything, so … you have raised the matter of fraud and that has to be dealt with separately. But if it is a mistake where somebody has to redraw the line across your boundary, or something, that is something we can rectify without any issue. So just to clarify that if, in drawing up your title deeds, they accidentally draw the red line in the wrong

place and that comes to our attention, that will be reported to the Registry and if it is a clear mistake we can clear that up without any –

Q105. The Chairman: Pardon me, but I come back to the same point: how will Mr King find out?

***Mr Clague*:** Yes.

Q106. The Clerk: But I think the point is that I only really find out if the other person starts *using* my land –?

Mr Clague: Yes, that's right.

***Mr Anderson*:** Exactly, exactly.

Q107. The Clerk: – in which case the rectification procedure could also come into play. And the fact that section 11 says it is conclusive evidence that he owns it, it does not really matter if it is wrong – it can be corrected.

***Mr Anderson*:** It can be corrected, so there is that valve.

The Clerk: But you still have to go back to that conveyance, the root of title, the original traditional method.

***Mr Anderson*:** You would have a dispute and you would have to … or maybe you would not have a dispute, but you could clearly show that you own this land, 'It has my title to it ...' and that it was erroneous.

Questions might then arise as to whether it was fraudulent or whether there was negligence involved, and their advocate might have to look to his insurers to protect himself.

Q108. The Chairman: I think I really would like to see how many of the voluntary first registrations you get in a month.

***Mr Clague*:** Yes, okay.

The Chairman: I think this Committee needs to see that, just to see how much extra effort it would be in these circumstances to send out a notice like the yellow planning –

***Mr Clague*:** Yes, okay.

The Chairman: Well, let's just wait and see how many there are.

***Mr Clague*:** And the only thing in considering that, I would say, if you *are* to consider such messages … is that an effective deterrent? Because essentially what we are looking at here is protection against fraud, a malicious application – yes?

So the question is, is that an effective deterrent against it? Or actually if that context happens, would the people find another route to bypass that by, say, conveyancing … making that voluntary first registration as part of a conveyance?

Another thing I would suggest that … well I am sure you will anyway … but we would need to consult on other people involved in the conveyancing industry if that were to happen; but I am sure you … yes.

Q109. The Chairman: But we are also looking for a deterrent against mistakes … ***(Mr Clague*:** Yes.) find if there are persons who might be affected by it ***(Mr Clague*:** Okay.) and they would be diligent in protecting their land, I would suggest.

***Mr Anderson*:** Yes. In this matter, if you take away the Kenyon part of it, as I explained in the answer to question 1, the boundary difference is *very* small and Mr Cleator – at the meeting that we held on 19th August 2013 – agreed that the boundary should follow the 1998 plan.

So the issue about the boundary was relatively minor and could perhaps have either been part of the general boundaries rule, or could have been rectified by me as being formal and trivial –

Q110. The Chairman: But the Deemster rejected it –

***Mr Anderson*:** The Kenyon case –

The Chairman: The Deemster rejected Kenyon and said it is great in common law but I will not use it for the purposes of registration – that is in the judgment.

***Mr Anderson*:** With respect, the Land Commissioner has not rejected the Kenyon case.

Q111. The Chairman: No, in this particular one she has, it is in the judgment. For the purposes of registration – I refer you to paragraph 100, pages 28 to 30:

> I deny the right to register title based upon it.

The Clerk: Mr Coleman is referring to a printout of the internet version of the judgment. The version in your red file … oh, it does have the same paragraph numbers … yes, paragraph 100.

***Mr Anderson*:** The Kenyon case applies.

The Land Commissioner found that the road is an occupation or accommodation road – that is the finding.

The Kenyon case says that what is usually called an occupation or accommodation road, i.e. a road over which there is no public right of way, and over which *all* of the owners of the lands abutting on the road have rights of way for all purposes in order to gain access to and from the highway and to their respective properties.

So it is an occupation road, the Petitioners have a right of access over it, and there is no dispute about that. The owner of the other property does not dispute that and the Deemster has confirmed that.

As far as the ownership of the *land* is concerned, Deemster Cain referred to Deemster Farrant in the case of *Quine v Mitchell*:

> In the absence of evidence of title –

and there was no title to the occupation road –

> it seems I must fall back on the common law rule that in the case of a private way or occupation road between two properties, as in the case of a highway, the presumption arises that the soil of the road [*to the middle*] belongs to the owner of the adjoining land…

Q112. The Chairman: But this was not an issue to do with ownership, this was an issue to do with registration, surely? ***(Mr Anderson*:** Yes, but –)

And she denied the right to register, on that basis.

***Mr Anderson*:** Yes, but it does not deny that Mr Cleator is the owner of the property – of the half of the road. He is *presumed* to be the owner of the road up to the middle line, but it is not registerable and by virtue of the general boundaries rule it is *presumed* to be included in the title.

Q113. Mr Cannan: Can I just go back to the points you have made, Mr Anderson, a second ago?

What you have just said to us is that in this particular case this was a very small change and really could have been … from your perspective, I think you were alluding to the fact that in normal circumstances you might have just made the decision to alter it, to change it back?

Is that correct? Were you saying that?

***Mr Anderson*:** No, I would have had to consult with the other party – if I knew there was another party.

Q114. Mr Cannan: Okay. But I think the way it came across is that this was a fairly minor, small change to a boundary – ?

***Mr Anderson*:** No it was not, sorry –

Q115. Mr Cannan: But I think the point I am wanting to make clear is that even these tiny changes could have *significant* implications for people. Do you not agree?

***Mr Anderson*:** Yes, I do.

Q116. Mr Cannan: It may result in all sort of different scenarios arising. But in this case for Dr Craine and family it has cost them, as far as we know, well over £10,000 to have it corrected. So I think, whilst these may be minor changes they can impact *significantly*.

The other point is, I want to just try and get back to this whole issue of first registration where a boundary may impact on somebody else and where we have only got the one set of lawyers involved – or the one lawyer involved. I still have not understood what you regard as the problem, with having a protection system in place, whereby the public get notice of this first registration. I just do not understand what complications it is going to lead to, because if you are saying, 'Well, actually it might encourage more disputes' …

We need to be in a position where people are not having chunks of their land taken away – which we admit could well be the case?

***Mr Anderson*:** We cannot deny that it may be the case; but what is the likelihood? In the majority of cases we would assume that people live in peace and harmony, with no boundary disputes – and that has been manifested by the number of applications we have received for this.

Q117. Mr Cannan: But how many, in every given year approximately … do you have a regular knowledge of boundary dispute cases that have arisen out of the redrawing of boundary lines?

***Mr Anderson*:** Very minimal.

Q118. Mr Cannan: Minimal? So you would see one or two a year? Or three or four a year, do you think?

***Mr Anderson*:** I cannot say.

***Mr Clague*:** We will have a look to see what figures we have and come back to you on that, if that is okay?

Q119. Mr Cannan: Right. So at the present time are there any other cases, where you have been contacted, that you are aware of a boundary dispute ongoing?

***Mr Anderson*:** A boundary dispute has been referred to the Land Commissioner.

Q120. Mr Cannan: And are you able to tell *us* what the fundamentals of that boundary dispute are? Are they to do with the registration of boundaries?

***Mr Anderson*:** Yes, it is to do with a boundary dispute. It was a sale of one piece of land – part of the piece of land by the owner to the adjoining owner. So they were acutely aware of what the boundaries were, but they are now disputing one foot six inches.

Q121. Mr Cannan: Okay, but there were two parties involved in terms of lawyers? Yes?

***Mr Anderson*:** Yes.

Mr Cannan: Okay.

***Mr Anderson*:** If I can just go back to the question of access – if I can find it.
The Land Commissioner refers to the mound of earth, the whole problem seems to have arisen by 'the Mound of Earth' being constructed, or growing in size in the occupation road:

> A claim for ownership to part of the Road can be raised at common law (and I stress 'common law') based on the Presumption as I have found the Road up to the eastern boundary of the River is an occupation road and that there is no evident title to it. However, such common law claim would be subject to the rights of other occupation road users to have access along it.

So the Petitioners are entitled to access of that road, wherever the boundary is.

> The Right over the Road in favour of the Applicants is not denied by Mr Cleator.
> Even if Mr Cleator establishes at common law a right of ownership to the Road up to the eastern boundary of the River on the basis of the Presumption that does not give him right to obstruct it with the Mound of Earth which he has enclosed and fenced. It seems to me that at common law any rightful user of the Road could argue for the removal of the Mound of Earth as it protrudes into the Road.

That, in my view, is the essence of this whole dispute which has given rise to the Petition.

Q122. The Chairman: Can I ask a very simple question, going back to Kenyon?
The registration of the piece of land is an indication of ownership, is it not?

***Mr Anderson*:** Yes.

Q123. The Chairman: So if you have not registered half of the road, how can you own it?

***Mr Anderson*:** The presumption. It is *presumed*.

Q124. The Clerk: May I pick up again on the compensation clause, at section 66 of the 1982 Act?
I do not think it would be appropriate for you to comment on the individual case, but if you ever got a claim for compensation how are you supposed to tell what are:

… the costs reasonably incurred by the claimant in obtaining the rectification …

Have you got a procedure for determining that?

***Mr Clague*:** We have not got a procedure for that and I think we would have to look at the case as it arose and was presented at that time really. It is very difficult.

The Chairman: Has it ever happened?

Q125. The Clerk: Well, we assume it ... well, has it ever happened?

***Mr Clague*:** That we have given compensation? (**The Clerk:** Yes.)
Not that I am aware of, no.

***Mr Lewney*:** There has not been a case.

***Mr Anderson*:** There has not been a case.

The Clerk: Thank you.

The Chairman: That is it! Thank you very much.

***Mr Lewney*:** Gentlemen, can I ask you, just before we finish off? Is that okay?
We are talking about the issue of having two advocates and there is less risk … that is what I am seeming to pick up. On the basis that in many cases one advocate's firm can act for buyer and seller, how would that reduce the risk?

The Chairman: I think you are never going to stop this happening, whatever comes up. Okay? (***Mr Lewney*:** Right.) I think the thing to do is to try and reduce the likelihood.

***Mr Lewney*:** Yes, certainly, and I would have thought – and I do not know because I have never worked in a legal office –

Q126. The Chairman: Well, the procedure says … it is either if only one advocate is involved, or the advocate is representing both parties … How many extra would that add?

***Mr Lewney*:** Right. Again I do not know, we would have to look at those types of figures.
But I would just have thought from a legal perspective – and maybe Mr Anderson can answer more – but a member of the public coming along and saying, 'I want to voluntarily register my property' … that advocate would be taking great care because they are signing-off for something that they were not involved in.
So I would have thought for their own professional indemnity they would be looking to make sure they dot every 'i' and cross every 't'; whereas sometimes two people, buyers' and sellers' advocates … and I am in a rush to get in the house, I am buying it – am I going to take the same care with doing the checks?

Q127. Mr Cannan: Yes, but the point is – and I will try not to get drawn into an argument here – but even if the advocate is acting in good faith, they may well still get it wrong. ***(Mr Anderson and Mr Lewney*:** Yes.)
And the point we are making is that, fine … I am not saying, Chairman, we are not favouring one route or the other, we are merely examining this case (***Mr Lewney*:** Yes.) and asking why Dr Craine's proposition should not be taken forward.

But the point is that even if the advocate is acting in the best of faith, with the best of intentions, with the best of information, it may still be the case ***(Mr Anderson and Mr Lewney*:** Yes.) that he acts erroneously and impacts significantly on somebody else's property, to which they feel they have due claim and they would not know about it. That is still –

***Mr Anderson*:** And if he did it by mistake and you became aware of it, you would apply for ratification –

Q128. Mr Cannan: *If* you became aware of it, which is the –

***Mr Anderson*:** Well, you will become aware of it eventually and you will apply for ratification – 'Sorry, I made a mistake and I will agree to read reduce my boundary'. And if there is no argument it would be a relatively simple ratification.

If there is an underlying dispute, then it is a different story –

Mr Cannan: But there is ... okay, you could go on, I think –

The Chairman: What we are attempting is … and we are actually taking cognisance of the fact that you are saying it would be onerous if we said you should do it for everybody –

***Mr Anderson*:** It is the 80/20 rule, isn't it?

Q129. The Chairman: Well, what we are trying to look at are the ones where it is most likely to happen, with the least impact upon you guys. Okay?

Anyway, I will leave it at that.

***Mr Anderson*:** But in a compulsory registration situation it would just be the completion of the conveyancing process.

So is that what you are saying? In the ordinary course of business … I have bought the property, I have got three months to register it, and I register it. Are you saying that in the voluntary registration – ?

Q130. The Chairman: We are looking at the voluntary side *(Interjection by Mr Anderson)* where there is one party, or the advocate for the purchase and sale are the same person – sorry.

I think what we are looking at here is a principle, where we are trying to look at the system which would avoid the massive amounts of work for the 90 applications a month and try and see if there might be only three a month, or five a month, in which case they might apply there. It is simply looking at the risk.

***Mr Clague*:** And the most effective solution, of course, as well.

The Chairman: That is right.

***Mr Clague*:** And it is not tokenism, we have got to be effective in preventing these sorts of mistakes, and the effort and scale proportionate to the risks involved.

***Mr Lewney*:** Can I just add onto that a number of the advocates now are quite often saying to their clients to voluntarily register their property, if they can, because that makes the subsequent sale much easier because you are guaranteeing your title.

Now, if we get into the chain scenario where somebody has to voluntarily register in the middle, all I would say is urge caution, as they have to advertise that for six weeks … does it cause an issue?

***Mr Clague*:** I think that would be part of it –

***Mr Lewney*:** That would be part of a contract –

***Mr Anderson*:** Yes, if it is voluntary … the finance would have been arranged already, and things like that. The banks would have something to say about that.

Q131. The Chairman: If you have any views about how you think that sort of thing could be made more workable, please come back to us.

***Mr Anderson*:** Section 24A of the Land Registration Act says that the Council of Ministers can grant an order requiring public bodies to first register their land, that could be a way in which –

Q132. The Clerk: Has that ever been used?

***Mr Anderson*:** It has never been.

***Mr Lewney*:** No.

We were talking about it in the office and having read the Petition and seen what has happened in this case, we would certainly like to do a lot of work on raising awareness about the caution procedure; but also trying to make the Land Register available online.

So if people do have a dispute, or if people are looking at properties around them … as you have seen from our map, there, it is very clear that anybody then looking can see it – so why not, sat at home at 10 o'clock at night? You can have a look to see if anything is happening around you, that would be great.

Q133. The Chairman: But the options really are: you spend £20 on sending out six notices a month, *or* people spend £75 on putting a caution on their – ?

***Mr Clague*:** It will be more than £20! Once you go out to consultation … you know in Government, any consultation you operate, if you are doing a consultation whether this person … We have to allow staff who can issue the notices, who can respond to the notices, who can do the queries, so it is not a low cost. Even if this is only one, two or three a month, it is a resource implication for us.

Q134. The Chairman: But if you put on the notice, 'If you are not happy with this, consult your advocate'?

***Mr Clague*:** Yes, but as I say, it comes with a resource, it is just –

***Mr Lewney*:** And hopefully raising the awareness will, when they consult with their advocate ...

Q135. The Chairman: So are you going to put something in the *Courier*?

***Mr Lewney*:** They will end up with a caution put on the land!

***Mr Anderson*:** We do give notice of applications for possessory title, as in first registration applications for acquiring somebody else's land – and it costs £500, I believe.

The Chairman: I do not think we were talking about sticking anything in the newspaper, we were simply saying get yourself the equivalent of the yellow planning thing and have that put up somewhere.

Or, they do not even do that! They send it to the person who has applied for planning and they put it up themselves – that is what happened to me.

***Mr Clague*:** I assume somebody checks you put it up, do they? I do not know.

The Chairman: Anyway, thank you very much. And I hope it has not been too arduous!

The Committee adjourned at 4.26 p.m.

WRITTEN EVIDENCE

Appendix 1: Advice Note dated 19th October 2015 from the Attorney General's Chambers

ADVICE NOTE RE. ITEM 45 – OCTOBER 2015 TYNWALD

Registration of Property

Since December 2009 all dealings in land which fall within the definitions set out in Schedule 2 Part 1 of the Land Registration Act 1982 ("the 1982 Act") have been subject to compulsory registration at the Land Registry. It is also possible for the owner of any land or property to voluntarily register their title with the Land Registry at any time since the 1982 Act came into force.

The issue in this instance appears to be that unregistered land purportedly owned by one person ("Person A") was included in an application for first registration by his/her neighbouring land owner ("Person B").

The 1982 Act and the Land Registry Rules each include provisions to both prevent and deal with issues of this nature.

Section 60 of the 1982 Act provides that where a person has "*such an interest in unregistered land as entitles him to object to a dealing therewith being made without his consent*" (section 60 (1) (a)) he may "*on producing an affidavit in such form as may be prescribed of his interest, lodge a caution with the Registrar to the effect that the cautioner is entitled to notice of any application that may be made for registration of an owner of the land*" (section 60 (1)).

In the situation of Person A and Person B referred to above, this means that had Person A registered a caution against all of the land that he owned, the application for first registration submitted by Person B would not have been determined until notice had been served on Person A giving him the opportunity to state his objection to the proposed registration by Person B.

It is also the case that if Person A had voluntarily registered his land it would not have been possible for any part of this registered land to be included within the first registration by Person B.

In summary, Person A could have protected himself by registering his land voluntarily or by lodging a caution.

The 1982 Act also contains provisions to rectify the register if errors are subsequently detected after registration has been completed. There is no time restriction on exercising the right of challenge. Section 65 of the 1982 Act permits the Land Commissioner, upon receipt of an application, to rectify the register to the extent that he sees fit. Land Registry Rule 81 sets out the procedure for making such an application and the Land Commissioner may direct that any person (including the Registrar and officers of the Land Registry) appear before him if he believes that this is necessary to enable him to make a determination. If an applicant to rectify is successful following the making of an application to the Land Commissioner he may be entitled to claim compensation pursuant to section 66 of the 1982 Act if he can show loss.

The Petition of Redress asks that consideration be given to requiring that Land Registry Applications be published for a period akin to that of planning applications prior to the registration application being processed by the Land Registry. It is very likely that this proposal would result in delay to the conveyancing process as it is unlikely that an advocate acting for a purchaser or any lending institution would agree to proceed to the exchange of contracts prior to the end of the notification period. Unlike the current situation where an advocate/lending institution is able to examine the extent of any registered caution, having to await the end of any notification period following a publication requirement would mean that it would be impossible to create the certainty that buyers/advocates/lending institutions require prior to committing to purchase by exchange of contracts. This delay may impact upon the property market on the Island in particular where, as is common, many conveyancing transactions are part of a chain

As detailed above, the 1982 Act does include provisions which enable individuals to protect against the wrongful registration of their land by another and it may be that making these options to protect ones land better known to the wider public would achieve a similar aim as the Petitioner seeks.

19th October 2015

Attorney General's Chambers

Appendix 2: Email dated 23rd October 2015 from Mr Garth Anderson, Assistant Chief Registrar and Legal Officer (Land)

From: Anderson, Garth (Central Registry)
Sent: 23 October 2015 15:03
To: Coleman, Michael (MLC)
Subject: LAND REGISTRY - Application for first registration
Attachments: PL1 Application for First Registration.pdf

Dear Mr Coleman

Thank you for your email which we received this morning.

An application for first registration of a legal estate (freehold or leasehold estate) in land is to be lodged by a firm of advocates. The reason for this is that the advocate should investigate the title to the unregistered land (Deeds Registry) and, if he or she is satisfied, certify that the title is good and that he or she is not aware of any defect which may give rise to a claim for compensation. It is on the strength of this Certificate of Title, which is part of Form 1: *Application for first registration,* that we will register the land in the Land Registry. On registration, the title will be guaranteed by the Government.

The applicable legislation is the Land Registration Act 1982, the Land Registry Rules 2000 (and the forms) and the Land Registration (Fees) Order 2013.

I enclose a brief note on applications for first registration for your assistance.

If you are the owner of the unregistered land, you may apply for the voluntary first registration of the land. No other parties are involved. This will then simplify a subsequent sale of the property as the title is guaranteed.

If you intend to sell your land, the sale will induce the application for first registration (compulsory first registration) and the application must then be lodged in the Land Registry within a period of three (3) months from the date of completion of the sale. If is not lodged timeously, the deed of conveyance (freehold) or the deed of assignment (leasehold) will become void. The practice in the Isle of Man is for the purchaser (and his advocates) to apply for first registration.

I trust that this is of some assistance.

Yours sincerely

Garth Anderson
Assistant Chief Registrar
Legal Officer (Land)

Land Registry
Department of Economic Development
Registries Building, Deemsters Walk, Bucks Road, Douglas, Isle of Man, IM1 3AR
| www.gov.im | www.whereyoucan.im

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Land Registration Act 1982
Applications for First Registration

This explanatory leaflet is designed to assist Advocates making an application for first registration of title and in complying with new procedures created by registration of title. The success of registration will be increased by Advocates and the Land Registry working together.

What is Registration of Title?

By using computerised mapping the ownership of a defined area of land is recorded onto a register, together with the name of the owner of the land, and any other interests which may attach to the land. Other interests may include details of the lender who provided the mortgage, or a right, such as access, which someone may have over the land.

The register is referred to as the 'Title Register' and each record of ownership and related interests registered in the Title Register is referred to as a 'Title'.

The Land Registry provides details of ownership and other interests by means of a map which is referred to as the 'Registry Map'. This is an all-island map depicting all registered titles.

The Benefits of Registration

The benefits of registration include:

- certainty of title through a Government guaranteed record of ownership;
- a computerised map based record of ownership that gives simple and quick public access;
- simplicity of use;
- uniformity of dealings;
- speed of access that should enhance conveyancing procedures;
- value for money.

When is Registration Compulsory?

Section 24 of the Land Registration Act 1982 enables the Department of Local Government and the Environment with the concurrence of the Treasury and approval of Tynwald to make an Order declaring any area specified in the Order to be a compulsory registration area. This introduces compulsory registration of title in the specified area for certain types of transaction.

Initially compulsory registration will be limited to:

- freehold property - upon a conveyance on sale;
- leasehold property - on the grant of a lease for a term of more than 21 years or the assignment on sale of such an estate provided the remaining term exceeds 21 years.

(The first such Order being the Land Registry (Designation of Compulsory Area) Order 2001 which came into operation on 1st May 2002 has been approved by Tynwald designating the parishes of Andreas, Ballaugh, Bride and Jurby as the first compulsory registration area).

Land Registry Compulsory Registration Order

1st Order – 1st May 2002

Andreas
Bride
Ballaugh
Jurby

Subsequent Orders now approved by Tynwald

2nd Order – 1st May 2003

German
Lezayre
Maughold
Michael
Patrick

3rd Order – 1st September 2005

Lonan
Malew
Rushen
Arbory
Santon
Marown

4th Order – 1st December 2009

Onchan
Braddan

How to Apply for Registration

Application for first registration is made on Form 1 together with appropriate appendix as set out in the schedule to the Land Registry Rules 2000. All forms are available on CD-ROM for Advocates or in printed form from the Land Registry (free of charge).

How do I know if Property is already Registered?

You can find this information by making a search in the Land Registry using Form 34. This form should be completed and returned to the Land Registry. There is a fee for an official search of the Index Map. You can also attend the Registry in person and carry out a personal search free of charge.

Priority

It is very important that applications for registration are presented in the correct chronological order so that the correct priority is given on registration.

Evidence of Title

The quality of title should be one that an Advocate would advise both a purchaser and a mortgagee to accept. The Advocate, in completing Form 1, certifies (inter alia) that the title is good and that the Advocate is not aware of any defect which would give rise to a claim for compensation under Schedule 10 of the Land Registration Act 1982 other than as disclosed in the application.

The standard of care is extremely important because of the financial implications to both Government and Advocates created by the registration.

Advice

Whilst Land Registry staff will be familiar with registration procedures and will help as much as possible, they are not legally qualified and under the terms of their employment they are not allowed or expected to give legal advice nor give an opinion on any document. It is the Advocate's responsibility to prepare and certify the title for first registration.

Maps

These form an essential link in the application for first registration. For more detailed information about maps and plans, reference should be made to Practice Leaflet No. 7.

Fees

These are as laid down by the current Land Registry Fees Order. All cheques or money orders are payable to **The Isle of Man Government**.

Where to Send your Application

Send or bring your application to The Land Registry.

Appendix 3: Submission dated 11th November 2015 from Dr J F Craine and Mrs A A J Hommet

Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Mr J King
Legislative Buildings
Douglas
Isle of Man
IM1 3PW

Wednesday 11 November 2015

Dear Mr. King

Select Committee on Registration of Property (Petition for Redress)

Thank you for your letter of 30th October.

As requested, please find enclosed the entirety of our correspondence to date with the Land Registry, with the understanding and acceptance that any evidence provided to the Committee may be made publicly available. We trust that the procedural vulnerability to which we refer in our petition is usefully demonstrated by our case.

We have provided responses to the Committee's questions in the attached documentation and remain at the Committee's disposal to provide any further information or oral evidence it may require. To this end we may be contacted by the details provided above.

The correspondence file can be supplied by email as a searchable PDF file if any member of the committee would prefer an electronic copy.

Yours sincerely,

Dr J F Craine

Mrs A A J Hommet

Select Committee on Registration of Property (Petition for Redress)

Responses to Questions

Question 1: Where were the boundaries of your property shown before and after the registration which was subsequently found to be defective?

In fact it was not our property registration that was affected but that of our neighbour's property which was incorrectly registered. As compulsory first registration upon conveyance was introduced in Ballaugh in May 2002, some time after we acquired our property, we should clarify that our property is not currently recorded at the Land Registry. The Title deeds to our property are, however, recorded at the Deeds Registry and Manx Museum and remain unaffected by proceedings at the Land Registry.

The actions that we took in order to correct the Land Registry concerned the voluntary first registration of our neighbour's property, the extents of which had been in dispute since June 2010 following an attempt to erect a wall on the road to our property. The defective registration took in the same part of the access road, marking a six metre discrepancy between the corresponding Deed plan and Registry plan. It is therefore perhaps appropriate to direct the Committee to the same plans referred to by the Land Commissioner in her determination of our application for rectification: the 1998 conveyance plan of the property; the plan immediately after first registration in 2012; and the Rectification Map Proposal submitted to the Land Commissioner in 2013, which we attach as Figures 1, 2 and 3 respectively.

Question 2: How long did it take to have the registration corrected and how much did it cost?

We were not made aware of the registration until November 2012 when it was cited to us, and to enforcement authorities, as justification to erect a fence across the access road. On visiting the Land Registry we were refused sight of the application for first registration that had been lodged on Data Protection grounds, as the registration had by this time been completed. The Assistant Chief Registrar also advised us that, without the consent of the party that made the registration, he does not possess the statutory powers to correct such defects. It was therefore suggested that we write to the advocate who had certified the registration, who in turn refused to correct the same upon request in early 2013. We therefore referred the matter to the Land Commissioner, whose statutory powers exceed those of the Registrar, in June 2013. The application for rectification was determined in August 2014.

The total monetary cost was slightly over £10,000. About 80% of this was advocate's fees, the remainder being made up of surveyor's fees, fees at the Land Registry and for aerial photography from the cartography department. Some hundreds of hours were spent in researching deeds at the Deeds Registry and Manx Museum library, handling correspondence, attending meetings and preparing submissions, but this time has not been accounted for.

Question 3: When land is first registered, what arrangements are in place to alert the owners of adjoining land?

We understand that under section 27 of the Land Registration Act 1982[1] (Examination of Title), the notification of "persons desirous of objecting" is left to the discretion of the Registrar:

1 http://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1982/1982-0007/LandRegistrationAct1982_3.pdf

> "(a) due notice shall be given, where the giving of such notice is prescribed, and where notice is given, an opportunity shall be afforded to any person desirous of objecting to submit his objections to the Registrar"

This is reflected in section 21 of the Land Registry Rules 2000, which states[2]:

> "In any examination of title, the Registrar may order the making of all such enquiries, searches, advertisements and service of notices in such manner and by such person as he considers expedient."

Thus Manx legislation provides for advertisement but at the discretion of the Registrar and without prescribing what form the advertisement might take.

We note that a registering advocate, acting on behalf of their client, is required to certify that the land has not been the subject of a dispute since acquisition. To put it delicately, with reference to our correspondence with the Land Registry, it is dubious whether such disputes are systematically disclosed at registration. In this manner, the Registrar is not necessarily made aware of potential objectors, which in turn would make it impossible for the Registrar to exercise the relevant provisions under section 27.

Section 60 of the Act (Cautions Against First Registration) supposes that any potential objector who might want to make representation to the Registrar would be aware, by clairvoyance or fortuity, of the intention of another party to apply for first registration. That any person should able to anticipate actions at any time in the future of any adjacent landowner is clearly an unreasonable supposition, especially should the latter intend to perform an erroneous land registration. Thus although Section 60 provides a mechanism for an owner to protect himself against a malicious registration by registering a Caution against First Registration, owners are unlikely to choose to bear the expense of registering such a caution unless they anticipate an impending problem. Moreover, it appears that owners are largely unaware of the existence of such cautions, as we were until our meeting with Mr Anderson. Our caution was number FC00028 suggesting that it was only the 28th Caution against First Registration to be issued, many cautions apparently having been lodged by entities directly concerned with land acquisition.

However, section 60 is the only provision of which we are aware that can enable a person to be alerted without, to some extent, depending upon both the registering advocate's disclosure to the Registrar and the Registrar's discretion under section 27. We do not therefore consider the provisions of sections 27 and 60 sufficient in providing potential objectors adequate means of notification.

Question 4: How do these arrangements compare to the equivalent arrangements in England?

With respect, as Manx residents not concerned with law in any professional capacity, it is beyond our practical knowledge or experience to provide Committee members with a reliable response to this question. We expect that provisions found in Acts of Parliament are made with particular regard to interacting legislation and common law of England and Wales, and that these are not always relevant to Manx law or the Isle of Man. Nevertheless, we note that under rule 30(c) of the Land Registration Rules 2003[3], provision is made in England and Wales for the advertisement of applications for first registration with wording that is similar to that of section 21 in the Manx Land

2 http://www.tynwald.org.im/links/tls/SD/2000/2000-SD-0588.PDF retrieved 2015-11-06

3 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362062/Land_Registration-Rules-2003__2014-09-30_version_.pdf retrieved 2015-11-06.

Registry Rules:

> "In examining title on an application for first registration the registrar may—
> (a) make searches and enquiries and give notices to other persons,
> (b) direct that searches and enquiries be made by the applicant,
> (c) advertise the application."

Question 5: To the best of your knowledge, has consideration been given at any time by the Manx authorities to a system of advertisement as proposed in your petition? If it has been considered and rejected, what reasons have been given for this?

We are unaware of a system of advertisement having been considered in the past. A search of several decades of Hansard has failed to reveal any such consideration.

Question 6: To the best of your knowledge, does the Land Registry consider that your proposal would represent an improvement to the current system. If not, what reasons have been given for this?

The Land Commissioner writes in her letter of 14th October 2013 that

> "It seems to me my yardsticks should be transparency, fairness and ensuring all parties have an opportunity to put forward their arguments in full prior to me making any determination."

These yardsticks should be equally applicable to the process of registration itself. A more transparent and fairer process would resolve issues at the start of the registration process instead of leaving them to be discovered later, when they are much more difficult and expensive to correct.

With this in mind, we put to Mr. Nigel Lewney of the Land Registry the following statement:

> "It is clear that the system of land registration in its current form, being dependent solely upon certification by the applicant's Advocate, is vulnerable both in terms of the validity of titles recorded at the Registry and by the omission of neighbouring interests, as our situation demonstrates."

In his response dated 17th December 2014 Mr Lewney stated that:

> "If the law was to be changed so that it requires the staff in the Land Registry to undertake a full title investigation in respect of every application presented to it, the Registry would have to be staffed with legally qualified persons to undertake such work. Although possible, this would naturally come at some considerable cost, which in turn would need to be reflected in the registration fees payable and would increase the time to process applications. As undertakings are given by Advocates on first registration applications it is considered that such a step is not necessary at this time."

Note that we did not suggest that the Land Registry take upon themselves the burden of undertaking a full title investigation. There would be little point in their replicating the registering Advocate's search, which in any case cannot always reveal matters such as overlapping boundaries or prescriptive rights.

Advertising first registration applications could work in the same way as planning applications currently operate and help distribute the burden of examination of title. Any small increase in workload for front office staff due to potentially interested parties wishing to examine documents

should not increase costs if extraction fees are set at an economic level. There can be only one first registration of a property, so any additional onus created by our proposal will inevitably reduce as time passes.

In his letter, Mr Lewney continues that:

> "Where a dispute about a boundary arises, there are steps that the interested owners of the properties may take in order to protect their estate or interests. One step would be to apply voluntarily for first registration of ownership of the land and the rights and burdens which affect the land."

A registering advocate must also certify that necessary research into the conveyancing history of land has been performed. Of course the process depends upon a bona fide application by the advocate, but even with the best intentions and an apparently exhaustive search, it is not possible to guarantee the discovery of extant third party interests. In this way, such interests might only come to light by public consultation.

Advertisement prior to registration would afford an opportunity to involve interested parties and to resolve any discrepancy prior to registration. The planning authority's policy of public consultation on applications and awarding of interested party status provides an obvious model.

The procedural vulnerability identified in our petition arises whenever an erroneous registration is made, not necessarily from a preceding dispute. It is the later discovery of such defective titles that, once admitted into the Land Registry, are more likely to lead to disputes which might have been much more simply settled prior to registration, without the adversarial procedure otherwise entailed. Our case has shown the severe procedural disadvantage that arises at the point of discovery of erroneous registrations, whereby evidence is withheld by the Registry in order to protect the privacy of the party that has – rightly or wrongly – registered land.

Our lengthy correspondence with the Registry has not gone so far as to discuss advertisement of applications. However it has seemed at times that staff recognise the extent to which they are bound to the provisions passed in 1982 and 2000.

Plans of "The Squeen" showing Boundary Changes

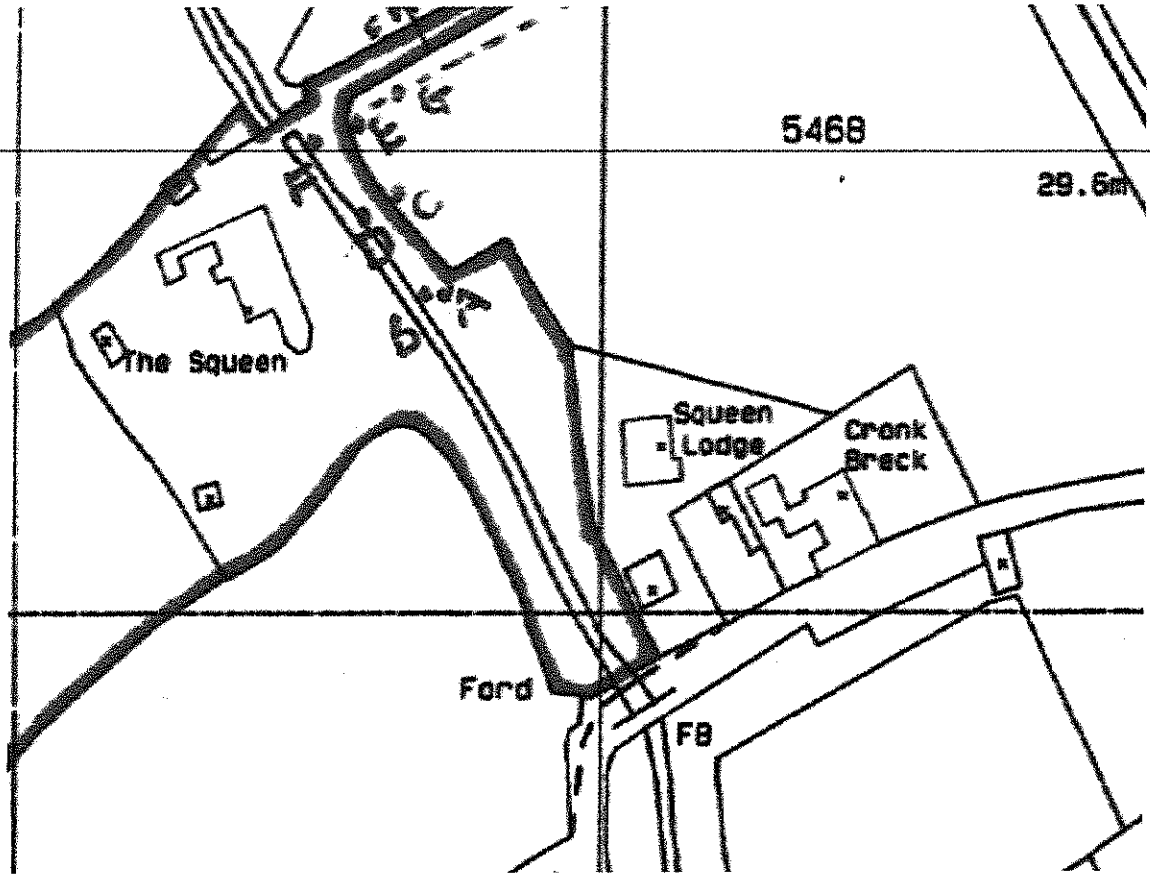


Figure 1: Extract from Conveyance Plan (1999-01407)

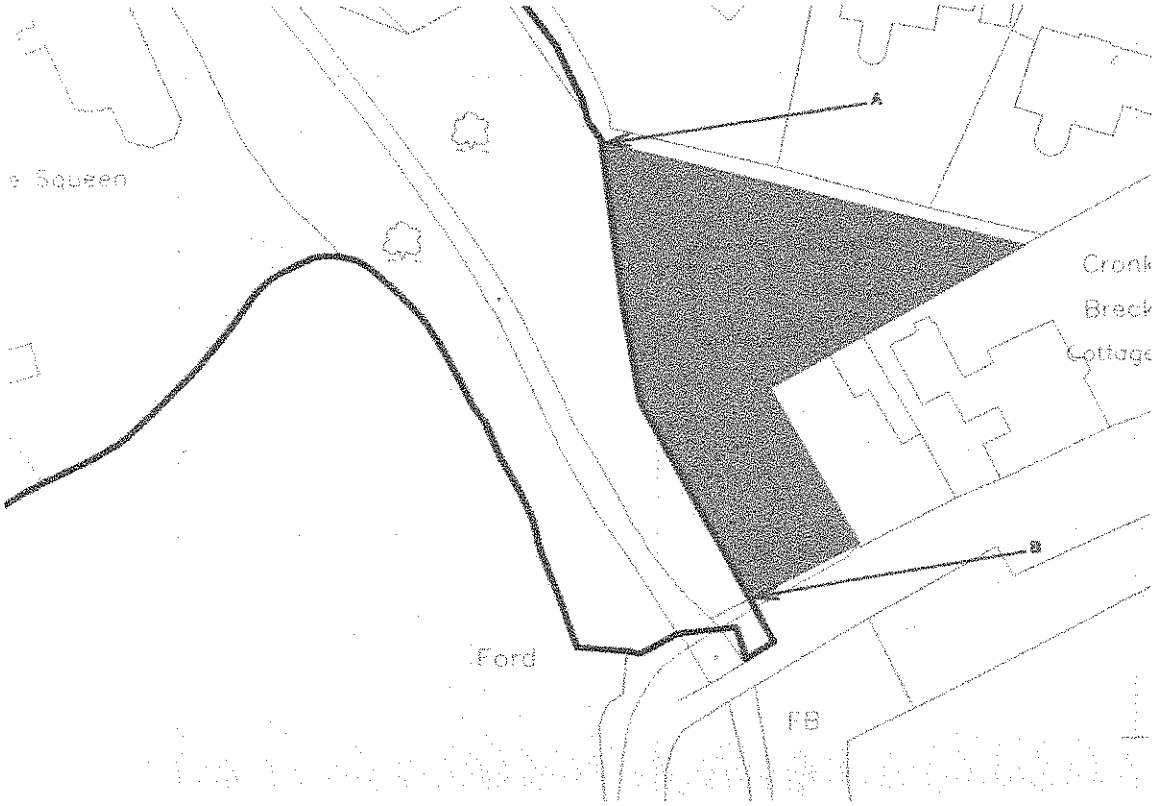


Figure 2: Extract from Title № 22-00244 Filed Plan (2012)

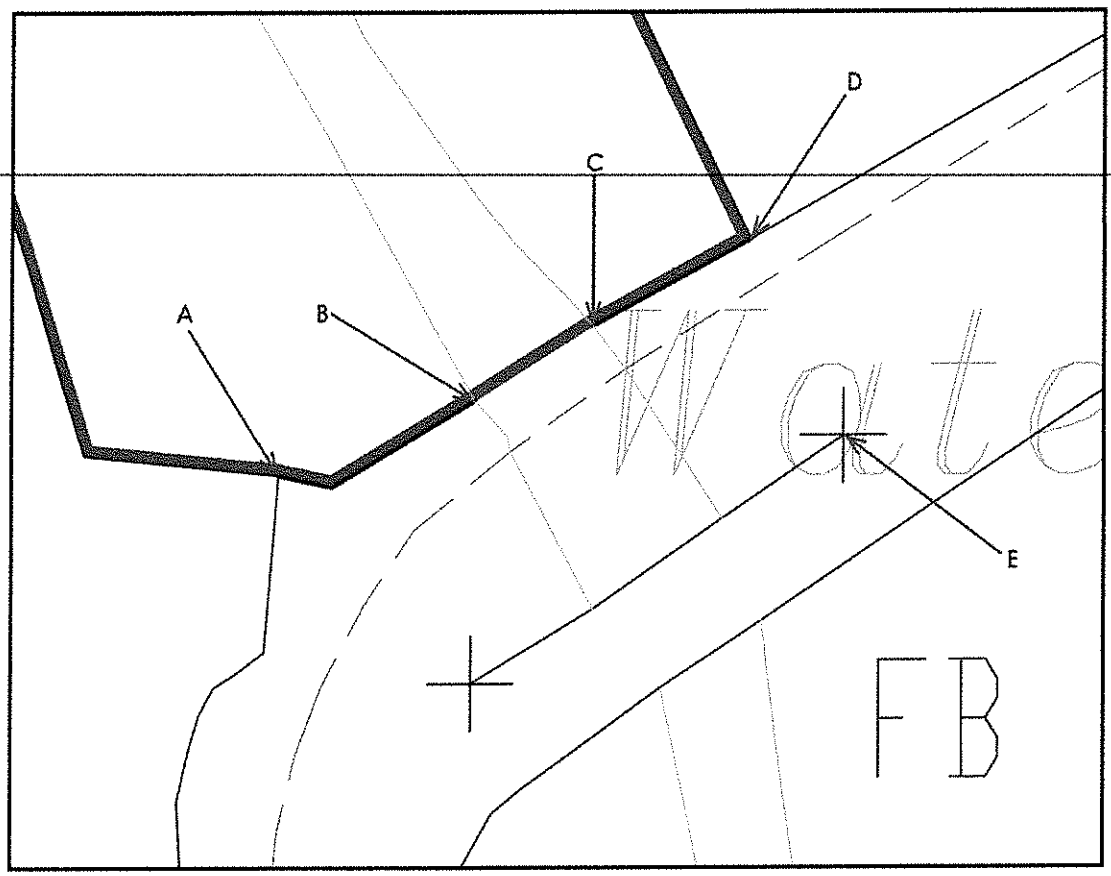


Figure 3: Proposed Boundary Line Rectification from Application 2013 01206.

Chronology of Contacts with Land Registry

The following chronology is intended to clarify the context in which the correspondence requested by the Committee was written. Regular type is used when referring to letters. Italic type is used to refer to events which, while not part of the correspondence, are significant milestones in the sequence of events.

2010

15th June — *A neighbour, Mr Edwin Keith Cleator of The Squeen, attempts to construct a wall in the occupation road leading to our property Mwyllin Squeen, partially obstructing access. Correspondence with Mr Cleator and his Advocate, Mr Mark Humphrey of Long Humphrey, continues over the ensuing months but there is no resolution and the parties remain in dispute.*

2012

7th September — *Mr Humphrey, registers The Squeen at the Land Registry with a boundary that has been extended beyond that conveyed to Mr Cleator, taking in the section of the occupation road at the entrance to our property where he had previously attempted to construct a wall. We remain unaware of this registration.*

29th November — *We discover the existence of the said registration, discuss the situation with our Advocate, and spend the following weeks examining the registration and researching Mr Cleator's title.*

2013

20th February — We write to the Registry, delivering the (undated) letter by hand.

25th February — Senior Registration Officer Mr Chris Bramhall responds stating that the Registry could not change the registration and suggesting that we or our Advocate contact Mr Cleator's Advocate with our evidence to ask if they would apply to rectify the title. *We immediately telephone Mr Bramhall who confirms the position.*

February – May — *We contact Mr Cleator and Mr Humphrey to point out the incorrect registration and spend about three months in fruitless correspondence with them.*

15th May — *We twice telephone the Land Registry and speak with the Assistant Chief Registrar Mr Garth Anderson, but he is adamant that the registration is a fait accompli and that there is no easy way to correct it. It is left to us to research the problem and discover that there is a procedure set out in the Land Registration Rules 2000.*

4th June — ***The start of the formal rectification process.*** Via our Advocate, Mr Robert Jelski, of Dickinson Cruickshank, we submit a Land Registry Form 25: "Application to the Land Commissioner for rectification of the Title Register" setting out our case.

18th June — Receipt is acknowledged by Mr Anderson who asks whether a copy had been served on the other party.

22nd June — We reply to Mr Anderson.

4th July — Mr Anderson gives notice that the Land Commissioner, Deemster Sharon Roberts, has directed him to convene a meeting between the parties and their advocates.

22nd July — Mr Anderson writes again to tell us that our application would be opposed by Mr Cleator's Advocate.

6th August — A further letter from Mr Anderson gives notice of a meeting to take place on 19th August. (*In this letter he mentions another letter dated 2nd August; presumably this was from our Advocate, but we do not have a copy of it.*)

19th August — *At the meeting Mr Cleator is unable to give any reasoned argument as to why the*

	registered boundary differs from that in his Deed of Conveyance, claiming never to have seen the said Conveyance plan which bears his signature. After about an hour Land Registry staff members leave the meeting to let the parties negotiate an agreement, but Mr Cleator also leaves almost immediately.
20th August	Mr Anderson enquires whether any progress has been made, stating that he would prepare a report to the Land Commissioner if not.
22nd August	Having discovered at the meeting that it is possible to register a Caution Against First Registration, we submit a Land Registry Form 7 applying for such a caution. *Note that there are now two related processes taking place: the rectification process itself involving Mr Anderson and the Land Commissioner, and the registration of a caution on our property being handled by Mr Bramhall.*
14th October	The Land Commissioner writes to the parties' Advocates proposing that Mr Cleator provide a detailed written response to the contents of our application and that she visit the site with both parties.
7th November	The Land Commissioner copies to us a letter to Mr Anderson asking him to forward to our Advocate Mr Jelski a copy of the boundary map prepared for Mr Cleator by his surveyors.
27th November	The Land Commissioner writes to Mr Jelski asking if we wish to make any further submissions and requesting our skeleton argument.
6th December	Mr Jelski responds on our behalf that we have further submissions to make but that we are still awaiting Mr Cleator's written response.
12th December	Mr Bramhall writes informing us that while the Land Registry will be able to register the Caution Against First Registration over the majority of the land indicated on the plan submitted with our application, they will not be able to include the area which is currently the subject of our application for rectification.
13th December	The Land Commissioner writes to both parties' Advocates setting out a timetable for submission of written statements, responses, skeleton arguments and site visit.
16th December	We reply to Mr Bramhall asking for the Caution to apply to all our land except the portion within the disputed area.
18th December	Mr Bramhall writes to tell us that the Caution has been completed and noted on the index map of the CLARE system.
	2014
17th January	Deemster Montgomerie agrees on behalf of the Land Commissioner to extend the time for the filing of Mr Cleator's response from 17th to 31st January 2014 and giving us an equivalent extension from 17th February to 4th March 2014.
	The following entries refer to submissions by the parties' advocates; although we have copies of the submissions we do not have copies of the covering correspondence.
31st January	*Mr Cleator and his Advocate submit written statements.*
27th February	*We and our Advocate (the Applicants) respond to the above written statements.*
18th March	*Mr Cleator responds to our response...*
27th March	*The Applicants submit their skeleton argument.*
31st March	*The other party submits their skeleton argument.*
15th April	*Site visit by the Land Commissioner.*
2nd May	Our Advocate copies to us a letter to the Land Commissioner from the other party stating

	that they do not wish to request an oral hearing but request an opportunity to make further submissions. *This appears to be in response to a letter dated 23rd April from the Land Commissioner to Advocates, of which we do not have a copy.*
6th May	The Land Commissioner writes to both parties' Advocates stating that there will not be an oral hearing but that she will afford the opportunity to make further submissions following the site visit.
19th June	*The other party makes further submissions to the Land Commissioner.*
15th July	Mr Anderson writes to Mr Jelski with comments on the parties' Further Submissions and Arguments.
12th August	***The Land Commissioner issues her judgment.*** *Further correspondence centres on the actions of Mr Cleator's Advocate prior to registration and the Land Registry's statements are relevant to the questions posed in the letter from the Select Committee. The area covered by our caution against first registration remains to be amended following the rectification of Mr Cleator's registration.*
25th September	In the light of the Deemster's statement in her judgment that "Mr Humphrey points out that prior to registration of the Property, meetings were held with Land Registry staff" we write asking Mr Anderson about these meetings.
29th September	Mr Anderson acknowledges receipt of the above.
20th October	Mr Lewney responds that a meeting took place with Mr Cleator's Advocate on 29th June 2012.
17th November	We respond to Mr Lewney that it is apparent that both occurred after registration, and that had they occurred earlier there would have been no need to escalate the matter as a result of the Registry's dependence upon the Advocate's certification.
17th December	Mr Lewney responds that our proposals, although possible, would come at considerable cost, which would be reflected in the registration fees payable and the time to process applications.
22nd December	Chief Registrar Mr Stephen Cregeen writes to Mr Alf Cannan that he believes that no changes are currently required to the legislation or the processes.
	2015
12th January	We respond to Mr Lewney that "...this case demonstrates that the statutory provisions open to the Registry with regards to Examination of Title will remain impotent so long as the Registry is dependent upon a system of self-certification by the applicant's advocate".
29th January	Mr Lewney writes to inform us that the extents of our caution have been extended to cover all of the land set out in our original application. He also states that he is content for us to provide a copy of all correspondence to our Advocate.
25th March	We write to Mr Anderson asking for the cautioned area to be amended so that it is contiguous with Mr Cleator's registered boundary as amended by the Land Commissioner's judgment. *This follows Mr Cleator's carrying out construction work in the previous week outside his property boundary as amended by the Land Commissioner.*
10th April	Mr Anderson replies that it will be necessary for us to provide mapping coordinates.
8th May	Mr Bramhall writes to inform us that the plan has now been amended.

Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Mr C Bramhall
Senior Registration Officer
Land Registry
Deemsters Walk
Bucks Road
Douglas
IM1 3AR

Dear Mr Bramhall

The Squeen, Ballaugh

Mr E K Cleator of The Squeen has registered (22-00244) the full width of a section of the occupation road leading to our property north of the footbridge labelled 'FB' on the associated plan; I refer you to the point labelled 'B' in blue on the plan, part of which is on the enclosed page. Here the registered boundary extends beyond the historical line shown on the plans derived from previous Deeds associated with this property, the relevant parts of which are also on the enclosed page.

Point 'B' lies on the north wall of the occupation road. This wall marks the boundary between the quarterlands of Squeen and Ballacrosha, is clearly identifiable as such in Deeds dating back over two hundred years and is shown as a solid line on current maps. We know of no legitimate reason why this boundary should have been changed and have been unable to find any conveyance that would justify the inclusion of the occupation road in his Title.

Although the geographical extent of the boundary discrepancy is small and has a strange shape, it has considerable impact and in fact takes in part of our property. We believe that this discrepancy is no accident, as Mr Cleator has previously attempted to construct a masonry wall on the occupation road. Having registered this piece of the occupation road, Mr Cleator has begun to enclose a part thereof, which impedes vehicular access to our property. Vehicular access to our property has already been obstructed on a number of occasions, including delivery and agricultural vehicles. We understand full access, including vehicular, over the road of occupation to be our right as our only access to the highway. The hindrance could prove life threatening in the event of an emergency.

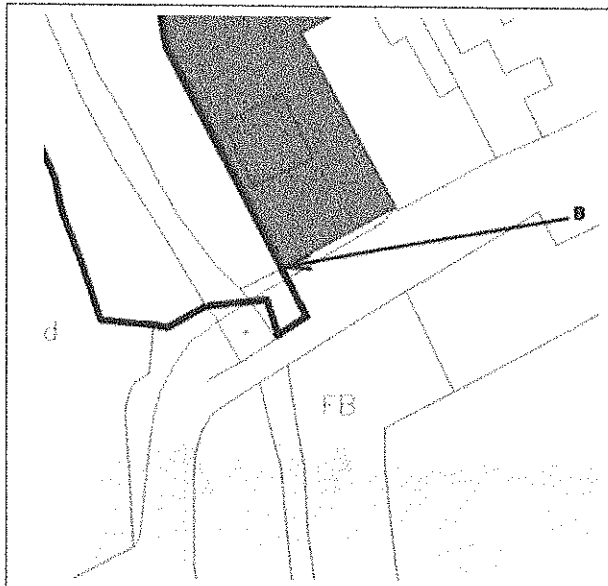
Some time ago Mr Cleator demolished part of the boundary wall close to point 'B' in order to open up a vehicular access, apparently without planning permission. He now appears to be attempting to divert our access road to serve his property instead. Our understanding is that this, and the demolition of the boundary wall, is in contravention of 6(2)d of the Town and Country Planning Act 1999: "the following are engineering operations constituting development — (i) the material alteration of any existing means of access to land from a road; (ii) the provision of a new means of access". The break in the wall and the driveway leading from the occupation road to his property are not shown on the registered plan which does, however, show his existing entrance on Station Road adjacent to Ballaugh School.

2

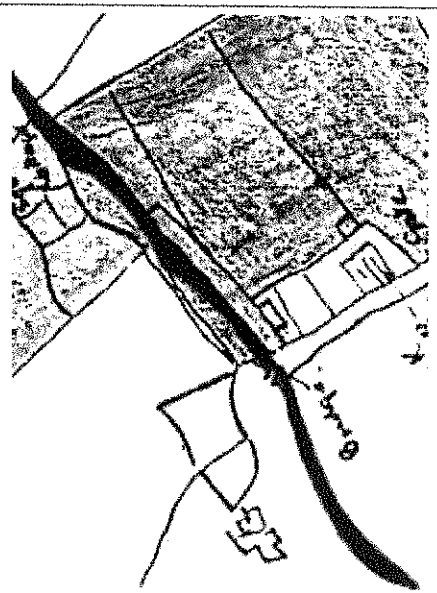
At the suggestion of our advocate, we request that the registration be amended in line with the historical property boundaries shown on the earlier Deeds. I trust that you will agree that this an urgent matter, that steps should be taken to rectify the error and that we should be kept informed of progress.

Yours sincerely

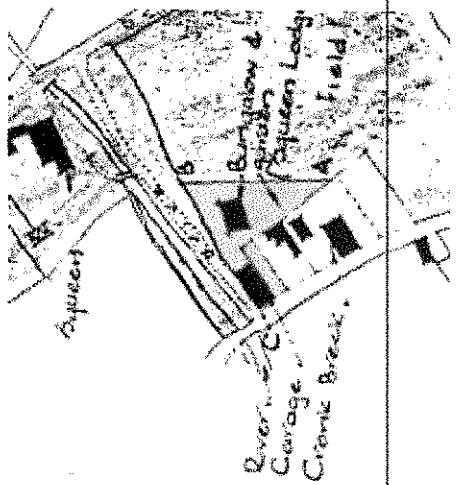
J. F. Craine (Dr.)



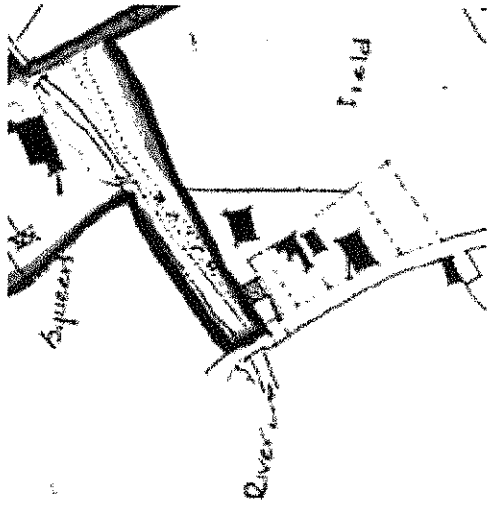
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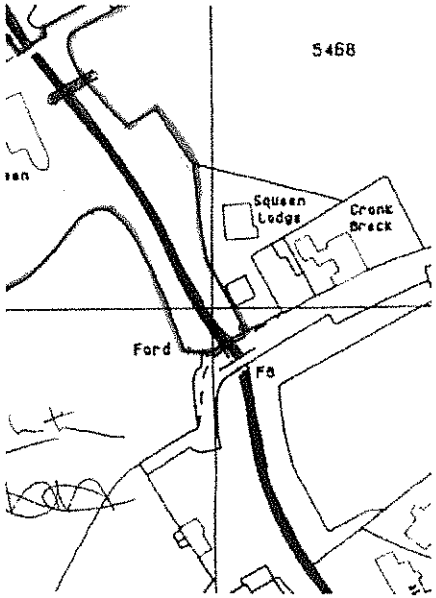
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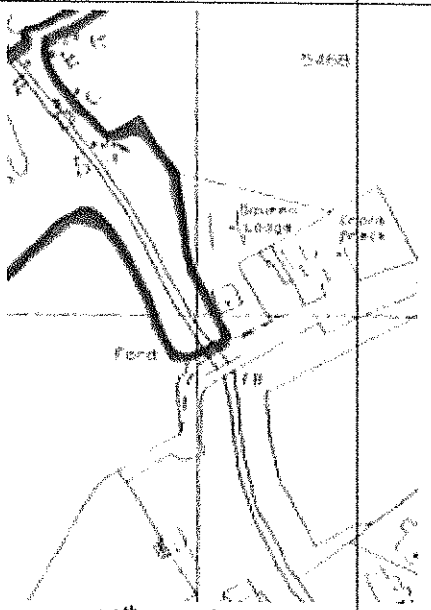
Nov 1957/44



Jan 1986/61



D1997-6374



11th March 1998

77

Isle of Man Government
Reiltys Ellan Vannin

General Registry
Oik-Recortyssee

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dr JF Craine
Mwyllin Squeen
Ballaugh
IM7 5AH

Contact: C. Bramhall
Our ref: 2013-02-25 Craine
Your ref --

Date: 2013 February 25

Dear Dr Craine,

The Squeen, Ballaugh

I am writing in reply to your letter, delivered by hand on 20th February 2013.

On reviewing our files I see that Mr EK Cleator's property was originally the subject of two applications for voluntary first registration. This resulted in titles 22-00242 and 22-00243 which were subsequently terminated when an application was made to amalgamate them, resulting in the current title, 22-00244.

While I note what you have said in your letter about the boundary in the vicinity of the point marked B on the Filed Plan, the boundaries for the property have been registered in accordance with the plans provided, and certified to us as being correct, by the advocates who acted for him in the first registration. While your advocate may have suggested that you contact Land Registry directly with a view to rectifying the title, we cannot act on your letter.

Whilst I appreciate the problems set out in your letter, I can only suggest that you or your advocate contact the firm which acted in the first registration with the evidence supplied with your letter to ask if they would be prepared to make an application to rectify the title. For your information, I can confirm that the firm who acted on behalf of Mr Cleator was Long & Humphrey.

Yours sincerely

C. Bramhall
Senior Registration Officer

Isle of Man Government
Reiltys Ellan Vannin

General Registry
Oik-Recortyssee

20 JUN 2013 5

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dickinson Cruickshank Ramsey
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1RD

Our ref: GEA
Your ref: KH/EL

Date: 18th June 2013

Dear Sirs

Application No.	**: 2013 01206**
Applicants	**: Dr. John Ffynlo Craine & Annie Andree Jeannine Hommet**
Property	**: The Squeen, Station Road, Ballaugh**
Title No.	**: 22-00244**
Registered Owner	**: Edwin Keith Cleator**

I acknowledge receipt of the abovementioned application.

Please would you advise whether a copy of the application and the various documents lodged in support thereof have been served on the registered owner. If not, this will be part of the directions to be given in due course.

Yours faithfully

G. E. Anderson
Assistant Chief Registrar
Legal Officer (Land)

Dr. Craine + Mrs. Hommet
Mwyllin Squeen
Ballaugh
IM7 5AH
Isle of Man

Mr. G. E. Anderson
Land Registry
Registries Section
Deemsters Walk
Bucks Road
Douglas
IM1 3AR
Isle of Man

Date: 22nd June 2013
Your Ref: GEA

Re: Application No. 2013 01206

Dear Mr. Anderson,

Our application for rectification is in response to a voluntary First Registration of land that was subject to dispute immediately prior to registration. We were not notified of the registration prior to its completion, and upon investigation we were subsequently refused sight of the contents of the application lodged at the Land Registry on data protection grounds.

We would therefore ask that this application be processed similarly, in accordance with the Data Protection Act 2002, and that, upon any information concerning our application being divulged to or by another party, we be notified alike and on equal terms.

In response to your letter, our correspondence to Mr. Cleator and his agents is limited to that lodged with our application for rectification. We understand that under the Rules, notice shall be entered by the Registrar on the title affected and that all other directions resultant of our application will be the Commissioner's. We will therefore send all information information contained within this application to the registered owner upon the Commissioner's direction, and will notify you upon doing so.

Yours Sincerely,

Dr. J. F. Craine **Mrs. A. A. J. Hommet**

General Registry
Oik-Recortyssee

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Our ref: 2013 01206
Your ref:

Dr. J. F. Craine & Mrs. A. A. J. Hommet
Mwyllin Squeen
off Station Road
Ballaugh
Isle of Man
IM7 5AH

Date: 4th July 2013

Dear Dr Craine & Mrs Hommet,

Application No. : **201301206**
Applicants : **Dr. John Ffynlo Craine & Annie Andree Jeannine Hommet**
Property : **The Squeen, Station Road, Ballaugh**
Title No. : **22-00244**
Registered Owner : **Edwin Keith Cleator**

Thank you for your letter dated 22nd June 2013 which we received on 1st July 2013.

Please note that correspondence with the Land Registry must in future be directed through your duly appointed advocates, Dickinson Cruickshank Ramsey.

I can confirm that a copy of the application has been delivered to the Land Commissioner.

In accordance with the Land Registry Rules 2000 I appeared before the Land Commissioner Her Honour Deemster Roberts and I have been given directions as to the conduct of this application. I enclose herewith a copy of the Directions Order made by the Land Commissioner on 24th June 2013.

As directed, I have forwarded a copy of the application and the supporting documents to Mr E K Cleator and to his advocates, Long & Humphrey. I enclose copies of the letters addressed to both these parties.

I have also been directed by the Land Commissioner to convene a meeting of the parties and their advocates in order to clarify the issues arising from the application.

I shall liaise with the advocates to agree a convenient date for the meeting.

Yours faithfully

Assistant Chief Registrar
Legal Officer (Land)

General Registry
Oik-Recortyssee

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dickinson Cruickshank Ramsey
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1RD

Our ref: GEA
Your ref: RAEJ

24 JUL 2013

Date: 22nd July 2013

Dear Sirs

Application No. : 2013 01206
Applicants : Dr. John Ffynlo Craine & Annie Andree Jeannine Hommet
Property : The Squeen, Station Road, Ballaugh
Title No. : 22-00244
Registered Owner : Edwin Keith Cleator

I have received written confirmation from Long & Humphrey Advocates that they have been instructed to act in the opposed application for the registered owner, Mr E K Cleator.

Please let me know whether the advocates would like to meet with me prior to convening the meeting at which the applicants and the registered owner are to attend.

I await to hear from you.

Yours faithfully

G. E. Anderson
Assistant Chief Registrar
Legal Officer (Land)

- 7 AUG 2013

General Registry
Oik-Recortyssee

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dickinson Cruickshank Ramsey
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1RD

Our ref: GEA
Your ref: RAEJ/AC

Date: 6th August 2013

Dear Sirs

Application No. : **2013 01206**
Applicants : **Dr. John Ffynlo Craine & Annie Andree Jeannine Hommet**
Property : **The Squeen, Station Road, Ballaugh**
Title No. : **22-00244**
Registered Owner : **Edwin Keith Cleator**

Thank you for your letter dated 2nd August 2013.

I would like to clarify a misunderstanding. I did not suggest a meeting with your clients prior to the formal meeting but rather a meeting with the two advocates only to discuss the matter. I thought it may assist you with your preparations.

I confirm that the meeting of the parties and their legal representatives is to take place on Monday 19th August 2013 at 3.00pm.

The Registries Meeting Room which was used by us for meetings of this nature has now been converted into offices and accordingly I have booked Court 4 in the Courts Building as the venue for the meeting. Please note that this is not a formal Court but rather a small boardroom which will be adequate for our purposes.

The meeting has been ordered by the Land Commissioner to enable the parties to meet and to discuss and clarify the issues arising out of the application. I shall then prepare a report to the Land Commissioner setting out the issues in respect of which a decision is to be made.

Yours faithfully

G. E. Anderson
Assistant Chief Registrar
Legal Officer (Land)

Isle of Man Government
Reiltys Ellan Vannin

General Registry
Oik-Recortyssee

21 AUG 2013

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dickinson Cruickshank Ramsey
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1RD

Our ref: GEA
Your ref: RAEJ/AC

Date: 20th August 2013

Dear Sirs

Application No. : **2013 01206**
Applicants : **Dr. John Ffynio Craine & Annie Andree Jeannine Hommet**
Property : **The Squeen, Station Road, Ballaugh**
Title No. : **22-00244**
Registered Owner : **Edwin Keith Cleator**

I refer to the meeting held yesterday in Room 4 of the Courts Building when the various issues which gave rise to the application were considered.

I confirm that after the meeting the parties discussed the matter in an attempt to resolve their differences. I enquire whether the parties were able to make any progress with those discussions or whether more time is required to explore the issues.

If no progress was made I shall prepare my report to the Land Commissioner.

Yours faithfully

G. E. Anderson
Assistant Chief Registrar
Legal Officer (Land)

Isle of Man Land Registry

Oik-Recortyssee Thallooyn Ellan Vannin

APPLICATION RECEIPT

201301763

This application number must be quoted in all correspondence

Dr John Ffynlo Craine
Mwyllin Squeen
Station Road
Ballaugh
IM7 5AH

The Land Registry acknowledges the receipt of the following application.

Your Reference	
Applicant(s)	John Ffynlo Craine
Fee Received	£75.00
Deed No. Inducing First Registration[1]	
Property Address or Affected Title No.	Mwyllin Squeen Station Road Ballaugh
Date Lodged	22 August 2013

[1] *As recorded in the Deeds Registry pursuant to The Registration of Deeds Act 1961, as amended*

Date: 22 August 2013

Garth Anderson

Garth Anderson, B.Com., LL.B.
Assistant Chief Registrar
Legal Officer (Land)

De Cagh e Halloo

Deemster Sharon Roberts as
Land Commissioner
c/o Courts Administration Offices
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

14th October 2013

JOINT LETTER

Mr. M. Humphrey
Advocate
Long & Humphrey Advocates
Old Courthouse
Athol Street
Douglas
Isle of Man
IM1 1LD

and

Mr. Robert Jelski
Advocate
Dickinson Cruickshank Advocates
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1 RD

Dear Sirs

Re: Application Number: 2013 01206
Applicants: Dr. J. F. Craine & Ms. A. A. J. Hommet
Property: The Squeen, Station Road, Ballaugh

As you may be aware I am the Land Commissioner. The Assistant Chief Registrar, Mr. G. Anderson has provided me with a report and file in relation to the above matter. I enclose a copy of the index to the report so that it is clear what documents I have in my possession.

The Land Registry Rules 2000 at Section 81 deal with Applications for Rectification. The Rule is not as comprehensive as I would wish in relation to the precise procedure I should adopt.

It seems to me my yardsticks should be transparency, fairness and ensuring all parties have an opportunity to put forward their arguments in full prior to me making any determination. What is important is that my determination is not found wanting because of procedural irregularity.

I therefore propose that Mr. Cleator provides a detailed written response to the contents of the Application, incorporating areas of disagreement and the reasons for such disagreement. The applicants should be afforded a copy of the response.

I propose that I have a site visit with both parties (with their Advocates if they so wish).

Following these two steps, an appearance before me by the parties to expand on their respective arguments shall take place if either of the parties request it, or I feel it would be helpful. If it is not considered necessary then I will proceed to make my determination taking account of the written submissions and the site visit solely.

I would welcome your response to my proposals as to the method of dealing with the application at your earliest convenience.

Yours faithfully

Deemster S. Roberts

Isle of Man Government
Reiltys Ellan Vannin

The Isle of Man Land Registry

Application Number	: 2013 01206
Applicants	: Dr. John Ffynlo Craine & Mrs. Annie Andree Jeannine Hommet
Advocates	: Dickinson Cruickshank Ramsey
Nature of application	: Rectification of the register of title – title number 22-00244 in the name of Edwin Keith Cleator
Property	: The Squeen, Station Road, Ballaugh, Isle of Man
Registered Owner	: Edwin Keith Cleator

Report of the Assistant Chief Registrar G. E. Anderson to the Land Commissioner, Her Honour Deemster Roberts as directed by Order dated 24th June 2013

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1. Report to the Land Commissioner
2. "A : Boundary Plan dated 1st March 2011 of the property prepared by WGS Ltd
3. "B" : Office Copy in respect of title number 22-00244 issued by the Isle of Man Land Registry & "B1" – Filed Plan
4. "C" : Plan annexed to Deed of Conveyance dated 11th March 1998 (Deed 1999/1407) and "C1" – magnification of the ford boundary
5. "D" : Survey map extract
6. "E" : Applicants' version of the boundary at the ford drawn on the survey map extract
7. Minutes of Meeting between the Land Commissioner and Assistant Chief Registrar dated 24th June 2013
8. Form 25: Application to the Land Commissioner for rectification of the Title Register and Appendix I
9. Sworn affidavits of John Ffynlo Craine and Donald Andrew Wyatt Warren
10. Submissions made by the applicants
11. Correspondence between the applicants and Mr Cleator and his legal representatives

13 NOV 2013

The Land Commissioner
c/o Courts Administration Office
Deemsters Walk
Bucks Road
Douglas

Mr. R. Jelski
Dickinson Cruickshank Ramsey
Masonic Buildings
Water Street
Ramsey
IM8 1RD

7th November 2013

Dear Mr Jelski

Re: application number	:	2013 01206
Applicants	:	Dr. Ffynlo Craine & Annie Andree Hommet
Property	:	The Squeen, Station Road Ballaugh
Title No	:	22-00244
Registered owner	:	Edwin Keith Cleator

Further to your letter of the 22nd October 2013 in relation to the above matter I have directed Mr Anderson to forward documents to you. You should hear from him shortly.

I enclose a copy of my letter to him and his letter to me of the 5th November 2013.

In the meantime I would welcome your comments on my proposals for the procedure in this matter as set out in my letter to you of the 14th October 2013.

Yours sincerely

Sharon Roberts
Land Commissioner

The Land Commissioner
c/o Courts Administration Office
Deemsters Walk
Bucks Road
Douglas

Mr. G. E. Anderson
Assistant Chief Registrar, Legal Officer (Land)
The Land Registry
Registries Section
Deemsters Walk
Bucks Road
Douglas

7th November 2013

Dear Mr Anderson

Re: application number	: 2013 01206
Applicants	: Dr. Ffynlo Craine & Annie Andree Hommet
Property	: The Squeen, Station Road Ballaugh
Title No	: 22-00244
Registered owner	: Edwin Keith Cleator

Thank you for your letter of the 5th November 2013 in relation to the above matter and your helpful comments.

I would be grateful if you could forward to Mr Jelski at Dickinson Cruickshank, Ramsey a copy of the boundary map of the property dated the 1st March 2011 prepared by WGS. (I appreciate it has been incorporated as Plan 'A' in your report to me, however, for the avoidance of any doubt I believe it is expedient to forward a copy of the requested map afresh).

I note your comments in relation to the application for first registration and that, in fact there were four applications.

I do note that, in the ordinary course of business, copies of underlying documents are not released. Rule 127 of the Land Registry Rules 2000 appear to me to provide me with power. I am of the opinion that the production to Mr Jelski of the application for First Registration of title – application 2011 01586 is desirable – which for the avoidance of doubt, should include the epitome of title.

I would be grateful therefore if you could provide Mr Jelski with the documents pertaining to First Registration application 201101586 and indicate in your covering letter that 201101586 is the second application and there are four in total but that 201101586 appears to be the one of relevance to this matter.

Should Mr Jelski then seek to have the other three he should revert to me with an indication of why he feels it is desirable that he sees them.

I confirm you may release the report you made to me dated the 3rd October 2012. I note it effectively comprises (inter alia) your minutes of the meeting of the 19th August 2013.

I am forwarding a copy of this letter to Mr Jelski and Mr Humphrey in an exercise in transparency and would be grateful if you could forward to Mr Humphrey a copy of all that you will be forwarding to Mr Jelski (I appreciate he may have some of the copies already but I wish to avoid any confusion as to who has and has not had documents).

Yours sincerely

Sharon Roberts
Land Commissioner

Deemster Sharon Roberts as
Land Commissioner
c/o Courts Administration Offices
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

27th November 2013

Mr. Robert Jelski
Advocate
Dickinson Cruickshank Advocates
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1 RD

Dear Mr Jelski

Re: Application Number: 2013 01206
Applicants: Dr. J. F. Craine & Ms. A. A. J. Hommet
Property: The Squeen, Station Road, Ballaugh

I enclose herewith a copy of the letter of the 19th November 2013 I have received from Messrs Long & Humphrey.

Could you please let me know whether Dr. Craine and Ms. Hommet wish to put forward any further submissions. If so, perhaps you could give an indication of when you expect to be in a position to forward such submissions. Please also advise whether you agree that Mr. Cleator should provide his response and supporting evidence once Dr. Craine and Ms. Hommet have forwarded their submissions. For my part, I can say that would seem a sensible way forward, although I will of course consider arguments from you to the contrary.

I would welcome skeleton arguments and trust you agree.

I am keen to progress this matter at the earliest opportunity and I look forward to hearing from you.

Yours sincerely

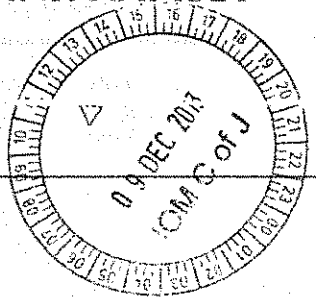
Deemster S. Roberts

Enc

DICKINSON CRUICKSHANK RAMSEY
ADVOCATES & NOTARIES

MASONIC BUILDINGS
WATER STREET
RAMSEY
ISLE OF MAN
IM8 1RD
TEL: 01624 812107
FAX: 01624 814275
e-mail: reception@dc-ramsey.com
web site: www.dc-ramsey.com

Our Ref: RAEJ/AC



6th December 2013

Deemster S Roberts
Land Commissioner
c/o Courts Administration Offices
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas IM1 3AR

Dear Deemster Roberts

Re: Application Number: 2013 01206
Applicants: Dr J F Craine and Ms A A J Hommet
Property: The Squeen Station Road Ballaugh

Thank you for your letter of the 27th November 2013 which I have now had an opportunity of discussing with my clients who have asked me to raise the following points with you:-

1. My clients have asked me to state that they have an amount of further evidence but feel it should only be disclosed after they have had sight of Mr Cleator's written response which has been awaited since July 2013. His failure to produce his response is in the view of my clients, unreasonable, given the amount of detail which has already been supplied with their application.

2. My clients have asked me to point out that their application had to be produced to counter the arguments which had been put forward by Mr Humphrey prior to the registration and to demonstrate the actual physical boundary of Mr Cleator's property at the time of its acquisition by him.

3. My clients are willing and able to attend a site meeting at a mutually convenient time to all interested parties.

4. My clients have asked me to point out that in an earlier letter, you had proposed and I quote (Mr Cleator) "provides a detailed written response to the contents of the application, incorporating areas of disagreement and the reasons for such disagreement. The applicants should be afforded a copy of the response". This has not been done.

5. My clients will be pleased to make further submissions in response to Mr Cleator's disagreements but cannot do so until they are made aware of what these disagreements are and where Mr Cleator's considers his boundary to be.

Yours sincerely

R A E Jelski

Summary/Small Claims	
Fee ref:	
Fee (£)	
Paid	
Charge	
Date	9/12/13
Initial	RF
Line no.	7660

General Registry
Oik-Recortyssee

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dr JF Craine
Mwyllin Squeen
Station Road
Ballaugh
IM7 5AH

Contact: C. Bramhall
Our ref: 201301763
Your ref: --

Date: 2013 December 12

Dear Dr Craine

Application Number: 201301763
Applicants: Dr John Ffynlo Craine
Premises: Mwyllin Squeen, Station Road, Ballaugh IM7 5AH

I am currently examining your application for a Caution Against First Registration (Form 7), received in the Land Registry on 22nd August 2013. Please find enclosed a copy of the application receipt for your application.

My reason for writing is to let you know that while we will be able to register the Caution Against First Registration over the majority of the land indicated on the plan submitted with your application, we will not be able to include the small area which overlaps the adjoining title and which is currently the subject of your application in Form 25 (application number 201301206).

Before I proceed to process your Caution application, can you please confirm that this is acceptable by close of business on 6th February 2014.

Yours faithfully

C. Bramhall
Senior Registration Officer

Deemster Sharon Roberts as
Land Commissioner
c/o Courts Administration Offices
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

13th December 2013

JOINT LETTER

Mr. M. Humphrey
Advocate
Long & Humphrey Advocates
Old Courthouse
Athol Street
Douglas
Isle of Man
IM1 1LD

and

Mr. Robert Jelski
Advocate
Dickinson Cruickshank Advocates
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1 RD

Dear Sirs

Re: Application Number: 2013 01206
Applicants: Dr. J. F. Craine & Ms. A. A. J. Hommet
Property: The Squeen, Station Road, Ballaugh

Further to the above matter I enclose for ease of reference a copy of the letter of the 6th December from Mr. Jelski to me and the letter of the 19th November from Mr. Humphrey to me.

I fear if we are not careful we will become enmeshed in tactical manoeuvring. It seems to me that what I need is written statements from both parties and their respective responses from the other. That way both parties get a full opportunity to make statements, consider the points raised by the other party and respond to them.

Bearing that in mind it seems to me it is of little significance who commences the chain.

I do not want a situation to arise where one party feels disadvantaged.

I feel the best way forward is that Mr. Cleator provides a detailed response to the contents of the application as I originally suggested. Following that, Dr. Craine and Ms Hommet provide a responding statement. Mr. Cleator thereafter be at liberty to provide a final response.

On conclusion of that, both parties provide me with Skeleton Arguments and I have a Site Visit with all parties and their Advocates.

I would very much like to receive Mr. Cleator's response shortly.

I suggest the following timetabling:

Mr. Cleator's response no later than 17th January 2014;
Dr. Craine's and Ms. Hommet's response no later than 17th February 2014;
Mr. Cleator's final statement no later than 18th March 2014;
Skeleton Arguments from both parties no later than 31st March 2014;
Site Visit mid-April.

Should my suggestion and/or timetabling prove problematic please let me know very quickly, I do not want this matter to become unduly protracted.

You may both find the report of Mr. Anderson dated 3rd October 2013 helpful and I enclose a copy.

Yours faithfully

Deemster S. Roberts

Enc: Letter of the 6th December from Mr. Jelski to me
Letter of the 19th November from Mr. Humphrey to me
Report of Mr. Anderson dated 3rd October 2013

Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

16th December 2013

Mr. C. Bramhall
Land Registry
Registries Section
Deemsters Walk
Bucks Road
Douglas
IM1 3AR
Isle of Man

Dear Mr. Bramhall,

Application 201301763

We are aware that a small portion of our property is the subject of our Application to the Land Commissioner for rectification (201301206).

Please register the Caution against First Registration over all of the land indicated in the plan submitted with our application except that portion where there is an overlap with the disputed area.

Yours sincerely

J. F. Craine (Dr.)

General Registry
Oik-Recortyssee

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dr JF Craine
Mwyllin Squeen
Station Road
Ballaugh
IM7 5AH

Contact: C. Bramhall
Our ref: FC-00026
Your ref: --

Date: 2013 December 18

Dear Dr Craine,

Caution Against First Registration
Premises: Mwyllin Squeen, Station Road, Ballaugh IM7 5AH

I am pleased to say that the first registration caution on the above premises has now been completed and is noted on the Index Map of the CLARE system within the Land Registry.

Yours sincerely

Chris Bramhall
Senior Registration Officer

DICKINSON CRUICKSHANK RAMSEY
ADVOCATES & NOTARIES

MASONIC BUILDINGS
WATER STREET
RAMSEY
ISLE OF MAN
IM8 1RD
TEL: 01624 812107
FAX: 01624 814275
e-mail: reception@dc-ramsey.com
web site: www.dc-ramsey.com

Our Ref: RAEJ/AC

2nd May 2014

Dr J F Craine
Mwyllin Squeen
Station Road
Ballaugh

Dear Ffynlo

Re: The Squeen – Cleator

I enclose herewith a copy of a letter which has been copied to me from Long & Humphrey, for your information.

Yours sincerely

R A E Jelski

Enc

LONG & HUMPHREY
ADVOCATES & NOTARIES PUBLIC

COPY

The Land Commissioner
c/o Courts Administration Offices
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
IM1 3AR

Our ref: CLE2-1/MSH/JC1
Your ref:

Date: 30 April 2014

Your Honour

Re: Application under 2013/01206
Applicant: Dr J F Crane and Ms A A J Hommet
Property: The Squeen, Station Road, Ballaugh

Thank you for your letter dated 23rd April 2014.

I have met with my client to consider whether or not an oral hearing will be requested.

I confirm that my client would be content for you to consider matters on the strength of written representations but it is requested that further submissions be allowed to address any issues that have arisen as a result of the site meeting.

As it was also indicated at the site meeting that you intend to make certain enquiries of Mr Anderson it may be that further submissions would be necessary/desirable depending on his reply.

As such, I would request that the parties be given an opportunity to make further submissions on any matters arising out of the site meeting and the replies of Mr Anderson to your questions of him. I would suggest that such submissions could be made within 14 days of receipt by the parties of Mr Anderson's comments.

I assume also that the question of costs will be dealt with separately following your determination in respect of the application.

Lastly, you mentioned at the site meeting that there were certain deeds of which you would wish to have copies and I would ask you to please confirm if there are any in particular or if it is just a case that any deeds referenced in the various parties' submissions should be copied and forwarded to you?

The Old Court House
Athol Street
Douglas
Isle of Man
IM1 1LD

t +44(0) 1624 651951
f +44(0) 1624 651950
e info@longandhumphrey.com
w www.longandhumphrey.com

LONG & HUMPHREY
ADVOCATES & NOTARIES PUBLIC

I look forward to hearing from you.

Yours sincerely

MARK HUMPHREY
LONG & HUMPHREY

cc: Mr R Jelski, Dickinson Cruickshank, Masonic Buildings, Water Street, Ramsey IM8 1RD

DICKINSON CRUICKSHANK RAMSEY
ADVOCATES & NOTARIES

MASONIC BUILDINGS
WATER STREET
RAMSEY
ISLE OF MAN
IM8 1RD
TEL: 01624 812107
FAX: 01624 814275
e-mail: reception@dc-ramsey.com
web site: www.dc-ramsey.com

Our ref: RAEJ/VB

19 May 2014

Dr J F Craine Esq.,
Mwyllin Squeen,
Ballaugh.
IM7 5AH

Dear Ffynlo

Re: Cleator -The Squeen

I received a copy letter from Deemster Roberts which although dated 6th May has only been received by me today. Perhaps you could consider the contents and let know if you have any thoughts arising from the questions asked. We have, as you will see, until 19th June to file any response.

Yours sincerely

R A E Jelski.
Dickinson Cruickshank Ramsey

Enc..

Deemster Sharon Roberts as
Land Commissioner
c/o Courts Administration Offices
Isle of Man Courts of Justice
Deemsters Walk
Bucks Road
Douglas
Isle of Man
IM1 3AR

6th May 2014

JOINT LETTER

Mr. M. Humphrey
Advocate
Long & Humphrey Advocates
Old Courthouse
Athol Street
Douglas
Isle of Man
IM1 1LD

and

Mr. Robert Jelski
Advocate
Dickinson Cruickshank Advocates
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1 RD

Dear Sirs

Re: Application Number: 2013 01206
Applicants: Dr. J. F. Craine & Ms. A. A. J. Hommet
Property: The Squeen, Station Road, Ballaugh

Further to the above matter I enclose herewith the notes of the meeting I had with Mr. Anderson.

I note neither party seeks an oral hearing and I do not require an oral hearing.

I note Mr. Humphrey would like the opportunity to put forward further submissions following my meeting with Mr. Anderson and following the site meeting. I agree this is reasonable.

By way of further directions and order therefore **I Order** that both parties have the opportunity to make further submissions on issues arising as a result of the site visit and the note of the meeting with Mr. Anderson. These submissions shall be filed no later than **4.00 p.m.** on **Thursday 19th June 2014.**

I would be grateful if both parties could provide me with full copies of all deeds with accompanying plans referred to in the submissions filed to date and copies of the arbitrations. It would be helpful if the parties could liaise to avoid unnecessary duplication.

I confirm costs will be dealt with after the decision.

Yours faithfully

Deemster S. Roberts

Application for rectification by Dr Craine, Ms, Hommet in respect of the registered title of Mr Cleator re the Squeen

Notes of a meeting with Mr Anderson, 16th April 2014 held in the absence of parties and their Advocates, but with their consent.

I asked the following theoretical question.

I own my unregistered property and the title deeds show good root of title with a northern boundary abutting what I consider to be an accommodation road.

I wish to register my property and one half of the accommodation road as it abuts on my property under the rule under the Kenyon Case.

How do I go about it and how will it be treated by the Land Registrar.

In answer Mr Anderson stated as follows:

First, I may apply for first registration of my property and in the Appendix A: Epitome of Title I should provide evidence of the devolution of the title to the property commencing with a good root of title as defined in the Conveyancing Act 1985.

Second, I may make a separate application for first registration of the one half of the accommodation road and I should likewise provide evidence of the title in Appendix A.

If my Advocate is not able to certify the title in the normal way as I do not have good root of title then my application will be rejected. There is no practice in the Land Registry for the registration of land based upon a common law presumption.

There is no practice note or direction in that respect.

The Registry does not seek to argue against the principles contained in the Kenyon Case.

There have been no applications to register title based solely on the common law principles laid down in the Kenyon Case.

I asked the following further question about the matter before me.

What factors influenced the Land Registry in registering the title to the Squeen.

The answer was:

On first registration of land the Land Registry relies on the certification of title given by the Advocate in Form 1 which was lodged at the Land Registry. In the case of The Squeen it was assumed that Mr Cleator had title to the whole property because the title was as certified by the Advocate.

The Registry does not require a map with coordinates and, in general, uses the Isle of Man survey map base to enable it to record the boundaries and other information relevant for Land Registry purposes. It is understood that a map with coordinates provides a more accurate map than those provided by the Registry. It may be based on GPS co-ordinates or upon measurements.

It is to be borne in mind that there is no guarantee as to boundaries by the Registry although the owners of adjoining registered lands may agree that such boundaries are conclusive. The survey maps are drawn at a scale 1:1250 in urban areas and 1:2500 in rural areas. The maps are subject to accuracy and plotting tolerances and limitations – as a general rule the width of a line on a map at a scale of 1:1250 represents 300mm (one foot) on the ground and at a scale of 1:2500 the same line represents about 600mm (two foot) on the ground.

THE ISLE OF MAN LAND REGISTRY

Application number	**: 201301206**
Applicants	**: Dr. John Ffynlo Craine & Mrs. Annie Andree Jeannine Hommet**
Nature of application	**: Rectification of title number 22-00244 registered in the name of Edwin Keith Cleator**
Property	**: The Squeen, Station Road, Ballaugh, Isle of Man ("the property")**
Registered Owner	**: Edwin Keith Cleator ("Mr Cleator")**

1. I have been invited by the Land Commissioner to comment on the further submissions and arguments of the Registered Owner and the Applicants which were directed by an Order dated 6th May 2014.

2. I set out hereunder my comments.

3. Firstly, the boundaries of the property marked on the survey map extract lodged with an application for first registration should correspond with the relevant deeds maps.

4. Part 4 of the Land Registry Rules 2000 ('the 2000 Rules') deals with 'First Registration and Examination of Title.' Rule 17(1)(a) requires the applicant for registration to lodge, inter alia, the following:

   (a) an extract from a survey map on which the boundaries of the land are clearly indicated.

5. "The application must be accompanied by an up-to-date ordnance map on which the boundaries are accurately marked.....It is important that the mapping detail should correspond with the relevant deed maps, although this can sometimes be difficult if the deed map was poorly drawn or prepared to an unusual scale."

   (Moir on Land Registration: 1st Edition: page 54).

6. I respectfully submit that the delineation of the boundary of the property on the deed plans which are annexed to:

   (a) Deed of Conveyance dated 11th March 1998 ('1998 Deed') made between Ronald Frank Stiles and Mona Stiles and Edwin Keith Cleator and Jane Cleator (1999/1407) ('1998 Deed Plan') and

   (b) Deed of Conveyance dated 12th November 1957 made between Sybil Dorothy Parkes and Edward Corteen as Trustees of the Will of Alfred

John Parkes, Sybil Dorothy Parkes in her personal capacity and Richard Garnet Waller and Joan May Waller (November 1957/44)

are clear and unequivocal. In particular, the disputed boundary at the ford follows an existing boundary feature on the survey map which is a straight line across the ford and in line with the gable wall of Cronk Breck. The position of the boundary line in the deed plans was not disputed by Mr Cleator: paragraph 29 and 30 of my Report dated 3rd October 2013.

7. I therefore respectfully submit that the survey map extract lodged with the application for first registration should have depicted the boundary line of the property where it crosses the ford in the same position as the 1998 Deed Plan. The representation of the boundary on the map did not require the application of common law presumptions in order to clarify the position.

8. Secondly, the legal estate that was conveyed to Mr Cleator and his wife in Deed of Conveyance dated 11th March 1998 was the legal estate in the property as defined and as delineated in the 1998 Deed Plan.

9. However, the application for first registration lodged by Mr Cleator in essence included two separate parcels of land which are as follows:

   (a) the property as described in the 1998 Deed and as represented on the 1998 Deed Plan; and

   (b) one half of the road ("the road").

10. In his application for first registration, Mr Cleator applied for registration of a freehold estate with an absolute class of title. In order to qualify for an absolute class of title, Mr Cleator was required to lodge an Appendix A: Epitome of Title which showed a chain of title commencing with a good root of title and ending with the deed conveying the property to him.

11. A 'good root of title' is defined in Section 2(5) of the Conveyancing Act 1985 as 'a conveyance for valuable consideration which-

   (a) is dated more than 21 years before the date of the contract;

   (b) purports to convey or create the estate contracted to be sold or otherwise disposed of;

   (c) is not expressed to be made in exercise of a statutory or other power to convey the land; and

   (d) contains a covenant by the conveying party to maintain the premises to the purchaser thereof free from encumbrances.'

12. I am satisfied that Mr Cleator provided a good root of title to the property which is referred to in 9(a) above and therefore was entitled to registration of

an absolute class of title to the property which is delineated on the 1998 Deed Plan.

13. It is my respectful submission that the legal estate in the property referred to in 9(b) did not form a part of the title to the property known as 'The Squeen' and should not have been included as part of that title.

14. Thirdly, in registering the property referred to in title number 22-00244 the Land Registry relied on the Certificate of Title given by the advocate acting for the applicant.

15. In an application for first registration the Land Registry relies upon the Certificate of Title contained in Box 14 of Form 1 which is signed by an advocate on behalf of the applicant. Reliance is placed on the Certificate for the reason that it is the advocate as the legal practitioner who has made a full investigation into the title and is satisfied that the applicant is entitled thereto and is therefore able to confirm the matters contained in the Certificate.

16. As the half share of the road was included within the boundaries of the property, in registering title number 22-00244, reliance was placed on the Certificate of Title contained in Form 1 which was signed by the advocate acting for Mr Cleator.

17. Fourthly, the description of the land contained in title number 22-00244 is not conclusive as to the boundaries or extent of the land.

18. The boundaries of the property are subject to the general boundaries rule: "except in cases in which it is noted in the property register that the boundaries have been fixed, the filed plan shall be deemed to indicate the general boundaries only." This is the position in the Land Registry in England and Wales: Ruoff & Roper: paragraphs 5.010 and 5.011.

This is similarly expressed in 'The Law of Real Property' (7th edition) Megarry & Wade at paragraph 7-118: "Unless a boundary has been determined, all boundaries that are shown in the register of title are general boundaries, and do not determine the exact line of the boundary."

19. The Land Registration Act 1982 ('1982 Act') does make provision at Section 59(2) for the owners of adjoining registered lands or of any registered land and unregistered land, 'to settle and enter on the title register as conclusive the boundaries between those lands.....". This would be what is meant by 'fixing' or 'determining' the boundaries referred to above.

20. In this application none of the boundaries of the property have been fixed and it is therefore my respectful submission that the general boundaries rule is to apply.

21. Fifthly, the general boundaries rule applies to the presumptions of ownership of boundaries.

22. Mr Cleator submitted that 'there are occasions when common law presumptions do apply and must be addressed as part of land registration in the Isle of Man.' It was therefore submitted that in the case of the presumption *ad medium filum viae* which is to the effect that the conveyance of land adjoining a highway or private right of way operates to transfer ownership up to the middle of that highway or private right of way, such land should be included in the registered title.

23. I accept the common law presumption referred to in 22 above but I respectfully submit that it should not be reflected on the title register.

24. As stated in Megarry & Wade at paragraph 7-118:

"The general boundary will extend to cases where there is a presumption of ownership, as where the owner of land adjacent to a non-tidal river or a road is rebuttably presumed to own the bed of the river or the soil under the highway to the mid-point. By reason of the general boundaries rule, such land is within the registered title although not shown on the title plan. This was clear prior to the Land Registration Act 2002 and it is not thought that the 2002 Act has changed the position."

Reference is made to the case of **Hesketh v Willis Cruisers Ltd (1968) 19 P. & C.R. 573 at 575 and 579: Divider 1.**

25. In the legal textbook: 'Boundary Disputes: A Practitioner's Handbook' by William Hanbury, the following passage at page 71 states that:

"In registered land it is a feature of the general boundaries rule, reflected in Land Registry practice, that no part of the highway is shown as being part of an adjoining owner's registered title even where the presumption of 50% ownership applies."

Reference is made to the case of **Russell v London Borough of Barnet (1984) 2 EGLR 44: Divider 2.**

26. I respectfully submit that the interpretation placed on paragraph 12 of the Land Registry Practice Guide 40 by Mr Cleator is incorrect. The statement that: "As registration with general boundaries leaves the exact line of the boundary undetermined, the effect of a legal presumption may be carried forward into a registered title."

As submitted above, no part of the highway is shown within the registered title but the effect of the legal presumption is that such land is presumed to be within the registered title although it is not shown on the title plan.

27. In my respectful opinion the common law rule laid down in the Manx case of **In re Kenyon** regarding the ownership of the soil of the road *usque ad medium filium viae* should likewise not find expression in land registration in the Isle of Man.

28. Sixthly, the application of presumptions is to assist with the clarification of boundaries.

29. Mr Cleator argues that 'there are occasions when common law presumptions do apply and must be addressed as part of land registration in the Isle of Man' and he then goes on to refer to the 'Legal Presumptions' in paragraph 12 of Land Registry Practice Guide 40 of England and Wales. However, this paragraph commences as follows:

"Documents of title rarely contain sufficient descriptions to enable one to establish the precise position of a boundary. In such cases legal presumptions relating to certain types of boundary feature may be helpful."

30. It is my respectful submission, as stated above, that the boundary of the property as delineated on the 1998 Deed Plan is clear and unambiguous and therefore that it was not necessary to apply the common law presumptions in order to clarify the boundary.

31. Seventhly, the half share of the road is subject to the right of way of the adjoining land owners.

32. The case of Re Kenyon also confirmed the rule that the owners of the lands abutting upon the road 'have rights of way for all purposes in order to gain access to and from the highway from and to their respective properties.' Ownership of the road would be subject to the rights of way and the restrictions that that places on ownership.

33. Finally, the Index Map is subject to accuracy and plotting tolerances and limitations. In practice, the accuracy tolerances relate to the degree of accuracy at which detail can be depicted at the survey scale of the map.

34. I accept the statement of Mr R Clynes, the Senior Cartographer of the Department of Infrastructure contained in paragraph 28 of the Further Submissions of the applicants that at a scale of 1:2500 the tolerance is approximately 1.100m.

Dated at Douglas on 15th July 2014.

G. E. Anderson
Legal Officer (Land)
Assistant Chief Registrar

General Registry
Oik-Recortyssee

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dickinson Cruickshank Ramsey
Masonic Buildings
Water Street
Ramsey
Isle of Man
IM8 1RD

Our ref: GEA
Your ref: RAEJ/AC

Date: 15th July 2014

17 JUL 2014

Dear Sirs

Application No.	**: 201301206**
Applicants	**: Dr. John Ffynlo Craine & Annie Andree Jeannine Hommet**
Property	**: The Squeen, Station Road, Ballaugh**
Title No.	**: 22-00244**
Registered Owner	**: Edwin Keith Cleator**

I enclose a copy of my comments on the Further Submissions and Arguments of the registered owner and the applicants.

Yours faithfully

G. E. Anderson
Assistant Chief Registrar
Legal Officer (Land)

Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Mr. G. E. Anderson
Land Registry
Registries Section
Deemsters Walk
Bucks Road
Douglas
IM1 3AR

Thursday 25 September 2014

Dear Mr. Anderson,

Rectification of Title, The Squeen (2013 01206)

I refer to the determination by the Land Commissioner regarding the above rectification.

In the judgment (J1507, under the heading "Mr Cleator's submissions and statement both dated the 19th June 2014"; unfortunately paragraphs are not numbered) she states that "Mr Humphrey points out that prior to registration of the Property, meetings were held with Land Registry staff to discuss the question of the plans to be submitted". Mr Humphrey subsequently certified that there was no dispute or claim contrary to his client's registration.

Having disclosed a prior dispute during the course of our application for registration we would therefore be defined as data subjects had Mr Humphrey indeed disclosed the full matters appertaining to a claim of presumptive ownership.

Bearing in mind Deemster Roberts' "yardsticks of transparency [and] fairness" and the provisions of the 2002 Data Protection Act, please inform us how many such meetings took place, the dates of the said meetings and whether our ownership of the property adjacent to Mr Cleator's was discussed at the said meetings.

Yours sincerely,

J. F. Craine (Dr.)

General Registry
Oik-Recortyssee

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dr. J. F. Craine
Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Contact: N. Lewney
Our ref: 201301206
Your ref:

Date: 29th September 2014

Dear Dr. Craine,

Application number	**: 201301206**
Registered owner	**: Keith Edwin Cleator**
Property	**: The Squeen, Ballaugh**

Thank you for your letter dated 25th September 2014.

I have referred the letter to our Registries Manager for his attention and I have asked him to investigate the matter and to respond to you.

Yours sincerely

G. E. Anderson
Assistant Chief Registrar
Legal Officer (Land)

Isle of Man
Government
Reiltys Ellan Vannin

General Registry
Oik-Recortyssee

Chief Registrar
Stephen Cregeen

Dr J.F. Craine
Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Contact: Nigel Lewney
Our ref: NL/MD/14-10-20
Your ref:
Date: 20 October 2014

Dear Dr Craine

Re: Rectification of Title, The Squeen (201301206)

Mr Anderson has passed your letter dated 25 September 2014, in relation to the above, on to me to respond. Please accept my apologies for the delay in doing so.

Regarding the registration of Mr Cleator's land, and in particular any meetings that may have taken place between Land Registry staff and employees from Long and Humphrey, I would like to point out at this stage that through the nature of the business that we deliver, and the manner in which we go about it, regular and informal discussions between staff and members of the legal profession, public and in some cases surveyors are common practice. Indeed, we encourage users of the Land Registry to come and speak to staff if they believe there may be problems in mapping the land parcel which is the subject of the application, or if they have any other questions in relation to our requirements. I would also mention at this stage that staff are not legally qualified and therefore are not able to give advice or offer opinions about any matter before them – staff will only offer guidance as to what is required from the Land Registry in order to register land. Such meetings are informal and normally very brief, and unless an application has already been lodged no notes are made by Land Registry staff of the discussion. Where an application has already been lodged, the Land Registry staff would normally arrange a meeting (if required) after raising any defects in a more formal manner (by notice, in writing).

I can confirm that staff have undertaken a full check of not only the relevant file but also their own work calendars to establish if any meetings did take place prior to registration and, if so, on what date and furthermore what was discussed. A member of the Land Registry team does recall meeting with an employee from Long and Humphrey to discuss the plans to be submitted with the application to register Mr Cleator's land. From an e-mail the staff member has located, it would appear the meeting was scheduled to take place on Friday, 29 June 2012, although I cannot confirm for definite that this is the date the meeting actually took place as no record of the meeting was made. However, the member of staff does recall that the meeting was requested to agree what measurements or mapping co-ordinates the Land Registry would require in order to plot the land being the subject of the application, as delineated on the map at that time by Long and Humphrey, on the Land Registry system. I can assure you that during such meetings staff do not discuss the merits of an application, the requirement to check a Title and certify it as being good instead sitting

solely with the lodging Advocate. There is no record, or staff recollection, of any other meeting.

I hope the information I have provided is helpful, however if you have any further questions please do not hesitate to contact me.

Yours sincerely,

Nigel Lewney
Manager, Registries Section

Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Mr. N. Lewney
Manager, Registries Section
Deemsters Walk
Bucks Road
Douglas
IM1 3AR

Monday 17 November 2014

Dear Mr. Lewney,

Re: Rectification of Title, The Squeen (201301206)

Thank you for your letter of 20th October.

On 19th August 2013, Mr. Anderson chaired a meeting between ourselves as the owners of Mwyllin Squeen, the owner of The Squeen and both parties' legal representatives concerning our application for rectification of Title to The Squeen. Mr. Anderson opened the meeting by outlining the provisions of the Land Registration Act 1982 by which we made application, that we had afforded the certifying Advocate an opportunity to correct an error and that his refusal precluded our application directly to Mr. Anderson as Registrar to correct the title plan, as this requires consent. It was also stated that the applicants had disclosed a prior dispute regarding the land in question to the Registry, as grounds for an application to the Land Commissioner for rectification.

The certifying Advocate defended his position by disclosing his prior meeting with Registry staff concerning the registration of The Squeen. By your letter dated 20th October 2014 the Registry has indicated that staff recall only a meeting of 29th June 2012, but that no record of such meeting exists.

Our dispute is not regarding the merit of the legal presumption of *usque ad medium filum viae* as was Mr. Cregeen's interpretation in his letter of 13th October 2014 to Mr. Cannan MHK. Neither is it, as far as we are concerned, a matter of access; that is solely the certifying Advocate's contention. Our dispute was always about a boundary and the representation of such boundary at the Land Registry. Mr. Anderson considered this boundary as represented on the corresponding Deed plans "clear and unequivocal", in particular with respect to the 1998 Deed plan which he described as "clear and unambiguous and therefore that it was not necessary to apply the common law presumptions in order to clarify the boundary". This was also our opinion prior to Registration and formed much of the prior dispute of which the signing Advocate was also aware.

Therefore, and to clarify, our query concerns two matters – the point in time at which such dispute was disclosed to the Registry and the point in time at which such legal presumption was presented to the Registry.

It is apparent that both occurred after registration, and that had they occurred earlier there would have been no need to escalate the matter as a result of the Registry's dependence upon the

Advocate's certification, and the same Advocate's subsequent refusal to correct his own error. Such a scenario could easily be repeated and, without properly established Registry procedures, others through no fault of their own will inevitably be faced with the same predicament in which we found ourselves.

The first matter is with regard to the disclosure of a dispute prior to registration. It appears that such dispute was not disclosed; neither your letter of 20th October 2014 nor that of Mr. Cregeen dated 13th October 2014 mentions such disclosure. In 2012 we applied for sight of the contents of the application for first registration but were refused, presumably for the very reason that we are not mentioned within. We were subsequently granted sight of the same during the course of our application for rectification. In the application for first registration, the Advocate certified under section 12(h) that: "I believe that the applicant(s) is/are and have since the date of acquisition mentioned in this application, been in sole and undisputed possession of the land or in sole and undisputed receipt of the rent or profits thereof". We contested the registration due to a significant disparity between Deed plan and registered Title plan that took in land which was clearly neither in sole possession nor undisputed.

We understand that many Government departments will offer informal guidance, including Planning and Income Tax divisions. In some instances the information discussed at these informal meetings forms a procedural part of the decision making process, but in others this is categorically not the case because information as it is presented in such circumstances cannot always be relied upon. We also understand that Registry staff are unable to provide legal advice, as is clearly stated on notices within the Registry public office itself.

We respectfully request that the Registry confirm whether we, as data subjects, or any statement on our part, were the subject of any meeting concerning the first registration in question and if so whether this formed a material consideration in the processing of the same.

The second matter is with regard to an application of Common Law presumption prior to registration. When afforded an opportunity to correct the title, the certifying Advocate's response was with regard to the accuracy of the information provided to the Land Registry. It is the recollection of Registry staff that the meeting of 29th June 2012 was to "agree what measurements or mapping coordinates the Land Registry would require in order to plot the land being the subject of the application". In neither instance was the matter of legal presumption raised and so presumption must have been raised as an issue at the Registry only after our application for rectification.

We, as the owners of Mwyllin Squeen, enjoy a statutory right of way (of necessity) over Bayr y Wyllin, the occupation road serving our property. Regardless of application of a legal presumption or land ownership, the position and extent of the boundaries of this occupation road, as represented at the Land Registry, will remain our concern and it will remain our right to object to the modification of its boundaries.

A legal presumption did not form any part of the contents of the application for first registration. The application for first registration of The Squeen dated 7th September 2012 was in fact made for an Absolute Title (section 5 of Form 1). In a meeting with the Land Commissioner on 16th April 2014, Mr. Anderson stated his opinion that in such a scenario the Registry would refuse registration:

> "If my Advocate is not able to certify the title in the normal way as I do not have good

> root of title then my application will be rejected. There is no practice in the Land Registry for the registration of land based upon a common law presumption."

Had Registry staff been alerted to the fact that (as the certifying Advocate asserted only later) a portion of the land delineated was included by legal presumption and not by good title, it would therefore not have been registered.

Where examination of title is required, the Land Registration Act 1982 enables any interested person to make an objection, Section 27 stating:

> "Subject to the following provisions, where the examination of title is required under this Act or is necessary to facilitate any registration, such examination shall be conducted by such person and in such manner as may be prescribed — (a) due notice shall be given, where the giving of such notice is prescribed, and where notice is given, an opportunity shall be afforded to any person desirous of objecting to submit his objections to the Registrar..."

For 27(a) to operate, notice must be provided to potential objectors, and such notice is in turn dependent on such information having been made available to Registry staff.

We respectfully request that the Registry confirm whether a Common Law presumption regarding the land of an occupation road, to which we as rightful users of the road have an interest, was the subject of any meeting concerning the first registration in question and, if so, whether this formed a material consideration in the processing of the same.

It is clear that the system of land registration in its current form, being dependent solely upon certification by the applicant's Advocate, is vulnerable both in terms of the validity of titles recorded at the Registry and by the omission of neighbouring interests, as our situation demonstrates. In our case, it appears there is also a procedural issue regarding meetings that do or do not form part of the application process, and how such information ought or ought not to be incorporated in such process if not within the contents of documents lodged at the time of application.

With the aim of preventing any such recurrence, we therefore look forward to your response regarding the two matters that we have outlined above, in particular that any potential objector to a first registration be accordingly and properly notified.

Yours sincerely,

J. F. Craine (Dr.)

cc Mr A Cannan MHK

Isle of Man Government
Reiltys Ellan Vannin

General Registry
Oik-Recortyssee

Chief Registrar
Stephen Cregeen

Dr J.F. Craine
Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Contact: Nigel Lewney
Our ref: NL/MD/14-11-27
Your ref:
Date: 17 December 2014

Dear Dr Craine

Re: Rectification of Title, The Squeen (201301206)

Thank you for your letter dated 17 November 2014. I hope the following will answer the questions you have posed.

An application to register The Squeen ("the application") was lodged with the Land Registry on 8 September 2011. As you will be aware, the lodging Advocate certified by way of section 14.(h) on Form 1 that the applicant (Mr Cleator) was, and had been since the date of acquisition, in *"sole and undisputed possession of the land...."*.

The application included an extract from a survey map on which the boundaries of the land were clearly indicated by the lodging Advocate. Under section 14.(f) on Form 1, the lodging Advocate certified that *"The extent of the land, as far as I am able to ascertain, is as shown on the maps submitted with this application".*

The land being the subject of the application was registered on 26 July 2012. A further application in December 2012 made slight adjustments to the positioning of some of the boundaries, but the changes made did not change the fact that half of the occupation road had been included within the extents of the land parcel that was the subject of registration.

It would appear from our records that we first received notice of your dispute with Mr Cleator following receipt of your undated letter which we received on 20 February 2013. Enquiries have confirmed staff in the Land Registry had no knowledge of any dispute you may have been having or had with Mr Cleator prior to the date your letter was received.

Staff have confirmed that you and/or Mrs Hommet, as data subjects, were not the subject of any meeting concerning the application.

Through events that have followed, it has become evident that when indicating the boundaries of the land to The Squeen the lodging Advocate applied a legal presumption in order to include ownership of one half of the occupation road serving your property. No mention of this was made in the application, and staff have confirmed that the common law presumption applied was never the subject of any meeting concerning the first registration of the land.

The Land Registry staff review all applications submitted, although obviously the staff are not in a position to undertake a full title investigation on an application. It is for this reason that first registration of land must be undertaken by an Advocate, the Registry obtaining the comfort from a professional, qualified person who is required to certify that he or she has carried out a full investigation into the title to the land and that such title is in order. The staff raise defect notices, in accordance with Rule 12 of the Land Registry Rules 2000, if on reviewing an application an error or omission is discovered. In the case of the Squeen, there was nothing to suggest to staff that everything was not in order.

If the law was to be changed so that it requires the staff in the Land Registry to undertake a full title investigation in respect of every application presented to it, the Registry would have to be staffed with legally qualified persons to undertake such work. Although possible, this would naturally come at some considerable cost, which in turn would need to be reflected in the registration fees payable and would increase the time to process applications. As undertakings are given by Advocates on first registration applications it is considered that such a step is not necessary at this time.

The Registrar may undertake an examination of title in certain applications although in practice this relates more to those applications where there is a known contention (for example, where a person applies for possessory title to land). In such a case, as referred to towards the end of your letter, notice of the application may be issued.

Where a dispute about a boundary arises, there are steps that the interested owners of the properties may take in order to protect their estate or interests. One step would be to apply voluntarily for first registration of ownership of the land and the rights and burdens which affect the land. This is the step that Mr Cleator took. Alternatively, an interested party may lodge a caution against first registration in accordance with Section 60 of the Land Registration Act 1982 ("the Act"). This would ensure that notice would then be served on the person who lodged the caution, in accordance with Section 60(2) of the Act, should an application to register the land be received in the Land Registry. Finally either party to the dispute would naturally have a right to approach the High Court for relief.

I hope you find the above information helpful, however if you have any further questions please do not hesitate to contact me.

Yours sincerely,

Nigel Lewney
Manager, Registries Section

cc – Mr A Cannan, MHK
Mr S Cregeen, Chief Registrar

General Registry
Oik-Recortyssee
Chief Registrar
Stephen Cregeen

Chief Registrar's Office
Isle of Man Courts of Justice
Deemsters Walk, Bucks Road
Douglas, Isle of Man
IM1 3AR

Mr Alfred Cannan MHK
House of Keys
Legislative Buildings
Douglas
Isle of Man
IM1 3PW

Our ref:

Your ref: AC/jw

Date: 22nd December 2014

Dear Mr Cannan

Re: Boundary dispute – Mwyllin Squeen

Thank you for your letter dated 8th December 2014 which followed our meeting to discuss the issues raised by your constituents, Dr and Mrs Craine.

My views and those of the Land Registry on the matter have been set out in some detail in the correspondence which I have had both with yourself and directly with your constituents whilst the decision of the Land Commissioner deals in detail with the facts of the case and to the applicable legal principles.

I however believe that no changes are currently required to the legislation or the processes. The dispute between the parties has been fully and properly aired through a transparent judicial process, a decision was reached and the Land Registry duly acted on the decision of the Land Commissioner.

I think that you will agree that disputes over boundaries between the owners of adjoining properties are not uncommon although in the overwhelming majority of cases neighbours are able to live in harmony and to accept the position of the physical boundaries. The difficulty in establishing precisely the position of the legal boundary to a property, being an artificial line dividing two properties, is recognised by the Land Registration Act 1982 which confirms the general boundaries rule.

That said, this application was certainly unusual. In essence, it was rather a dispute about access - the neighbour allegedly denying or obstructing the rightful access of your constituents over the accommodation road. The "boundary change" of The Squeen east of the ford (which was at the core of the dispute) did not affect the boundary of Mywiin Squeen as there is not a common boundary with The Squeen and therefore it is doubtful that your constituents were entitled to notice of such a change. Applying the principle of the Kenyon case, Mr Cleator, as the owner of a property adjoining the accommodation road, is the owner of the lane up to the middle line – whether that is registered in the Land Registry or not. The same case entrenches the principle that the road is subject to the rights of access of the adjoining owners.

The relief which your constituents therefore ultimately sought is the restoration of unimpeded access to their property.

I am therefore not sure what you mean by "potential boundary changes." Clearly, if the title to adjoining properties has been registered in the Land Registry and one owner wishes to effect a "boundary change" to the common boundary, he would be unable to do so without

notice to the other registered owner. If, as happened in this case, an application was made by the one owner to change the boundary without the consent of the other, the Land Registry would give notice to that other: section 65(1) or (2B). In this matter, the Land Registry gave notice to Mr Cleator of the "potential boundary change" comprised in the application of your constituents for the rectification of the title to The Squeen.

As I mentioned at our meeting applying for first registration of their property was one of the actions which your clients could have taken when the dispute arose in 2010. This would then have meant that notice of any "boundary change" would have to have been given to them as the registered owners in much the same way that their application to rectify the title of The Squeen was given to their neighbour.

In the case of unregistered land, that is land, the ownership of which is proved by reference to deeds which have been lodged in the Deeds Registry under the Registration of Deeds Act 1961 where the names of the owners of land is not as readily available, a caution against first registration could have been registered in the Land Registry and a caveat in the Deeds Registry. Upon registration of the caution against first registration of The Squeen (section 60), a note would have been made on the Index Map at the Land Registry and if an application for first registration of The Squeen had been lodged in the Land Registry (as happened in this case) it would not have been determined "until notice has been served on the cautioner to appear and oppose, if he thinks fit, the registration..." Your constituents have now used this protective measure in respect of their own property.

In summary, there are already a number of legislative measures in place which your constituents could have used when the dispute originally arose in 2010 in order to ensure that they received due notice of any "potential boundary change" and accordingly I do not think further action is required to protect the rights of interested parties.

I hope the above is of assistance.

Yours sincerely

Stephen Cregeen
Chief Registrar

Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Your ref: NL/MD/14-11-27

Mr. N. Lewney
Manager, Registries Section
Deemsters Walk
Bucks Road
Douglas
IM1 3AR

Monday 12 January 2015

Dear Mr. Lewney,

Re: Rectification of Title, The Squeen (20131206)

Thank for your letter dated 17th December 2014 and for your assistance in these matters.

With regards to our recent subject access request concerning certain non-disclosures of information, we note the discrepancy between your statement that "the common law presumption applied was never the subject of any meeting concerning the first registration of the land" and the corresponding statement of the certifying advocate, Mr. Humphrey. In section 14 of his "Supplemental Submission and Argument of the Registered Owner" dated 19th June 2014, he stated that "... meetings were held with Land Registry staff to discuss the question of the plans submitted with the application and it is believed that Land Registry staff were aware that the one half of the occupation road included within the application was based on legal presumption".

Theoretical questions were put to Assistant Chief Registrar Mr. Anderson by Land Commissioner Deemster Roberts, as to the use of a legal presumption of this kind in an application for a registration under absolute class of Title. His answers dated 16th April 2014 included the statement "if my Advocate is not able to certify the title in the normal way as I do not have good root of title then my application will be rejected". He continued: "There is no practice in the Land Registry for the registration of land based upon a common law presumption".

Whilst we appreciate the notion of "General Boundaries" to which you refer, or the Conclusiveness of the Register, this case concerned land entirely beyond that of the applicant as shown on the Deed plans. In section 6 of his report dated 15th July 2014 Mr. Anderson stated that "I respectfully submit that the delineation of the boundary of the property on the deed plans ... are clear and unequivocal". Thus the use of a presumption was in any case not required. The erroneous legal theory that appears to have been employed in this registration did not form part of the documentation lodged with the application. The Registry was apparently unaware of the error and unable to detect it. Mr. Anderson's answers show that, had the Registry been aware, the application would have been unsuccessful. As a result of this omission, the title registration was completed despite the error.

This case demonstrates that the statutory provisions open to the Registry with regards to Examination of Title will remain impotent so long as the Registry is dependent upon a system of self-certification by the applicant's advocate. Until such vulnerabilities are addressed it is impossible to detect whether an advocate has, in the interests of their client, made decisions that

are both undisclosed and erroneous in their assumptions. This will ultimately lead to equally erroneous registrations.

~~The provisions under Examination of Title allow the the Registrar to "order the making of all such~~ enquiries, searches, advertisements and service of notices in such manner and by such person as he considers expedient". A system of self-certification denies due process, as the Registry cannot exercise these provisions without the certifying advocate disclosing matters contrary to his client's interests. There is a clear procedural disadvantage to persons desirous of objecting, and only application to the Land Commissioner is offered as a recourse when such errors are eventually brought to the potential objector's attention.

We note your statement regarding the protection offered to owners by entering a caution. Until our meeting with Mr. Anderson on 19th August 2013 we were, like the great majority of residents of the Isle of Man, unaware of the existence of cautions. Following the meeting we proceeded to enter a caution over the extents of our property on the 22nd August 2013. At the time that our caution (number FC00028) was lodged the Land Registry had been in operation for over a decade, yet of all the properties on the Island (including about 36,000 dwellings), it appears that ours was the 28th first registration caution to be issued. We therefore consider it fair to remark after some investigation that cautions are little known to property owners, very rarely exercised and are more often employed not necessarily by owners, but by entities directly concerned with land acquisition.

With regard to our caution FC00028, Mr. Bramhall indicated in his letter of 12th December 2013 that a caution would not be entered for that portion of our property which had already been registered by our neighbour. As this erroneous registration has now been corrected, we would be obliged to receive confirmation that the extents of our caution have accordingly been extended to the boundaries as originally lodged.

It is apparent that, had the advocate not made misstatements in certifying the application or omitted detail of the decisions he had made, a lengthy and expensive application to the Land Commissioner would have been easily averted in the correction of a registration. Again, according to Mr. Anderson's answers, such an application would have originally been denied had the Registry been aware of these matters. Accordingly, the Registry could have also notified ourselves as persons desirous of objecting, had they been aware.

With regard to the above-cited quote from your letter dated 17th December 2014 regarding common law presumption, contrary to Mr. Humphrey's position, it is regrettable that it will be necessary for us to retain this correspondence should there be further proceedings with our neighbour, as this conflict of evidence has come to light only after the conclusion of recent proceedings. For the avoidance of any doubt and in the interest of maintaining transparency we would therefore be obliged if you could reconfirm by letter to our advocate, Mr. Jason Stanley of Kelly Luft Stanley & Ashton, the position of the Land Registry as previously stated: that the Registry was not notified of the theory underlying the registration.

Yours sincerely,

J. F. Craine (Dr.)

cc: Mr. A. Cannan MHK

General Registry
Oik-Recortyssee

Isle of Man Government
Reiltys Ellan Vannin

Chief Registrar
Stephen Cregeen

Dr J.F. Craine
Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Contact: Nigel Lewney
Our ref: NL/MD/15-01-29
Your ref:
Date: 29 January 2015

Dear Dr Craine

Re: Rectification of Title, The Squeen (201301206)

Thank you for your letter dated 12 January 2015.

As requested, I can confirm that the extents of the caution you lodged on the 22 August 2013 have been extended to cover all of the land set out in your original application.

To ensure matters are not taken out of context and/or to avoid any confusion, rather than me writing to your Advocate I am content for you to provide a copy of all correspondence directly to Mr Stanley. This approach will afford Mr Stanley the opportunity to discuss with you, as his client, any other questions or concerns you may have and in turn provide you with appropriate legal advice if required. If Mr Stanley, after viewing all of the correspondence and discussing the same with you, has any further matters that he wishes to raise with me then I would be more than happy to address them.

Yours sincerely,

Nigel Lewney
Manager, Registries Section

cc – Mr A Cannan, MHK
Mr S Cregeen, Chief Registrar

Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Mr. G. E. Anderson
Land Registry
Registries Section
Deemsters Walk
Bucks Road
Douglas
IM1 3AR

Wednesday 25 March 2015

Dear Mr. Anderson,

Caution 201301763

Following the Land Commissioner's ordered rectification of the southern boundary of "The Squeen" (2013-01206), we wrote to the Land Registry asking that the above Caution against First Registration be extended to include all of the land delineated on the plan exhibited to the Affidavit of John Ffynlo Craine, dated 22nd August 2013 (the "Caution Plan").

Line A-B-C-D, the base map features described on the Rectification Map Proposal (2013-01206), are also delineated on the Caution Plan with respect to "Mwyllin Squeen".

Having recently viewed the boundaries recorded on the CLARE system it is noted that the cautioned area, as amended following our request, does not currently extend to the boundaries shown on the Caution Plan.

We therefore respectfully request that the CLARE system be updated to reflect the Caution Plan with particular attention to the coordinates of the base map features referred to, so that the cautioned area of "Mwyllin Squeen" and the registered land of "The Squeen" are made contiguous and exclusive. We are informed by your staff that they are unable to perform this minor rectification without your authority.

Yours sincerely,

J. F. Craine (Dr.)

Department of Economic Development
RheynnLhiasagheyTarmaynagh

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dr J. F. Craine
Mwyllin Squeen
Ballaugh
Isle of Man
IM7 5AH

Contact: C. Bramhall
Our ref: 201301763
Your ref:

Date: 10th April 2015

Dear Dr Craine,

Caution 201301763 – Caution against first registration

Thank you for your letter dated 25th March 2015.

I apologise for the delay in reverting to you but we have had to retrieve the folders from our archives which are situated off site.

You have requested that 'the CLARE system be updated to reflect the Caution Plan with particular attention to the coordinates of the base map features referred to, so that the cautioned area of "Mwyllin Squeen" and the registered land of "The Squeen" are made contiguous and exclusive.'

From a land registry perspective, it may be worth me explaining that cautions against first registration are mapped directly on to the Index Map. In respect of your application, there were a number of areas on the map where there was no boundary feature to follow and as a result we were obliged to digitise a line in an approximate position.

As the application for the caution covers two parcels of land, strictly speaking, we should have asked you to provide two applications because a Caution against First Registration only covers one land parcel. However, in order to assist you, we mapped the caution as if it was only in respect of one land parcel. This is why, when you look at the index map, you will see that we have had to connect the two land parcels being the subject of the caution with a very fine isthmus where they cross the former railway line.

Cautions against first registration cannot be rectified or amended in the same way as a registered title. That is why, when we had to change the extent to exclude part of the land at the rear of River Cottage (now title 22-00286), we had to create a whole new caution from scratch.

That being said, having retrieved the file, we have compared the plan lodged with your application with what has been mapped on the Index Map and it is clear there are a number of areas which we have identified where we were obliged to make a calculated estimate as to the position of the indicated extent as there was no corresponding physical feature to follow on the Index Map nor were co-ordinates provided by you. If you wish to ensure the extents of the caution match the exact area that you require, it will be necessary for you to provide the appropriate mapping co-ordinates to enable the extents to be accurately positioned. We have

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previously refrained from asking you to do this, as we would with any other customer wishing to register a caution, as we are aware that this would normally involve you having to employ the services of an architect or surveyor and therefore incur further expense.

In order to possibly avoid the need for this, I suggest that you meet with us so that we can discuss the extents and other mapping issues and resolve the queries raised in your letter.

If this meets with your approval, I should be grateful if you would arrange a meeting through our Registries Manager, Nigel Lewney or Senior Registration Officer, Chris Bramhall. Nigel can be contacted on 685235, or alternatively Chris can be contacted on 686282.

I know I have previously mentioned it in correspondence, however it would be remiss of me not to mention again that the other option open to you is to consider a voluntary application for first registration of your property, Mwyllin Squeen. This would provide you with the comfort which you require regarding the boundaries of the property, although I appreciate the decision as to whether or not you do this is yours to make. If you have any questions about this procedure, we would be happy to answer them at the proposed meeting.

I will be away on annual leave from 10th to 30th April 2015.

Yours faithfully

Garth Anderson

Assistant Chief Registrar

Legal Officer (Land)

Department of Economic Development
Rheynn Lhiasaghey Tarmaynagh

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Dr JF Craine
Mwyllin Squeen
Station Road
Ballaugh
IM7 5AH

Contact: C. Bramhall
Our ref: FC-00031
Your ref: --

Date: 2015 May 08

Dear Dr Craine

Caution Against First Registration
Premises: Mwyllin Squeen, Station Road, Ballaugh IM7 5AH

I am pleased to say that the first registration caution on the above premises has now been completed and I enclose herewith the Office Copy and plans showing orange hatching for the extent of the area covered by the caution. Please note that the plan also includes another applicant's caution for first registration over an area of land which abuts your own, so not all of the hatching relates to your own caution.

While there remains a small part of the eastern end of the common boundary between your caution and title 22-00244, as discussed this morning, the extent protected by your caution has now been extended so that it closes the gap previously visible between the caution and the title.

Yours sincerely

Chris Bramhall
Senior Registration Officer

enc.

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Appendix 4: Letter dated 2nd December 2015 from Mrs Jacqueline Canipa

Jacqueline Canipa

02.12.2015

Jonathan King
Deputy Clerk of Tynwald
Legislative Buildings
Douglas
IM1 3PW

Dear Jonathan King

Registration of Property

Thank you for your letter dated 24th November 2015.

In reply I would like to confirm that I fully agree and support the recommendations and points put forward in the Petition for Redress presented at St Johns on 6th July 2015 by John Flynlo Craine and Annie Andree Jeannine Hommet.

I have been in a similar situation for a period of five years (5) causing me intolerable stress and considerable expense.

I live in an isolated location and my health is deteriorating making marketing my property a priority to enable me to move closer to the community of Peel.

However, I am unable to market my property due to the ongoing situation I find myself in.

I sincerely hope that the Land Registration Act 1982 and/or the Land Registration Rules 2000 be amended for all the reasons given thus preventing situations such as these from happening again.

Furthermore it would eliminate the considerable financial burden of Land Fees one is forced to pay to hold onto property/Land that rightfully belongs to you and stated quite clearly to be in your ownership on deeds and confirmed by a survey carried out by a professional firm of surveyors.

With thanks.

Jacqueline Canipa

Appendix 5: Email dated 31st January 2016 from Dr J F Craine

From:
Sent: 31 January 2016 21:31:01
To: Jonathan King; Mr Garth Anderson
Subject: Select Committee - Oral hearing
Importance: Normal

Dear Mr King,

We would like to express our thanks to the Committee for their invitation to provide evidence at the oral hearing, and also to Messrs Anderson, Clague and Lewney for their contributions.

We hope that our evidence has been of use to the Committee and that the Registry will embrace this or any opportunity to introduce proactive protection against further errors.

Another matter that we feel should be considered is that we were refused sight of the application that had led to the first registration. Only later, when the Land Commissioner permitted sight of this application, did it become apparent that the application had been made on the basis of "good root of title" and not a legal presumption. This came as little surprise as the actions of our neighbour had shown very clearly that he sought to take possession of land. We therefore consider Mr. Humphrey's use of a legal presumption to be an effort to rationalise the registration and in complete contradiction to his client's actions – both before and after the determination.

Again with regards to our particular case, we appreciate that Registry staff may not be in full possession of facts as they have developed since the Land Commissioner's determination in 2014. We are somewhat concerned that Mr Anderson implied at the hearing that the dispute was essentially about access. With respect, the matter of our access was simply a consequence of Mr. Cleator attempting to take possession of land, and in this regard we agree with Mr. Anderson's statement in his report to the Land Commissioner dated 15th July 2014 that the boundaries to The Squeen are "clear and unequivocal".

In our application for rectification we were concerned solely with rectifying Mr Cleator's boundary back to its conveyed position. We did not set out to prove ownership of our property, which shares a boundary with Mr Cleator's property extending not just along AB and BC but also part of CD. Neither did we contest the line of other parts of Mr Cleator's registered boundary where its position differs from that shown in earlier conveyance plans.

Finally and without wishing to overburden the committee with evidence, we attach a copy of the letter from the Directorate of Planning and Building Control to which I referred during the hearing. Note in the highlighted section that the burden of advertising the application lies with the applicant.

Please do not hesitate to contact us again if you feel that we can offer any further contribution to assist your deliberations on this matter.

Regards

Ffynlo Craine

cc: Mr G Anderson, Land Registry

Isle of Man Government

Department of Environment, Food and Agriculture

Rheynn Chymmyltaght, Bee as Eirinys

email:
Tel:
Fax:

Director of Planning & Building Control
M Gallagher, M.R.T.P.I.

Our Ref: EJC/MC

19th January 2016

Dear Sir/Madam

RE: Planning and Building Control Updates

As you know, the Planning and Building Control Directorate write to you from time to time as a regular agent and and/or customer of this office, in order to give you updates on current issues.

In this instance there are three matters we would like to bring to your attention. They relate to the imminent introduction of the Freedom of Information Act 2015 and its impact on any pre-application dialogue, the importance of the display of site notices and changes to the Building Control team.

These matters are referred to as follows overleaf. If you have any queries in relation to these, please do not hesitate to contact me.

Yours faithfully

Miss E J Callow
Head of Technical support and customer Services

Enc.

Freedom of Information Act 2015 (FOI)

From February 1st 2016 the Department of Food Agriculture and the Environment, along with the Cabinet Office, will both be subject to the Freedom of Information Act 2015 and open to receive requests under that legislation. FOI relates to any information held by the Department since the 11th October 2011. However, any request received for information before that date would be treated as if it was a request made under the Code of Practice on Access to Government Information so may also be released.

Although every request must be treated on its own merits it may be useful to set out at this point those areas where information is very unlikely to be released following a request and those areas where information may be released subject to the details and circumstances of the particular request.

Planning Applications

Planning applications will be exempt from the release of information following a request as the Department already makes these documents available to the public to view, as required by the Town and Country Planning Act 1999. This is allowed for under Part 3 of the FOI Act as the information is taken to be reasonably accessible if it is available on the internet or from any other reasonably accessible source and/or the public authority that holds it, or any other person, is obliged by or under any enactment to supply it to members of the public on request or payment of a fee in the case of a planning search.

Pre-application Advice

Under the Freedom of Information Act, it is possible that we could be asked to provide information regarding enquiries for pre-application advice and provide copies of any correspondence or advice we have given. Depending on the details and circumstances of the particular request we may be able to withhold some or all of this information but we may also have to release it. Withholding of any information may only be possible if its disclosure could prejudice commercial interests, inhibit the provision of advice or exchange of views during the planning process or could prejudice the effective conduct of public affairs, or any other exemption considered relevant.

Those seeking pre-application advice should provide a covering letter that sets out the reasons why, and for how long, any information relating to the case needs to remain confidential. It will be for us to decide whether information can be treated as exempt from disclosure. Generally, notes and correspondence relating to pre-application discussions will not be treated as confidential once a planning application has been submitted and the case is in the public domain. The personal information you have provided will only be used to enable us to process your request and will at all times be treated in accordance with the Data Protection Act 2002.

Please notify the planning office if you feel any previous pre application discussion since 11th October 2011 remains commercially sensitive. Please use the form at the end of the notification if you wish to make a retrospective claim for confidentiality. If nothing is received, the Department will assume that you are happy for it to be released should the occasion arise.

Encouraging pre-application discussions

We actively encourage pre-application discussions for all development proposals before submitting for formal consideration. We believe the benefits of such discussions are:

- They can help applicants understand how we will apply policies and guidance to their proposal.

- They can improve the quality of planning application submissions by identifying at an early stage where we will need specialist input.
- They could help applications be registered more speedily and can improve the likelihood of a successful outcome.
- They can save an applicant's time and money by identifying if a proposal is unacceptable in principle.
- We want to provide a positive climate for pre-application discussions, offering impartial and professional advice. We will allocate your enquiry to a planning officer who will co-ordinate comments from internal colleagues, and provide you with feedback.

Erection of Planning Application Site Notices

May I remind all agents of the importance of the timely display of a planning application site notice. It is a legal requirement that applicants must clearly display the site notice (and ensure its remains on display for the required period of time).

An instance has recently occurred where the late erection of a planning application site notice resulted in a decision being made before neighbours had the opportunity to comment. That decision is currently the subject of an appeal.

The Town and Country Planning (Development Procedure) (No.2) Order 2013 requires that:

"(3) No later than the publication date the Department must —

(a) send a copy of the notice to the applicant requiring the applicant to —

(i) send a copy of the notice to every owner and occupier (who is known to the applicant) of the land that is the subject of the application or any part of it; and

(ii) display a copy of the notice by fixing it firmly to a building or other structure or object on or near the land that is the subject of the application so that it is easily visible by members of the public from a public highway and is unlikely to become obscured or concealed, and to ensure that it remains so displayed for a period of not less than 21 days;

A site notice not properly displayed or not displayed for the correct amount of time, could undermine the validity of a planning approval if challenged.

To ensure this process is respected I have reminded planning case officers to check (and photograph) whether site notices are being displayed when they are undertaking their site visit, that site notices are present and appropriately placed. Please keep this in mind and your clients are informed of this obligation.

Building Control Team

You may be aware that Richard Barks has recently retired as Building Control Officer. It is with regret that the Department has to announce that now after over 22 year's service, our Head of Building Control & Standards, Siamack Rowaichi is also leaving the Department, albeit for a senior position across the water.

Aside from the appointment of Mr Richard Baker to a permanent Building Control position, both Officers will be sorely missed. It would be appreciated that until any replacement building control officers can be appointed, any building regulations applications, or requests for site inspections are made with the current availability of staff in mind.
Your patience and that of your clients in this regard would be appreciated.

Department of Food Agriculture and the Environment

CONFIDENTIALITY request regarding the introduction of the Freedom of Information Act 2015 – Application for information provided to be regarded as confidential

Reference for the information (or element of information) you regard as confidential	**Marking - either 'in confidence' or 'commercially sensitive'**	**Why you consider element of information to be confidential**

Signature: .....

Name: .....

For and on behalf of: .....

Date: .....

Appendix 6: Submission dated 18th January 2016 from Mr Garth Anderson, Assistant Chief Registrar and Legal Officer (Land)

Department of Economic Development
Rheynn Lhiasaghey Tarmaynagh

Isle of Man Government
Reiltys Ellan Vannin

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Mr Jonathan King
Clerk of Tynwald's Office
Legislative Buildings
Finch Road
Douglas
Isle of Man
IM1 3PW

Our ref: GA
Your ref: Jonathan King

Date: 18th January 2016

Dear Mr King

Select Committee of Tynwald – Petition for Redress on registration of land

As requested we enclose three folders which contain the written answers to the seven questions which were posed by the Select Committee together with the enclosures which are referred to in the submissions.

Should the Committee have any further questions regarding matters raised by the Petition which they may wish to raise at the hearing, please would you let us know to enable us to prepare properly and thereby fully assist the Committee.

~~Yours~~ sincerely

G. Anderson
Assistant Chief Registrar
Legal Officer (Land)

Enc.

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SELECT COMMITTEE FOR TYNWALD

PETITION FOR REDRESS: LAND REGISTRATION

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Form 1 – Application for First Registration	**TAB PQ**

Question 1

"Where were the boundaries of the petitioners' property before and after the registration which was subsequently found to be defective"

Answer:

1. It is not possible to say with certainty what the boundaries of the petitioners' property were before and after the registration of the title to The Squeen. This will be evident from what is set out hereunder.

2. The property of the petitioners known as Mwyllin Squeen is not registered in the Land Registry nor have the petitioners applied for the first registration of their property in terms of the Land Registration Act 1982 ('the LRA 1982') and the Land Registry Rules 2000 ('the LRR 2000').

3. Proof of the ownership of Mwyllin Squeen and the boundaries of that property will be found by referring to the deeds, documents and plans recorded in the Deeds Registry under the Registration of Deeds Act 1961 ('the RDA 1961'). The petitioners will be in possession of an Abstract of Title relating to their property which will contain copies of all of the documents relating to the property which are recorded in the Deeds Registry.

4. Until such time as the land has been registered in the Land Registry, after certification of the title by an advocate, evidence of the title and the boundaries of unregistered land remain in the Deeds Registry.

5. For the benefit of the Committee, the two properties which are the subject matter of the ongoing dispute are the following:

<u>THE SQUEEN</u>

6. The Squeen is the name of land which has been registered in the Land Registry.

7. The application for rectification ('the application') dated 11th June 2013 made by the petitioners to the Land Commissioner in terms of section 65(1) of the LRA 1982 related to the rectification of the title to The Squeen registered under number 22-00244 ('The Squeen') in the name of Mr Edwin Keith Cleator ('Mr Cleator').

8. The extent of the land and the position of the boundaries of The Squeen is easily ascertainable by reference to the Office Copy and the Filed Plan of title number 22-00244 issued by the Land Registry. The boundaries of The Squeen:

8.1 before the rectification are shown in Edition 1 of the Office Copy: **TAB H** and

8.2 after the rectification are shown in Edition 3 of the Office Copy: **TAB J.** The boundaries on the Filed Plan are as rectified in accordance with paragraphs 106 and 107 of the Decision of the Land Commissioner, Her Honour Deemster S Roberts ('the Land Commissioner') dated 12th August 2014 ('the Decision'). A copy of the Decision is attached as **TAB L**.

9. To summarise, the property belonging to Mr Cleator – The Squeen – is registered in the Land Registry. This is part of what is sometimes known as 'registered conveyancing'

MWYLLIN SQUEEN

10. The property belonging to the petitioners known as Mwyllin Squeen ('Mwyllin Squeen') is not registered in the Land Registry.

11. Proof of the ownership of the petitioners' property will therefore have to be obtained by an investigation into the title of the petitioners in their property by reference to deeds, documents and plans recorded in the Deeds Registry. This process of the deduction of title is a part of 'unregistered conveyancing'.

12. An indication of the boundaries which the petitioners claim or allege are comprised in the title to Mwyllin Squeen may be obtained by reference to the caution against first registration which they caused to be registered after the first registration of The Squeen.

13. The Land Registry is therefore not in a position to state conclusively where the boundaries of the petitioners' property were before and after the rectification of the title to The Squeen.

COMMENTS OF THE LAND COMMISSIONER IN THE DECISION

14. In attempting to determine the position of the boundaries of Mwyllin Squeen before and after the rectification, it will be instructive for the Committee to refer to the Decision of the Land Commissioner which deals in detail with, inter alia, the dispute about the position of the boundaries.

15. Numerous statements have been made that the essence of the dispute between the parties is a boundary dispute. In our view it is not. It is our view that this is a dispute about access – the interference with the access to Mwyllin Squeen along the occupation road and the attempt to open a new vehicular access point to The Squeen at the river ford.

16. Given the size of both of the properties – The Squeen and Mwyllin Squeen – and their extensive boundaries, it is only a short stretch of the boundary of the petitioners which was affected by the rectification. As will appear from the Decision, the two properties are separated by the property known as "Sadler's Flatt" or the "Flatt" which is owned by a third party and as such the boundary of The Squeen and Mwyllin Squeen meets, and is a common or contiguous boundary for a short stretch, at the Ford which is where the accommodation or occupation road crosses the river (which the Land Commissioner refers to as the 'Ford Boundary'). This is the only part of the boundary about which there appears to be any dispute.

17. By way of illustration, I refer the Committee to the first plan annexed to the Decision which is referred to as the "Rectification Map Proposal". The boundary which was rectified lies between the points marked A and D.

18. The Land Commissioner in her Decision distinguishes between the three sections of the Ford Boundary:

18.1 **Section A to B (land west of the ford)**

This is the only section of the Ford Boundary which is or, in fact may be, a common boundary between the two properties known as The Squeen and Mwyllin Squeen. It is a section which is approximately seven (7) metres long. It is also the only section of the boundary which, although there were minor differences in the boundary line which may have been covered by the General Boundaries Rule, did not contribute towards the dispute between the parties about access. The dispute about access lies between the points B to D where there is not a common boundary between The Squeen and Mwyllin Squeen.

The section between A and B can therefore be said to be the only part of the boundary of Mwyllin Squeen which has been affected by the Petition for Redress:

18.1.1 the petitioners have not registered their land in the Land Registry and therefore we do not know whether they own the land adjoining this section of the boundary or not. The Land Commissioner states at paragraph 58 (page 45):

"From the evidence before me there is an argument that Title to the Road west of the River may (and I put it no stronger) form part of the Title of Mwyllin Squeen. However, I am not prepared to be more definitive and neither is it necessary that I am. Ms Llewellyn may have a view on the matter".

Ms Llewellyn is, we understand, the owner of the field known as the Flatt

18.1.2 it is therefore not certain that any of the boundaries of The Squeen and Mwylllin Squeen are contiguous or common and as such it may be argued that the boundary of the petitioners has not been affected at all

18.1.3 as stated above, the dispute therefore is essentially about the unimpeded and unrestricted rights of access over the occupation road to Mwyllin Squeen

18.1.4 the rectification of the boundary between the points A and B did not affect the question of access which was at the core of the dispute between the parties

18.1.5 the marginal discrepancy in the line of this section of the boundary may have been covered by the General Boundaries Rule

18.1.6 the differences in the boundary can be ascribed to the discrepancy between the Ordinance Survey Map and the more accurate surveyed plan prepared by WGS Limited which was used for the first registration of The Squeen.

18.2 **Section B to C (the river ford)**

The section between points B and C represents the river ford which is a section of the road which passes over the river over which the petitioners pass in order to get access to their property. If the petitioners own the river ford the boundary of Mwyllin Squeen would be contiguous with the boundary of The Squeen between the points B to C and they would be affected by a boundary change.

However, the Land Commissioner held at paragraph 61 on page 45:

"I find no title to the Road as it travels over the River (the Ford in fact) has been established".

As such the section of the boundary of The Squeen between points B and C is not a common boundary with the boundary of Mwyllin Squeen and therefore the petitioners' property or their boundary between these two points was not affected by the rectification. What was affected was their access over the river ford.

18.3 **Section C to D (Land east of the ford)**

18.3.1 The section between points C and D represent a section of the occupation road which lies to the east of the river ford.

18.3.2 The parties were in agreement that this was an occupation or accommodation road. The Land Commissioner held at paragraph 14 on page 40 of her Decision that:

"I find that the road is an occupation road which runs from Station Road to the eastern boundary of the River".

18.3.3 The petitioners do not claim ownership of the road to the east of the river. As the petitioners do not claim ownership of the land adjoining the points between C and D, the section of the boundary of The Squeen between points C and D is not a common boundary with the boundary of Mwyllin Squeen and therefore there is not a boundary of the petitioners which is affected by the rectification.

18.3.4 Again, the interest of the petitioners that is affected is a right of access over the occupation road. The right of access is not disputed by Mr Cleator.

SUMMARY

19. To try and answer the question of the Committee:

19.1 at best for the petitioners, the only section of the boundary of Mwyllin Squeen which was affected by the rectification was that section between points A to B. As stated above, the rectification of the section between points A to B was minor and in any event proof of ownership of the land to the west of the ford has still to be proved and registered, the Land Commissioner not being prepared to find that the petitioners owned the land adjoining this section; and

19.2 at worst for the petitioners, if it is shown that they do not own the land to the west of the ford and the ford itself, no section of the boundary of Mwyllin Squeen was affected by the rectification; and

19.3 the only interest that was affected was access and yet the Petition for Redress seeks a wholesale review of the procedure in an application for first registration of land as it relates to boundaries.

ACCESS

20. The right of access over the occupation road, across the river ford and on to the land to the west of the ford is not in dispute. This was recognised by the Land Commissioner and is not disputed by Mr Cleator, the owner of The Squeen.

21. As will appear from the Decision, the Land Commissioner found that the road is an occupation road and as such the principles which were upheld by His Honour Deemster Cain in the Manx case of *IN RE KENYON 1996-98 MLR :* **TAB M** are applicable to this case. To summarise:

21.1 an occupation or accommodation road is *"a road over which there is no public right of way, but over which all the owners of the lands abutting upon the road have rights of way for all purposes in order to gain access to and from the highway from and to their respective properties"* (page 129 at lines 17 to 22); and

21.2 His Honour then turned to the ownership of the occupation road at pages 131 – line 40 - to 132:

> "*I now refer again to the judgment of Deemster Farrant in Quine v. Mitchell (3). He said:*
>
> *'In the absence of evidence of title it seems I must fall back on the common law rule that in the case of a private way or occupation road between two properties, as in the case of a highway, the presumption arises that the soil of the road usque ad medium filium viae belongs to the owner of the adjoining land, provided that there be no other evidence of ownership to rebut such presumption (Holmes v. Bellingham (1859), 29 L.J.C.P. 132, per Cockburn, C.J.)."*

22. It was therefore the attempt by Mr Cleator to construct a ramp and driveway and a new access point to his property between the points marked B to D, of which area he is presumed to be the owner by applying the common law presumption referred to in the Kenyon case, and which as shown above do not affect the boundary of Mwyllin Squeen, which gave rise to the dispute.

23. In our view, therefore, it is not a boundary dispute requiring wholesale changes to primary and secondary legislation but rather an argument about rights of access to which the petitioners are in any event entitled in law and which is not disputed by any party.

Question 2

"How long did it take to have the registration corrected and how much did it cost?"

Answer:

HOW LONG DID IT TAKE?

1. The application to the Land Commissioner under the provisions of Section 65(1) of the LRA 1982 and Rule 81 of the LRR 2000 for the rectification of title number 22-00244 issued in respect of the property known as 'The Squeen' was presented to the Land Registry on the 14th June 2013. Over the intervening period of fourteen (14) months until the date upon which the Decision of the Land Commissioner, Her Honour Deemster Roberts was delivered on the 12th August 2014, a full judicial process was followed in accordance with the directions given by the Land Commissioner.

2. The Committee is asked to bear in mind this was a judicial process. The process for appeals and references to the Land Commissioner is dealt with in Sections 6 to 9 of the LRA 1982 and in Part 11: Proceedings in the Land Registry, Part 12: Proceedings before Land Commissioner and Part 13: Costs.

3. Once the Decision of the Land Commissioner was delivered, and the 42 day period allowed for an appeal against the decision had lapsed, the Land Registry rectified the title on the 28th October 2014.

4. The judicial process referred to above is clearly set out in the Decision of the Land Commissioner. The timetable is summarised below:

4.1 14 June 2013 – application for rectification presented to the Land Registry

4.2 24 June 2013 – Land Commissioner met with Mr Anderson, Assistant Chief Registrar, to receive the application and directed Mr Anderson to (a) meet with all parties in order to clarify the issues and (b) subsequently provide a report on the issues to her

4.3 the meeting referred to in 4.2 took place on the 19th August 2013. The petitioners and their son, Mr Euan Craine and Mr Cleator were present together with their legal representatives

4.4 3 October 2013 – Mr Anderson provided his report as directed

4.5 14 October 2013 – Land Commissioner wrote to all parties proposing the procedure that should be adopted

4.6 13 December 2013 – after taking all responses to her letter dated the 14th October 2013 into consideration, the Land Commissioner suggested the following procedure and timetable:

4.6.1 Mr Cleator provide his response to the Application for Rectification no later than the 17th January 2014;

4.6.2 the Applicants provide a response to Mr Cleator's aforesaid response by no later than the 17th February 2014;

4.6.3 Mr Cleator to submit a final statement no later than the 18th March 2014;

4.6.4 the Advocates for the parties to provide Skeleton Arguments by no later than the 31st March 2014;

4.6.5 a site visit to take place in the middle of April 2014

4.7 in the absence of the Land Commissioner, a variation to the above timetable was ordered (by agreement and consent) by His Honour Deemster Montgomerie whereby extensions of time were granted to the parties

4.8 15 April 2014 - the Site Visit took place. At the Site Meeting the Land Commissioner indicated she intended to pose further questions to Mr Anderson and the parties agreed to that course, and to it taking place in their absence, on the basis that the Land Commissioner would provide them with a report of the outcome

4.9 the Land Commissioner provided a report of her further meeting with Mr Anderson

4.10 the parties were granted permission to submit further written comments. Both parties took the opportunity to submit such comments and submissions by the 28th June 2014, the final date agreed upon.

4.11 the Land Commissioner invited Mr Anderson to comment on their further submissions and he submitted further submissions and argument on the 15th July 2014; and

4.12 12th August 2014 - the Decision of the Land Commissioner was delivered.

HOW MUCH DID IT COST?

5. The fee payable to the Land Registry for the application for the rectification of the register was £90.00. The fee, prescribed by Item 16 of *Part 1 – Fixed fees* of Schedule 1 of the Land Registry Fees Order 2010 in force at that time, was approved by Tynwald on the 16th November 2010.

6. Once ordered, the administration involved in the rectification of the title was minimal and the process was a matter of minutes rather than hours.

7. No record has been made or kept of the time that has been spent by various members of staff in the General Registry dealing with the multitude of correspondence about or related to this matter since 2013 to date.

Question 3

"When land is first registered, what arrangements are in place to alert the owners of adjoining land?"

Answer:

GENERAL RULE

1. There is no procedure in place under the legislation which requires the Land Registry to automatically give notice of an application for first registration in all cases 'to alert the owners of adjoining land'.

2.1 There are a limited number of cases where notice of an application for first registration is given. In the case of an application for the first registration of a freehold estate in land with a possessory class of title – Section 16 of the LRA 1982 – where the applicant claims that he or she has acquired the land by adverse possession under Section 16 of the Limitation Act, that is, the applicant has been in possession of the land for a period in excess of twenty one (21) years, the Registrar will require that notice of the pending application be given.

2.2 The reason for the giving of notice is obvious. The applicant claims a title to land which belongs to someone else and that is the landowner. The landowner is an interested party whose title may be affected by the application. If the name and address of the owner is known notice will be given directly to the owner. If the identity of the owner is not known, notice of the application will be published in the local newspapers.

2.3 This case is different to the present matter. The dispute is about the dispossession of the ownership of all of the land and not about boundaries.

'WHAT ARRANGEMENTS ARE IN PLACE?'

3. Although there is no general requirement of notice on first registration, the LRA 1982 and the LRR 2000 (Rules 16 to 26) do have 'arrangements' in place to alert the owner of adjoining land of an application for first registration in those isolated cases where an aggrieved party may wish to protect himself or herself against a threat of interference or a dealing with an interest in their property. These arrangements will alert the owner of the adjoining land of the application for first registration.

4. This requires action on the part of the concerned or interested party to protect his or her interests.

5. The 'arrangements' that are in place in the legislation depend upon whether the 'adjoining land' (Mwyllin Squeen) is registered land (Land Registry) or unregistered land (Deeds Registry).

ADJOINING LAND IS UNREGISTERED

6.1 If the adjoining land is unregistered the provisions of ***Section 60: Cautions against first registration*** of the LRA 1982 should be utilised.

The section provides that:

'any person claiming such an interest in unregistered land as entitles him to object to a dealing therewith being made without his consent.....if he claims under a document registered under the 1961 Act but satisfies the Registrar that such registration does not adequately protect that person's interest, ...lodge a caution with the Registrar to the effect that the cautioner is entitled to notice of any application that may be made for registration of an owner of land".

6.2 Therefore if the owner of land is concerned that his neighbour may be attempting to deal with his land or an interest in his land, he may apply to the Land Registry to register a caution in terms of Section 60.

6.3 The cost of registering the caution is £75.00 which is payable in terms of Item 7 of Part 1 – Registration and Related Matters of the Schedule to the Land Registration (Fees) Order 2013 which was approved by Tynwald on 21st May 2013.

6.4 On receipt of the application, the Land Registry would enter the caution on the Land Registry's computerised Index Map and shade or hatch the whole of the property of the 'adjoining owner' (the cautioner) as being subject to the caution. If the neighbour lodged an application for first registration of his property, the registration officer would take note of the fact that the boundaries of the neighbour's property encroached upon the boundaries of the adjoining property of the cautioner as delineated on the Index Map. The Land Registry would then give notice to the cautioner in terms of Section 60(2):

"....application for first registration shall not be determined until notice has been served on the cautioner to appear and oppose, if he thinks fit, the registration..."

7.1 This may be illustrated by using the example of the present case.

7.2 If we are to assume that 'the owners of the adjoining land' are the petitioners in this case and that there is a section of the boundary of Mwyllin Squeen which is common or contiguous with that of The Squeen, which as appears from the answer to Question 1 may be the section of the boundary between points A to B referred to in the Rectification Map Proposal annexed to the Decision of the Land Commissioner, or they were concerned about their access over the occupation road, the petitioners could have registered a caution against first registration over their property in terms of section 60.

7.3 On receipt of the application for first registration of The Squeen, the Land Registry would have noted that the boundary as shown on the survey map extract lodged by Mr Cleator under Rule 17(1)(a), encroached upon the boundary of Mwyllin Squeen as delineated by the caution against first registration.

7.4 The Land Registry would then have given notice to the petitioners of the application for first registration of The Squeen in terms of Section 60(2).

7.5 The petitioners would then have had to decide whether to oppose the application of Mr Cleator.

7.6 The petitioners did not avail themselves of this procedure in order 'to alert' them of an application.

7.7 The dispute arose, according to the evidence in the Decision of the Land Commissioner, on 15th June 2010 "after Mr Cleator began erecting a wall ...some metres south of the one previously demolished" (page 8 of the Decision) whilst the application for first registration of The Squeen was lodged in the Land Registry on 8th September 2011 and registered on the 26th July 2012 (page 2 of the Decision). The petitioners had a period of over a year to lodge the application for the registration of the caution against first registration but failed to do so.

7.8 It is to be noted that the petitioners have now registered a caution against first registration over Mwyllin Squeen. The application was lodged on 22nd August 2013

ADJOINING LAND IS REGISTERED

8. Arrangements are also in place if the land is registered. Had the petitioners voluntarily first registered their property, they would have received notice of the application for first registration of The Squeen.

9. By way of explanation, if the 'adjoining land' is registered, an application for first registration lodged by the neighbour in which the boundaries of the neighbouring land shown on the survey map extract encroach on the registered 'adjoining land', the application could not have been registered. The boundaries of adjoining registered land cannot overlap. Notice of this encroachment would be given to the applicant and if he did not agree to alter the boundary line to join the registered land, notice would then be given to the owner of the adjoining registered land. A boundary dispute may then arise if the parties are not able to settle.

10. The point is that had the petitioners registered Mwyllin Squeen, an application for first registration of The Squeen which showed boundaries encroaching upon the registered boundary of Mwyllin Squeen would have precipitated notice being given to the petitioners who would have then been 'alerted' to the action taken by Mr Cleator.

11. The Land Registry has been in operation since 1ST May 2002. It has therefore been open to the petitioners, who '...returned to live at Mwyllin Squeen in 1997...' (page 11 of the Decision), to apply for the voluntary first registration of Mwyllin Squeen at any time after 1st May 2002. An application for first registration of The Squeen which encroached upon or conflicted with the boundaries of the registered land of Mwyllin Squeen could not have proceeded to registration without notice first being given to the petitioners.

12. To date the petitioners have not applied for first registration of Mwylin Squeen.

13. The procedure for applications for first registration is dealt with in *Part 4: First Registration and examination of title* in the LRR 2000. Applications for first registration may either be:

13.1 voluntary

The owner of the legal estate in land which is unregistered, that is, the title is proved by reference to deeds recorded in the Deeds Registry in terms of the RDA 1961, may apply at any time for the first registration of the land in the Land Registry; or

13.2 compulsory

Schedule 2 of the LRA 1982 provides for the compulsory first registration of the land within a period of three (3) months from the date of a conveyance on sale of a freehold estate or of the date of grant of a lease or the assignment on sale of a lease where the term granted or the residue of the term granted exceeds twenty one (21) years.

14. Mr Cleator applied for the voluntary first registration of his land – The Squeen - on 8th September 2011. The petitioners have not applied for the voluntary first registration of their land – Mwyllin Squeen – and it therefore remains unregistered land.

15. It would appear that the voluntary application for registration of The Squeen was precipitated by the dispute. The petitioners had the same opportunity to first register their property and to ensure that the boundaries were as they claimed.

16. The majority of the applications which the Land Registry receives are compulsory applications, that is, the requirement to apply for first registration is 'triggered' by the events referred to in Schedule 2 above. A general requirement that notice be given of these applications would therefore affect the vast majority of applications for first registration in the Land Registry.

DUE DILIGENCE ENQUIRIES

17. By the time an application for first registration is made, the applicant has already acquired title to the legal estate in the land and the application is therefore made *ex post facto,* after completion of the transaction.

18. It should be noted by the Committee that there are other opportunities when disputes and issues about boundaries should come to light and which would 'alert' the interested or affected parties. The conveyancing process itself should bring to light any issues about a boundary or a dispute with a neighbour and which will give the prospective purchaser early notice of any issues. The purchaser may then elect to withdraw from – before exchange of contracts – or to continue with the transaction.

19. In general the steps which are followed in the conveyancing process are:

19.1 the appointment of an estate agent. The vendor will give a mandate to the agent to place the property on the open market and to sell the property. The vendor will give the agent full instructions about the quality and attributes of the property

19.2 a prospective purchaser will make an offer to purchase the property upon certain terms and conditions and the vendor may accept the offer

19.3 the parties will appoint advocates to act on their behalves to safeguard their interests

19.4 the vendor will hand his advocate all of the deeds and documents (the Abstract of title) relating to the title to the property and any other documents relating to the intrinsic qualities of the property itself, such as rates demands, boiler service reports, search reports etc

19.5 the vendor will send to the advocate acting for the purchaser a draft Agreement for Sale, the Abstract of title and a survey map extract showing the boundaries of the property

19.6 the purchaser will send a document known as Enquiries before Contract to the vendor: **Appendix N**. The Form has been drafted in accordance with the Isle of Man Law Society Conveyancing Committee's recommendations and has the approval of the Council of the Society. It is to be noted that the first two enquiries relate to 'boundaries' and to 'disputes'

19.7 the purchaser will commence his 'due diligence' enquiries in respect of the following main issues:

19.7.1 the title to the property. The conveyancer acting for the purchaser will need to carefully examine the Abstract of Title to ensure that the vendor has a good and marketable title to the subject property and that there are no encumbrances which are not disclosed in the Abstract. This will involve conducting searches at the Deeds Registry and the Land Registry when the title and deed plans of the property will be examined;

19.7.2 a prudent conveyancer should conduct a site inspection of the property to ensure that the property and the boundaries are as stated by the vendor and that there are not present other matters which may adversely affect the property, such as sitting tenants or the non-disclosure of a right of way across the garden which have not been disclosed

19.7.3 the intrinsic qualities of the property and the building thereon. This will require searches being made to the Highways Department, Planning Department, Manx Utilities regarding services, Manx Telecom, rates department etc. These enquiries relate to the use of and services to the property and not to its legal title

19.8 the vendor must reply to all of the Enquiries before Contract and in doing so will disclose the relevant information about the 'boundaries' and 'disputes'

19.9 if the purchaser is satisfied with the results of the due diligence enquiries the parties may agree to proceed with the sale and purchase

19.10 a formal and binding contract of sale and purchase comes into being when the vendor and the purchaser exchange Agreements for Sale and the purchaser pays the deposit

19.11 the sale is only finalised when completion takes place at which time the purchaser pays the balance of the purchase price and the vendor hands over the keys to the property and the deed of conveyance (freehold) or deed of assignment (leasehold) signed by the vendor to the purchaser

19.12 as referred to above the purchaser must then apply to the Land Registry for the first registration of the property within three months of the date of completion.

20. The conveyancing process generally takes between six weeks to two months to complete.

21. The conveyancing process is an intensive and sometimes lengthy procedure when all and any concerns about the property should be raised by the purchaser and answered by the vendor. The conveyancing process provides numerous opportunities for issues to be raised about the boundary of a property or a dispute about the boundary and satisfactorily dealt with prior to completion of the transaction. It is the appropriate process, time and forum for the issues raised by the petitioners to be dealt with in the majority of cases.

22. In cases where disputes arise a considerable time after the parties purchased their properties, as in this case, other arrangements are in place to 'alert the owners of adjoining land' – voluntary first registration and a caution against first registration.

23. The dispute between the petitioners and Mr Cleator began on the 15th June 2010 as will appear, inter alia, from page 8 of the Decision. In order to protect their interest in their unregistered land – Mwyllin Squeen – it was open to the petitioners to either:

23.1 apply for the registration of a caution against first registration at the Land Registry where the boundaries of Mwyllin Squeen would have been delineated on the Index Map base at the Land Registry. When Mr Cleator applied for first registration of The Squeen in September 2011, the boundaries of the land claimed by Mr Cleator would have encroached upon the land comprising Mwyllin Squeen. This would have triggered notice being given to the petitioners and resulted in hearing in the Land Registry under *Part 11: Proceedings in the Land Registry* of the LRR 2000 or the reference of the matter to the Land Commissioner under section 6(2) of the LRA 1982 and Rule 119(3)(b) of the LRR 2000; or

23.2 apply for the first registration of Mwyllin Squeen in the Land Registry. The title of the petitioners to their property would then have been conclusive as provided in section 11(1) of the LRA 1982.

24. The adoption by the petitioners of either of the above two procedures in terms of existing legislation would have brought an early conclusion to the dispute about the boundary.

CONCLUSION

25. As will appear from the answers to the other questions, the general requirement of notice or 'arrangements' being in place to alert the owners of adjoining land in all cases of application for first registration has been considered in other jurisdictions but not followed.

26. I refer the Committee to the legal textbook on *"Registered Conveyancing" by Ruoff & Roper (Thomson & Sweet & Maxwell)* where the authors discuss the origins of the general boundaries rule in England and Wales at paragraph 5.009 and then quote a passage from the Land Transfer Commission on the Operation of the Land Registry Act (1870) :

> "Everyone who has had experience in conveyancing knows that although the difficulties of identifying the parcels seem to be serious and numerous, yet in point of fact they hardly ever arise. The conveyancer sitting in his chambers is unable to identify things of which the description varies from time to time. But the attorney or land agent, seeing with his own eyes, and communicating directly with the person in possession, is in the vast majority of cases satisfied that his employer is getting the thing he contracted to have, and the history of which is narrated in the abstract of title. If there is any border land over which the precise boundary line is obscure, it is usually something of very trifling value and the purchaser is content to take the property as his vendor had it, and to let all questions of boundary lie dormant. But the Act of 1862 prevents a transfer on these terms. People who are quite content with an undefined boundary are compelled to have it defined. And this leads to two immediate consequences, both mischievous. First, notices have to be served on adjoining owners and occupiers which may and sometimes do amount to an enormous number, and the service of which may involve great trouble and expense... The second [mischief] is that people served with notices immediately begin to consider whether some injury is not about to be inflicted on them. In all cases of undefined boundary they find that such is the case, and a dispute is thus forced upon neighbours who only desire to remain at peace".

27. As a consequence of these recommendations, the requirement of notice to adjoining owners and that maps and plans were to show the exact boundaries of registered land were dispensed with and a general boundaries rule was adopted in its place – the registered description of the land should be as accurate as possible but should not be conclusive as to the boundaries or the extent of registered estates.

28. Using this principle, over twenty four million (24,000,000) properties or eighty per cent of the land in England and Wales has been registered.

Question 4

"How do these arrangements compare to the equivalent arrangements in England?"

Answer:

1. The legislation relating to land registration differs in each of the jurisdictions of England and Wales, Scotland, and Northern Ireland.

2. The system of land registration in the Isle of Man is based upon that of Northern Ireland. The provisions contained in the Land Registration Act (Northern Ireland) 1970 and the Land Registration Rules (Northern Ireland) 1994, as amended, have been incorporated into our primary and secondary legislation.

3. The officers of the Land Registry do not profess to expert knowledge of the land registration system in these jurisdictions.

4. However, from a consideration of legal textbooks and online information to which the Committee will be referred, the Land Registry does not believe that these jurisdictions require prior notice of an application for first registration to be advertised.

5. The following is the position in each of the following jurisdictions.

England

6. The seeds of land registration in England and Wales ('England') were sown in 1830 when the Real Property Commissioners recommended that a register of title be established as distinct from a register of deeds.

7. In 1857 a Royal Commission recommended a system of registration of title where the sole evidence of the ownership of property is the entry made on the register. Their recommendation became the basis of the present system of registration of title to land.

8. The Land Registry Act 1862 established the Office of the Land Registry. Registration was voluntary but not many applications were made. A Royal Commission was set up to enquire as to the reasons for this failure and they reported in 1870 that:

> "(a) The title shown to land before it could be registered had to be impeccable, beginning with a 60 year root. The Registrar had no discretion to ignore blemishes which were of no practical consequence. No title could be accepted for registration as indefeasible unless it

should appear to be such as a court of equity would hold to be a valid marketable title.

(b) The boundaries of every piece of land were guaranteed and so had to be determined exactly by the giving of notice to adjoining owners and by a perambulation of the ground fixing their position. This caused disputes over trifles which would never have arisen otherwise with the result that great expense and delay ensued.

(c) ……."

The above passage is to be found in the textbook on Registered Conveyancing by Ruoff & Roper (Thompson, Sweet & Maxwell) at paragraph 1.004.

9. The Royal Commission "had no doubt that the accurate definition of boundaries required on registration under that Act [Land Registry Act 1862] interfered with the transaction of business and they firmly recommended that thenceforth a purchaser should identify the boundaries for himself in the normal way. This is their view of the evidence as respects exact boundaries:

> "Everyone who has had experience in conveyancing knows that although the difficulties of identifying the parcels seem to be serious and numerous, yet in point of fact they hardly ever arise. The conveyancer sitting in his chambers is unable to identify things of which the description varies from time to time. But the attorney or land agent, seeing with his own eyes, and communicating directly with the person in possession, is in the vast majority of cases satisfied that his employer is getting the thing he contracted to have, and the history of which is narrated in the abstract of title. If there is any border land over which the precise boundary line is obscure, it is usually something of very trifling value and the purchaser is content to take the property as his vendor had it, and to let all questions of boundary lie dormant. But the Act of 1862 prevents a transfer on these terms. People who are quite content with an undefined boundary are compelled to have it defined. And this leads to two immediate consequences, both mischievous. First, notices have to be served on adjoining owners and occupiers which may and sometimes do amount to an enormous number, and the service of which may involve great trouble and expense… The second [mischief] is that people served with notices immediately begin to consider whether some injury is not about to be inflicted on them. In all cases of undefined boundary they find that such is the case, and a dispute is thus forced upon neighbours who only desire to remain at peace".

The above passage is to be found in the textbook on *Registered Conveyancing by Ruoff & Roper (Thompson, Sweet & Maxwell)* at paragraph 5.009.

10. As a consequence of these recommendations, the Land Transfer Act 1875 was passed which formed the basis of the modern system of land registration. The registrar was granted permission to accept less than perfect titles and hold hearings to determine disputes. The requirements of notice to adjoining owners and that maps and plans were to show the exact boundaries of registered land were changed to provide for the general boundaries rule – the registered description should be as accurate as possible but should not be conclusive as to the boundaries or the extent of registered estates. It was therefore no longer necessary to give notice to the owners of adjoining land whose interests may be affected by the registration of the land. Only full freehold or leasehold estates in land were to be registered.

11. The general boundaries principle has remained in force over the years since the Report of the Royal Commission.

12. The Land Transfer Act 1897 introduced compulsory first registration for titles on certain 'trigger' events (sales for value). In 1902 London County Council, including the City of London, became a compulsory area. Compulsion was necessary because of resistance to the concept of registration largely caused by the failure of the earlier 1862 Act.

13. The Law of Property Act 1925 reduced the number of legal estates to two and number of legal interests to five. The Land Registration Act 1925 built on and codified the prior Acts. Compulsory registration was gradually extended across England and Wales.

14. The Land Registration Act 2002 repealed the LRA 1925 and introduced a reformed system of land registration suited to the circumstances of the 21st century and established a framework for electronic services.

15. As regards boundaries the Land Registration Act 2002 provides at Section 60:

> "Boundaries
>
> 60-(1) The boundary of a registered estate as shown for the purposes of the register is a general boundary, unless shown as determined under this section.
>
> (2) A general boundary does not determine the exact line of the boundary."

16. The Report of the Law Commission (Law Com No 271) which reported on "Land Registration for the Twenty-First Century: A Conveyancing Revolution" reported at paragraph 9.9, 9.10 and 9.11:

> "9.9 In many countries, there is a cadastre, which is a record of all land holding. This is commonly kept for fiscal purposes, and under such systems,

boundaries are often surveyed and delimited with at least some degree of precision. No doubt because of a different approach to taxes on land ownership, this cadastral system has not been adopted in England and Wales. In general, in this country, the register is not conclusive as to boundaries. This is because of the so-called 'general boundaries rule' that is presently contained in Rule 278 of the Land Registration Rules 1925. This provides that-

> 'Except in cases in which it is noted in the Property Register that the boundaries have been fixed, the filed plan… shall be deemed to indicate the general boundaries only.'

9.10 Although there is power to fix boundaries, it has hitherto hardly ever been used for two main reasons. The first is the expense of so doing, which, given the manner in which boundaries have been fixed hitherto, is considerable. The second is that the process of fixing a boundary is all too likely to create a boundary dispute where none had existed hitherto. This is because it is necessary to investigate the titles of all adjoining landowners.

9.11 The general boundaries rule is to be retained under the Bill….."

17. The adoption of the general boundaries rule and hence no longer the necessity to give notice to owners of adjoining owners of the first registration has seen the registration of over twenty four million (24,000,000) properties or more than eighty per cent of the land in England and Wales. The remaining unregistered land is generally held within large estates, Crown Estates or public lands which are rarely conveyed.

First Registration – England & Wales

18. Application for First Registration can be made by an individual, or through a solicitor or conveyancer acting on the owners behalf.

19. The English Land Registry Form FR1 (Apply for First Registration) includes a declaration in Box 12 which appears to be made by the person applying for registration. Further questions in the application form establish whether the applicant is a conveyancer or someone who is not a conveyancer. A warning at the end of the form advises the applicant that they may commit the offence of fraud under section 1 of the Fraud Act 2006 and lists the penalties for such an offence. When a house is not registered, any original documents in the possession of the applicant must be submitted.

The following link to GOV.UK sets out the process in detail:

- https://www.gov.uk/registering-land-or-property-with-land-registry/register-for-the-first-time

Northern Ireland:

20. As stated above the Isle of Man's Land Registration Act 1982 (as amended) and Land Registry Rules 2000 (as amended) are based upon the legislation used in Northern Ireland and the Isle of Man Land Registry's procedures mirror closely those of that jurisdiction.

21. An application for First Registration is based on a solicitor's certificate and the solicitor is liable for statements made as to title. The Land Registry carries out no investigation of the title.

22. The following links to DFPNI.GOV.Uk provides more detail:

- Solicitors guide to First Registration https://www.dfpni.gov.uk/articles/first-registration-title-unregistered-land
- First Registration FAQ's https://www.dfpni.gov.uk/articles/compulsory-first-registration-questions-and-answers

Scotland

23. Like the rest of the UK when unregistered land ownership is transferred in Scotland, usually through a sale, it triggers the transfer of that land and property from the old Register of Sasines, which is akin to the Isle of Man's deeds-based register, to the Land Register. A solicitor must complete a full title investigation.

24. Voluntary registration is possible at any time and follows a similar registration process to that of a compulsory first registration.

25. The following links to ROS.GOV.UK provides more detail:

- ROS Land Registration FAQ https://www.ros.gov.uk/about-us/land-register-completion/land-register-completion-faqs
- ROS submit an application https://www.ros.gov.uk/services/submit-an-application

Question 5

"Has consideration previously been given to a system of advertisement as proposed by the petitioners? If it has been considered and rejected, why was this?"

Answer:

1. Yes. Consideration was given when the Land Registration Bill was debated and discussed in Tynwald.

2. The introduction of a system of land registration in the Isle of Man was preceded by a number of Commissions and has been the subject of debate and discussion in the House of Keys and the Legislative Council of Tynwald.

3. The Committee is referred to the following Reports:

   3.1 "Report of the Land Registration Commission" of 1969 (reference: Wt. N. 284/070 – 250/11/69) ('the 1969 Report'); and

   3.2 "Report of the Commission of Inquiry into Legal Services" of May 1990 which was chaired by Sir Cecil Clothier ('the 1990 Report').

4. The Committee is also referred to the Hansard Reports in which the debates on the draft Land Registration Bill are recorded.

5. The 1969 Report concluded that:

   5.1 "24. We are of the opinion that to adopt the English system of land registration in its entirety would be far too costly. A large proportion of that system would not be applicable to the Isle of Man and indeed unnecessary."

   5.2 Paragraph 30 sets out the requirement for the advocate's certificate on first registration;

   5.3 and recommended the introduction of a system of land registration.

6. The 1990 Report:

   6.1 noted that the Land Registration Act, 1982, authorised the installation of a system of land registration for the Island but left the implementation of a scheme until a day to be appointed

   6.2 provided at 5.5:

   > "We pause to comment that the initial loading [first registration] will be a critical phase in the implementation of a scheme and very much will depend upon the accuracy with which it is done. Having considered the evidence presented to us, we are of the opinion that it should be the responsibility of the advocate conducting the transaction to guarantee the validity of the first registration. He or she will need to be suitably insured."

7. As is clear from the answer to prior questions, the question of giving notice to adjoining landowners (referred to as 'a system of advertisement') is tied to the requirement for plans to describe exactly the land to be registered.

8. The Isle of Man however, as in other jurisdictions, adopted the 'general boundaries rule' with the result that, as the description of the land (verbal and on the filed plan) is not conclusive as to the boundaries or extent of the land, it is not necessary to give notice of first registration to neighbours.

9. I refer to the debate in the Legislative Council on the 1st December 1981 about *Part IV: MAPS AND BOUNDARIES* and Sections 57, 58 and 59 of the Land Registration Bill (as it then was). I enclose copies of pages C90 to C94 of the Hansard Report: **APPENDIX O**. The Attorney-General states at C93:

> "…I mean theoretically, Mr. President, I agree that it would be a marvellous idea if on every registration the neighbours were notified and then the boundaries were positively identified down to the nearest inch, but I think quite obviously that would enormously complicate the procedure and would make it very much more expensive and I would then almost move to the camp of my gallant friend, Major Crellin. We are not attempting to do that but where it becomes necessary to define a boundary accurately the procedure is there to do it."

Section 59 was then carried in a vote in the Council.

10. In the discussion of the next section – Section 60: Cautions against First Registration – in the Council at C93 to C94, the Attorney-General points out that:

> "Clause 60 provides a procedure under which a person interested in land can require notice to be given to him of any attempt to have a title to the land registered…..Now to some extent, Mr President, this follows on from what we have just said. If, in fact, there is a dispute about the ownership of a bit of land this would enable one of the parties in dispute to give notice to the Registrar that if any attempt was made to register that bit of land by the other person or by anyone else then the person objecting would be given notice and then he would come along and give his evidence to the Registrar as to whatever rights he had of the land. It would also enable, for example, a person to register his interest in the land if there was a dispute as to the boundary to prevent land being registered to the prejudice of the person who wished to dispute the precise boundary of the plot of land. I think it is a useful provision and it would enable people to prevent registrations over their heads if they felt that there was some argument about the ownership or the boundaries. I move that clause 60 stands part of the Bill."
>
> The Motion was carried without further comment.

11. The explanation of the Attorney-General in 10 above and the illustration given by him fits precisely the facts of the dispute which arose between the petitioners and Mr Cleator. To protect their interests the petitioners could and should have availed themselves of the protection afforded by the notice procedure prescribed in Section (clause) 60 which

would have triggered the giving of notice by the Land Registry. The petitioners did not use the caution procedure outlined above.

12. Having failed to make use of the caution procedure prescribed by Section 60 which may have shortened the dispute between the parties and saved time and costs, the petitioners now seek to impose a general notice procedure in all applications for first registration. In the overwhelming majority of cases such a procedure would be unnecessary or unwarranted.

13. The response is out of all proportion to the perceived wrong. The Isle of Man Land Registry has registered in excess of fourteen thousand (14,000) titles since the Land Registry opened for business on 1st May 2002. The application for the rectification of the register of title number 22-00244 in 2013 was the first application for rectification to the Land Commissioner in terms of Section 65(1) of the LRA 1982.

14. Attention is drawn to the correspondence between Mr Cannan and the Chief Registrar of October 2014 arising out of the complaint which the petitioners made to their local Member of the House of Keys, Mr Cannan. Mr Cannan refers to serious flaws in the practices of the Land Registry and that the processes do not provide sufficient protection to either land owners or interested parties.

15. In our view the current system of land registration outlined in the primary and secondary legislation with its inbuilt safeguards is fit for purpose.

GENERAL BOUNDARIES RULE

16. A further point to be made, as pointed out in the answer to Question 1, is that had the petitioners registered a Section 60 Caution and as a consequence received notice of the application for first registration of The Squeen, the only part of their boundary which may have been affected was the section between points A to B on the Rectification Map Proposal (shown at the end of the Decision). The discrepancy in the boundary between these points (a matter of metres) may have been deemed to be trivial and may then have been rectified by the Chief Registrar. Alternatively, the discrepancy may have been so small as to fall within the general boundaries rule and not require rectification at all.

EXCEPTIONS

17. There are cases where notice of an application for first registration is given. In the case of an application for the first registration of a freehold estate in land with a possessory class of title – Section 16 of the LRA 1982 – where the applicant claims that he or she has acquired the legal estate in the land by adverse possession under Section 16 of the Limitation Act, that is, the applicant has been in possession of the land for a period in excess of twenty one (21) years, notice of the pending application will be given.

18. The reason for the giving of notice is obvious. There is a party who is interested in or will be affected by the application for first registration and that is the absentee landowner. If the name and address of the owner is known notice will be given directly to that person. If

he identity of the owner is not known, notice of the application will be published in the three local newspapers.

Question 6

"Does the Land Registry consider that the petitioners' proposal would represent an improvement to the current system, and if not, why not?"

Answer:

1. No, the Land Registry does not consider that the petitioners' proposal would represent an improvement to the current system.

2. The Petitioners require the primary and/or the secondary legislation in respect to land registration to be amended in order, firstly, to allow for the publication or advertisement of notice of applications for first registration in the Land Registry in a similar manner to Planning Applications and, secondly, to establish a more efficient and equitable complaint handling procedure for first registrations.

3. In our view the current system of land registration outlined in the primary and secondary legislation with its inbuilt safeguards is fit for purpose.

4. There is a fundamental difference in the rationale behind a Planning Application and an application to first register land.

5. Planning applications relate to the development and use of land. When a planning application is made, it is normally before works or development has started and therefore the person making the application enters into the process knowing there is a risk that he or she may not obtain the outcome – the planning permission - they are looking to achieve. Planning applications take place 'before the event', the event being the planning permission sought.

6. Land registration is concerned with registering the ownership of legal estates in land. An application for first registration takes place after the event, the event being the completion of the acquisition of a legal estate in land. It is about the registration of a land transaction that has already occurred - in most cases, both buying and selling parties instruct advocates to act on their behalf to protect their respective interests. In any property deal it is imperative that a purchaser has certainty as to what he is purchasing and, in paying for the services of an advocate and having the necessary searches undertaken, by the time a land transaction is ready to complete, the purchaser should have peace of mind that he knows exactly what land he is getting. Entering the details of the transaction on a register should be a final administrative step, not part of a process that has to be finalised before a purchaser has certainty about what he or she is purchasing.

7. As such, at the stage of an application for first registration of the land, the purchaser is already the legal owner of the land. The vendor, the purchaser, the estate agent, the advocate acting for the vendor, the advocate acting for the purchaser, the advocate acting for the bank and the surveyor (possibly) employed to prepare a plan, have all been involved

in exhaustive due diligence enquiries about the nature and the extent of the property being sold and purchased. Disputes and queries about boundaries would arise at that stage. They are all satisfied as to the nature and the extent of the property being sold and purchased and mortgaged. The legal representatives advise their clients to proceed with the transaction and the acquisition of the land is completed. It would seem nonsensical that after the completion of an intensive, lengthy and costly legal and conveyancing process there should then be a requirement for notice to be given to the adjoining owners after the property has been purchased and the mortgage secured. This will in all likelihood precipitate and encourage boundary disputes. Most people accept the boundaries as they are and wish to live in peace and harmony.

8. The Department's opinion is that the petitioners' proposals would not represent an improvement to the current system for the reasons that:

8.1 the proposals are an excessive and disproportionate response to the perceived grievance. Over 14,000 titles have been registered in the Isle of Man Land Registry without notice having first being given

8.2 a notice procedure after the date of completion of the acquisition of the land would precipitate and encourage disputes about the exact position of a boundary

8.3 the notice procedure would delay and slow down the registration of the land in the Land Registry. It is very likely that this proposal would result in delay to the conveyancing process as it is unlikely that an advocate acting for a purchaser or any lending institution would agree to proceed to the exchange of contracts where the possibility exists that a subsequent notice about first registration would result in his client becoming embroiled in a boundary dispute. Unlike the Section 60 caution procedure where an advocate/lending institution is able to examine the extent of any registered caution, having to await the end of any notification period following a publication requirement would mean that it would be impossible to create the certainty that buyers/advocates/lending institutions require prior to committing to purchase by exchange of contracts

8.4 this delay may impact upon the property market on the Island in particular where, as is common, many conveyancing transactions are part of a chain of transactions

8.5 the delay in the registration process would result in uncertainty – the purchaser would be unsure of his boundary until the lapse of the notice period and finalisation of litigation and the banks would be concerned about the fact that their mortgaged security has not been registered. The banks may decide either to withhold funds until the boundaries are certain or to withdraw the finance

8.6 the procedure would be impractical. Although an approach similar to that of planning may be used, as a legal interest in land is involved in land registration consideration may have to be given to the following:

8.6.1 to whom would notice be given? The identity and the address of the owners of unregistered land would need to be established which in many cases is difficult to ascertain

8.6.2 as a consequence there may be arguments about the manner of service and whether the 'neighbour' received proper and timeous notice. In litigation service of process is effected by the relevant Coroner

8.6.3 the adjoining land may be owned by a trust or a company. To whom does one give notice?

8.6.4 the owner may be an absentee landowner? Do you proceed with registration or postpone it? Will the dispute be revived when the owner returns or finally receives the notice after the notice period has lapsed?

8.6.5 how is notice to be given? By ordinary or first class post or by advertising in the newspapers or by placing a notice at the property? Or by service through the Coroner?

8.6.6 if notice is to be advertised, who is to pay the cost of the advertisement?

8.6.7 how is service of the notice to be proven or certified to the Land Registry?

8.6.8 what would happen in the case of investors/purchasers living off Island?

8.6.9 there is the potential for even further disputes if advertisement was missed due to inadvertence

8.7 if notice is to be given before the application is lodged in the Land Registry, there will inevitably be questions about the priority of claims against the property?

8.8 if notice is to be given after the application is made to the Land Registry, there will be a large number of applications waiting proof of service of the notice and the outcome of litigation about a dispute which will result in a burden on the administration

8.9 the process will inevitably result in an increase in legal costs and costs to business and government which would ultimately be passed on to the purchasers of property

8.10 the result would be the introduction of another layer of administration and bureaucracy at a time when Government is aiming to slim down and reduce costs

8.11 the procedure will slow down and introduce unnecessary uncertainty to the registration process and arguably result in the stagnation of the property industry

8.12 the procedure may act as a barrier to investment and a disincentive for investors and thereby have a detrimental impact on the economy

8.13 advocates would not be able to advise a prospective purchaser because of the danger that a dispute may arise after notice and that the boundaries may change. It would introduce uncertainty

8.14 the procedure could adversely impact on the potential value of a property if someone wished to dispute the boundaries and the matter was not resolved before the owners wished to sell again

8.15 if advertising was to be introduced, and a purchaser was to lose land as a result of a dispute being raised after completion of the deal but before registration, who would compensate the purchaser in respect of his or her loss?

8.16 the increase in the number of queries regarding boundaries and the adjudication of the resultant disputes would likely result in the need to appoint at least one more full time Judicial Officer

8.17 the proposal runs contrary to a cornerstone of land registration in the Isle of Man – the acceptance of the principle of general boundaries

8.18 the Land Registry already has in place a procedure for neighbours to fix their boundaries if they so wish. The procedure is set out in Section 59(2) of the LRA 1982 and allows neighbours to settle and enter on the register their boundaries as being conclusive

8.19 in general it is not and never has been a requirement of Manx Land Law that on transfer of the ownership of a legal estate in land notice is to be given to all owners of adjoining properties whose properties have a common boundary and who may be interested in the transfer

8.20 none of the surrounding jurisdictions have a requirement to advertise

8.21 the present system if properly utilised is, and remains, fit for purpose

8.22 in general, the reasons why the Land Registry does not support the idea are to be found in the answers to all the questions.

9. It should be borne in mind that the recordal or registration of a deed in the Deeds Registry under the RDA 1961 constitutes constructive notice of what is contained in the deed.

10 The point remains that even if notice of the first registration of The Squeen had been given to the petitioners, the dispute between the parties would not have been prevented and would have continued as it does to this day for the reason that this is

a dispute about access and not about the position of a boundary. The position of the boundary has been fixed but we understand that the question of access on the ground remains an issue.

11. It would be most unfortunate that the inability of adjoining neighbours to agree the position of a very small portion of their common boundary and their rights of access should be allowed to dictate a general policy and requirement that would impact upon the overwhelming majority of the land owners in the Isle of Man who are content to live in peace and harmony with their neighbours.

12. If the Committee is minded to progress with the proposals contained in the Petition, the Department respectfully suggests that the Select Committee should seek the opinion of banks and financial lending institutions, the legal profession, conveyancers and estate agents regarding the impact such a measure would have on their business and customers before making any changes to the current system.

13. The staff in the Land Registry have worked very hard over the last few years in trying to register applications in a more timely manner, this previously being an issue for stakeholders. Introducing a further delay into the system would, we believe, not be supported in any way.

Question 7

"At the time when Mr Cleator's property was registered (12 September 2012), was the Land Registry aware of the dispute between Mr Cleator and Dr Craine/Mrs Hommet?"

Answer:

1. No. The Land Registry only became aware of a dispute between Mr Cleator and the petitioners following receipt of an undated letter from Dr J F Craine on the 20 February 2013.

2. The Registries Manager, Mr N Lewney confirmed the above to Dr Craine by letter dated the 17th December 2014 and a copy of the letter was sent to Mr A Cannan MHK for the Parish of Michael to whom the petitioners lodged a complaint. This letter was in response to a letter of the 17th November 2014 from Dr Craine in which, amongst other things, a similar question was raised.

3. Had the Land Registry been made aware that part of the land comprised within Mr Cleator's application was subject to a dispute, notice would have been served on the petitioners by the Land Registry before registration was effected.

4. By way of additional information for the Committee, from reading the submissions made to the Land Commissioner there is evidence that:

4.1 the dispute between Dr Craine and Mr Cleator started in June 2010;

4.2 that Dr Craine sought legal advice from Mr Jelski at that time, whilst Mr Cleator evidently sought legal advice from Mr Humphrey.

5. On the 8th September 2011, Mr Humphrey as Advocate for Mr Cleator lodged a voluntary application to register The Squeen in the Land Registry.

6. An application under the Land Registration Act 1982 for the first registration of an estate in land in the Land Registry must be lodged on behalf of an applicant(s) by an advocate. In making the application, the advocate is required to complete a Certificate of Title in Box 14 of the Land Registry Form – *Form 1: Application for First Registration* certifying, inter alia, that he has made a full investigation of title and declaring that the title is good and that the extent of the land is as shown on the survey map extract lodged with the application. A copy of the standard Form 1 is enclosed as **APPENDIX P**.

7. The application lodged on behalf of Mr Cleator to register The Squeen included a Certificate of Title duly completed by Mr Humphrey. In completing the Certificate of Title, Mr Humphrey also certified:

"(c) *I am not aware of any claim to possession of the land adverse to the interest of the applicant(s)*

(h) *I believe that the applicant is, and have* [sic] *since the date of acquisition* [11th March 1998] *mentioned in this application, been in sole and undisputed possession of the land…..*".

8. As pointed out in an answer to an earlier question, it would appear that despite seeking legal advice back in 2010, presumably in order to protect his interest in the land that was the subject of the dispute, the petitioners did not take any steps to ensure that they would have to receive notice from the Land Registry should an application to register the land – The Squeen – be lodged. This application was subsequently made by Mr Humphrey, on behalf of Mr Cleator, on the 8th September 2011.

9. As pointed out earlier, Section 60 of the Land Registration Act sets out a procedure for any person (the cautioner) to lodge a Caution against First Registration over the property in which he has an interest, in this case Mwyllin Squeen, with the result that the cautioner must be notified should an application to register the land in which he/she has an interest be received at the Land Registry. Had the petitioners registered the Caution over the land which was the subject of the dispute, back in 2010 or indeed any time before or after and right up until the 8th September 2011, they would have been served with Notice when the application to register The Squeen was received.

10. On the 22nd August 2013 the petitioners made an application to register a Caution against First Registration over land upon which he claims an interest in the vicinity of, and encompassing, the property Mwyllin Squeen. The Caution has been registered, meaning that Dr Craine will be notified by the Land Registry if an application is received from any other person(s) to register land within the extents of the land afforded protection by the caution.

Isle of Man Land Registry

Oik-Recortyssee Thallooyn Ellan Vannin

Title No 22-00244

Edition No **1**

Title opened on 26 July 2012
by application no 201101587
Last amended on
by application no

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Title Status Open

Tenure FREEHOLD

Parish BALLAUGH

Local Government District BALLAUGH

PART 1: Description of Land & Appurtenances

Title Address

The Squeen
Off Station Road
Ballaugh
IM7 5AH
Isle of Man

Parcel(s) of Land

There is 1 parcel of land registered in this edition of title.

Land Parcel 1
Registered on 26 July 2012
by application no 201101587

The land shown edged red on the Filed Plan known as The Squeen off Station Road Ballaugh

Map Grid Reference EASTING: 234439 NORTHING: 493654

Appurtenances

There are 2 appurtenances registered in this edition of title.

Appurtenance 1
Registered on 26 July 2012
by application no 201101586
Creation date 12 November 1957
Document reference

A Deed of Conveyance dated 12 November 1957 and recorded as November 1957/44 between (1) Sybil Dorothy Parkes and Edward Corteen Trustees of Alfred John Parkes deceased (the Trustees) and (2) Sybil Dorothy Parkes (the Widow) and (3) Richard Grant Waller and Joan May Waller (the Purchasers) contained the following:- "The Widow and the Purchasers mutually covenant with each other and declare:- (a) that the boundary fences between Squeen Lodge" [coloured orange on the Filed Plan] "and the Scheduled Property" [edged red on the Filed Plan] "are party fences repairable jointly by the Widow and the Purchaser or other the owner or owners for the time being of Squeen Lodge and the Scheduled Property (b) that either the Widow or the Purchasers or other the respective owners for the time being of Squeen Lodge and the Scheduled Property shall be at liberty at any time to close the opening" [being a wicket gate] "in the boundary fence" [marked A-B on the Filed Plan] "and build up the same in a style and of a construction similar to the said boundary fence as then existing the cost thereof to be borne equally by the Widow and the Purchasers or others the respective owners for the time being of Squeen Lodge and the Scheduled Property and either party paying for such work shall be entitled to recover one-half the cost thereof from the other (c) that the foregoing provisos and agreements on the part of the Widow and the Purchasers shall operate as covenants and conditions running with the land and the benefit thereof shall be deemed to pass therewith and the same may be specifically enforced by the Widow and the Purchasers or other the respective owners for the time being of Squeen Lodge

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and the Scheduled Property"

Boundary Descriptions

Boundary A B
See Appurtenance created by Deed November 1957/44

Appurtenance 2
Registered on 26 July 2012
by application no 201101586
Creation date 01 December 2000
Document reference

A Deed of Easement dated 1 December 2000 and recorded as 2000/8224 between (1) Edwin Keith Cleator (Mr Cleator) and (2) Heritage Homes Limited (the Company) contained the following:- "The Company HEREBY COVENANTS with Mr Cleator that the Company in exercising the foregoing liberties rights and easements" [see Easement burden Deed 2000/8224] "will observe and perform the duties and obligations set forth below in the Second Schedule and in the case of any ongoing obligation to continue to perform such covenants during the period that the aforesaid easement continuing to be operative:- SECOND SCHEDULE - (1) pavouir or mineral hard surface the area coloured grey" [hatched brown on the Filed Plan] "to withstand a minimum vehicle laden weight of 30 tonnes to be driven over the stand or to turn and forever after to reinstate the same following any works to the drainage system created under the terms of this easement (2) only to permit surface water arising from the construction of the 9 properties with outbuildings on field 5468" [now known as Squeen Meadow Estate] "and the 42 properties with outbuildings on the portion of field 7378" [now known as Glebe Aalin Estate] "and not to allow any other type of surface water or drainage into the pipes to be constructed under the provisions of this Agreement and not to construct any other properties on any part of the lands of the Company which would result in surface water or drainage entering into the pipes constructed under this Agreement (3) to give the owners of The Squeen" [the land edged red on the Filed Plan] "1 months prior notice of the need to access the area shaded green on the plan hereto annexed" [hatched dark green on the Filed Plan] "(save and except in the case of emergency when the Owner of The Squeen shall be given prior notice of the desire for access and such access in an emergency situation shall be via the pedestrian access adjacent to Squeen Lodge) which access shall only be permitted by way of the private Squeen Roadway from the Highway to repair renovate or otherwise maintain the said surface water drainage pipe subject to paragraph (j)" [being:- The Company to do as little damage as possible to The Squeen to include trees or shrubs and vegetation on executing the works and to repair replace or otherwise correct any such damage within three months of its cause at the expense of The Company] "PROVIDED ALWAYS that the Company must make good any damage caused to The Squeen by the exercise of these rights (4) the private surface water system created by the Company under the terms of this easement will forever be solely for the benefit of the dwellings hereof" [being 9 dwellings and outbuildings in field 5468 being Squeen Meadow Estate and 42 dwellings and outbuilding in field 7378 being Glebe Aalin Estate] "and the Company and its successors and assigns whether public or private hereby agree that there will be no further increased usage of and no further connection to the private outfall into the Squeen River except with the prior written consent of the Owner for the time being of The Squeen following negotiations over the terms of such entitlement and the payment of a consideration acceptable to the owner of The Squeen And the Company DO HEREBY FURTHER covenant and guarantee that there will be no flooding or escape of water onto The Squeen caused as a result of the works permitted herein or by the exercise of the rights herein stated and in the event of any such flooding or escape of water onto The Squeen then and in such case the Company will carry out such works as are necessary to repair and restore The Squeen and compensate Mr Cleator or his successor from any losses caused as a result of such flooding or escape of water"

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Transfer of Part

No Transfers of Part have occurred prior to this edition of title

Merged Titles

This title was created by amalgamating title numbers:-
22-00242 Edition no 1
22-00243 Edition no 1

End of Part 1

De Cagh ee Halloo

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PART 2: Description of Owners and any Cautions, Inhibitions, Priorities or Restrictions

Class of Title **Absolute**

Classified on 26 July 2012
by application no 201101587

Consideration **£219,000.25**

Market Value **£550,000.00**

Value of Share Transferred

Registered Owners **There is 1 owner registered in this edition of title.**

Owner 1

Registered on 26 July 2012
by application no 201101585

Mr. Edwin Keith Cleator

Acquisition Date	30 November 2000	Index of Names No. 28174
Service Address 1	The Squeen off Station Road Ballaugh IM7 5AH Isle of Man	
Class of Ownership	Full	
Other Particulars relating to ownership	There are no other particulars registered in this edition of title.	

Cautions **There are no cautions registered in this edition of title.**

Inhibitions **There are no inhibitions registered in this edition of title.**

Priorities **There are no priorities registered in this edition of title.**

Restrictions **There are no restrictions registered in this edition of title.**

End of Part 2

De Cagh ee Halloo

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PART 3: Description of Burdens

There are 3 burdens registered in this edition of title.

Burden 1
Registered on 26 July 2012
by application no 201101586
Creation date 12 November 1957
Document reference

Easement or Profit

A Deed of Conveyance dated 12 November 1957 and recorded as November 1957/44 between (1) Sybil Dorothy Parkes and Edward Corteen Trustees of Alfred John Parkes deceased (the Trustees) and (2) Sybil Dorothy Parkes (the Widow) and (3) Richard Grant Waller and Joan May Waller (the Purchasers) contained the following:- "The Widow and the Purchasers mutually covenant with each other and declare:- (a) that the boundary fences between Squeen Lodge" [coloured orange on the Filed Plan] "and the Scheduled Property" [edged red on the Filed Plan] "are party fences repairable jointly by the Widow and the Purchaser or other the owner or owners for the time being of Squeen Lodge and the Scheduled Property (b) that either the Widow or the Purchasers or other the respective owners for the time being of Squeen Lodge and the Scheduled Property shall be at liberty at any time to close the opening" [being a wicket gate] "in the boundary fence" [marked A-B on the Filed Plan] "and build up the same in a style and of a construction similar to the said boundary fence as then existing the cost thereof to be borne equally by the Widow and the Purchasers or others the respective owners for the time being of Squeen Lodge and the Scheduled Property and either party paying for such work shall be entitled to recover one-half the cost thereof from the other (c) that the foregoing provisos and agreements on the part of the Widow and the Purchasers shall operate as covenants and conditions running with the land and the benefit thereof shall be deemed to pass therewith and the same may be specifically enforced by the Widow and the Purchasers or other the respective owners for the time being of Squeen Lodge and the Scheduled Property"

Burden 2
Registered on 26 July 2012
by application no 201101586
Creation date 01 December 2000
Document reference

Easement or Profit

A Deed of Easement dated 1 December 2000 and recorded as 2000/8224 between (1) Edwin Keith Cleator (Mr Cleator) and (2) Heritage Homes Limited (the Company) contained the following:- "Mr Cleator granted the Company the following in under over and upon The Squeen" [the land edged red on the Filed Plan] ":- The liberty right and easement of laying within a period of 80 years from the date of this deed" [1 December 2000] "being the applicable perpetuity period and thereafter and maintaining surface water drains and pipes in such manholes and appurtenances thereto for the drainage of 42 dwellings with outbuildings in field 7378" [now known as Glebe Aalin Estate] "and the continued drainage of 9 dwellings with outbuildings in filed 5468" [now known as Squeen Meadow Estate] "for carrying or conducting surface water in and under the fields or parcels of land part of The Squeen to the river along the appropriate route" [hatched dark green on the Filed Plan] "and of constructing within the aforesaid perpetuity period and thereafter and maintaining or such other works as may be necessary for effecting the aforesaid purpose on the appropriate route as indicated on the said plan and after the same has been laid the right to enter upon The Squeen to inspect maintain repair cleanse renew such surface water drains and pipes and appurtenances and of obtaining access to the same for all or any of the purposes aforesaid subject to the provisions of the Second Schedule" [see Appurtenance dated 1 December 2000 clause (4)]

Burden 3
Registered on 26 July 2012
by application no 201101586
Creation date 01 December 2000
Document reference

Covenant or Condition

A Deed of Easement dated 1 December 2000 and recorded as 2000/8224 between (1) Edwin Keith Cleator (Mr Cleator) and (2) Heritage Homes Limited (the Company) contained the following:- "Mr Cleator covenanted with the Company that he and the person or person deriving title under Mr Cleator will not at any time hereafter:- (1) erect

Deriving title under

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or suffer to be erected any new building or structure over or within one metre either side of the line of the pipes to be constructed under this Agreement or (2) make any connection into the said pipes without the prior written consent of the Company but nothing herein shall prevent Mr Cleator or his successors in title installing such further underground pipes ducts or cables or above ground verges or pillars as may be required by the owner of The Squeen" [edged red on the Filed Plan] "from time to time along or either side of the said line of pipe without any such consent being necessary"

End of Part 3

De Cagh ee Halloo

Title No.: 22 00244 Edition No: 1
Parish Ballaugh
Address: The Squeen, Off Station Road, Ballaugh, IM7 5AH

Isle of Man Land Registry
FILED PLAN

Tenure: Freehold

Plot Scale: 1:1000
Survey Scale: 1:2500



Note
Map accuracy is dependant upon the scale at which the land was surveyed For more information and a guide to the map symbols used please refer to information sheets available from the Land Registry

Issued on
26-Jul-2012 15:37:46
for Application no
201101587

0
Supplementary Plan exists for this Title

For Registry Use Only

App No

Date
Time

183

Box 1	Box 2
Signature(s):	Signature(s):
Witness(es): Date	Witness(es): Date:

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Isle of Man Land Registry

Oik-Recortyssee Thallooyn Ellan Vannin

Title No 22-00244

Edition No **3**

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Title opened on 26 July 2012
by application no 201101587
Last amended on 28 October 2014
by application no 201301206

Title Status Open

Tenure FREEHOLD

Parish BALLAUGH

Local Government District BALLAUGH

PART 1: Description of Land & Appurtenances

Title Address

The Squeen
Off Station Road
Ballaugh
IM7 5AH
Isle of Man

Parcel(s) of Land

There is 1 parcel of land registered in this edition of title.

Land Parcel 1
Registered on 26 July 2012
by application no 201101587
Last amended on 28 October 2014
by application no 201301206

The land shown edged red on the Filed Plan known as The Squeen off Station Road Ballaugh

Map Grid Reference EASTING: 234432 NORTHING: 493644

Appurtenances

There are 2 appurtenances registered in this edition of title.

Appurtenance 1
Registered on 26 July 2012
by application no 201101586
Creation date 12 November 1957
Document reference

A Deed of Conveyance dated 12 November 1957 and recorded as November 1957/44 between (1) Sybil Dorothy Parkes and Edward Corteen Trustees of Alfred John Parkes deceased (the Trustees) and (2) Sybil Dorothy Parkes (the Widow) and (3) Richard Grant Waller and Joan May Waller (the Purchasers) contained the following:- "The Widow and the Purchasers mutually covenant with each other and declare:- (a) that the boundary fences between Squeen Lodge" [coloured orange on the Filed Plan] "and the Scheduled Property" [edged red on the Filed Plan] "are party fences repairable jointly by the Widow and the Purchaser or other the owner or owners for the time being of Squeen Lodge and the Scheduled Property (b) that either the Widow or the Purchasers or other the respective owners for the time being of Squeen Lodge and the Scheduled Property shall be at liberty at any time to close the opening" [being a wicket gate] "in the boundary fence" [marked A-B on the Filed Plan] "and build up the same in a style and of a construction similar to the said boundary fence as then existing the cost thereof to be borne equally by the Widow and the Purchasers or others the respective owners for the time being of Squeen Lodge and the Scheduled Property and either party paying for such work shall be entitled to recover one-half the cost thereof from the other (c) that the foregoing provisos and agreements on the part of the Widow and the Purchasers shall operate as covenants and conditions running with the land and the benefit thereof shall be deemed to pass therewith and the same may be specifically enforced by the Widow

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and the Purchasers or other the respective owners for the time being of Squeen Lodge and the Scheduled Property"

Boundary Descriptions

Boundary A B
See Appurtenance created by Deed November 1957/44

Appurtenance 2
Registered on 26 July 2012
by application no 201101586
Creation date 01 December 2000
Document reference

A Deed of Easement dated 1 December 2000 and recorded as 2000/8224 between (1) Edwin Keith Cleator (Mr Cleator) and (2) Heritage Homes Limited (the Company) contained the following:- "The Company HEREBY COVENANTS with Mr Cleator that the Company in exercising the foregoing liberties rights and easements" [see Easement burden Deed 2000/8224] "will observe and perform the duties and obligations set forth below in the Second Schedule and in the case of any ongoing obligation to continue to perform such covenants during the period that the aforesaid easement continuing to be operative:- SECOND SCHEDULE - (1) pavouir or mineral hard surface the area coloured grey" [hatched brown on the Filed Plan] "to withstand a minimum vehicle laden weight of 30 tonnes to be driven over the stand or to turn and forever after to reinstate the same following any works to the drainage system created under the terms of this easement (2) only to permit surface water arising from the construction of the 9 properties with outbuildings on field 5468" [now known as Squeen Meadow Estate] "and the 42 properties with outbuildings on the portion of field 7378" [now known as Glebe Aalin Estate] "and not to allow any other type of surface water or drainage into the pipes to be constructed under the provisions of this Agreement and not to construct any other properties on any part of the lands of the Company which would result in surface water or drainage entering into the pipes constructed under this Agreement (3) to give the owners of The Squeen" [the land edged red on the Filed Plan] "1 months prior notice of the need to access the area shaded green on the plan hereto annexed" [hatched dark green on the Filed Plan] "(save and except in the case of emergency when the Owner of The Squeen shall be given prior notice of the desire for access and such access in an emergency situation shall be via the pedestrian access adjacent to Squeen Lodge) which access shall only be permitted by way of the private Squeen Roadway from the Highway to repair renovate or otherwise maintain the said surface water drainage pipe subject to paragraph (j)" [being:- The Company to do as little damage as possible to The Squeen to include trees or shrubs and vegetation on executing the works and to repair replace or otherwise correct any such damage within three months of its cause at the expense of The Company] "PROVIDED ALWAYS that the Company must make good any damage caused to The Squeen by the exercise of these rights (4) the private surface water system created by the Company under the terms of this easement will forever be solely for the benefit of the dwellings hereof" [being 9 dwellings and outbuildings in field 5468 being Squeen Meadow Estate and 42 dwellings and outbuilding in field 7378 being Glebe Aalin Estate] "and the Company and its successors and assigns whether public or private hereby agree that there will be no further increased usage of and no further connection to the private outfall into the Squeen River except with the prior written consent of the Owner for the time being of The Squeen following negotiations over the terms of such entitlement and the payment of a consideration acceptable to the owner of The Squeen And the Company DO HEREBY FURTHER covenant and guarantee that there will be no flooding or escape of water onto The Squeen caused as a result of the works permitted herein or by the exercise of the rights herein stated and in the event of any such flooding or escape of water onto The Squeen then and in such case the Company will carry out such works as are necessary to repair and restore The Squeen and compensate Mr Cleator or his successor from any losses caused as a result of such flooding or escape of water"

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Transfer of Part

No Transfers of Part have occurred prior to this edition of title

Merged Titles

This title was created by amalgamating title numbers:-
22-00242 Edition no 1
22-00243 Edition no 1

End of Part 1

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PART 2: Description of Owners and any Cautions, Inhibitions, Priorities or Restrictions

Class of Title **Absolute**

Classified on 26 July 2012
by application no 201101587

Consideration **£219,000.25**

Market Value **£550,000.00**

Value of Share Transferred

Registered Owners **There is 1 owner registered in this edition of title.**

Owner 1

Registered on 26 July 2012
by application no 201101585

Mr. Edwin Keith Cleator

Acquisition Date	30 November 2000	Index of Names No. 28174
Service Address 1	The Squeen off Station Road Ballaugh IM7 5AH Isle of Man	
Class of Ownership	Full	
Other Particulars relating to ownership	There are no other particulars registered in this edition of title.	

Cautions **There are no cautions registered in this edition of title.**

Inhibitions **There are no inhibitions registered in this edition of title.**

Priorities **There are no priorities registered in this edition of title.**

Restrictions **There are no restrictions registered in this edition of title.**

End of Part 2

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PART 3: Description of Burdens

There are 3 burdens registered in this edition of title.

Burden 1
Registered on 26 July 2012
by application no 201101586
Creation date 12 November 1957
Document reference

Easement or Profit

A Deed of Conveyance dated 12 November 1957 and recorded as November 1957/44 between (1) Sybil Dorothy Parkes and Edward Corteen Trustees of Alfred John Parkes deceased (the Trustees) and (2) Sybil Dorothy Parkes (the Widow) and (3) Richard Grant Waller and Joan May Waller (the Purchasers) contained the following:- "The Widow and the Purchasers mutually covenant with each other and declare:- (a) that the boundary fences between Squeen Lodge" [coloured orange on the Filed Plan] "and the Scheduled Property" [edged red on the Filed Plan] "are party fences repairable jointly by the Widow and the Purchaser or other the owner or owners for the time being of Squeen Lodge and the Scheduled Property (b) that either the Widow or the Purchasers or other the respective owners for the time being of Squeen Lodge and the Scheduled Property shall be at liberty at any time to close the opening" [being a wicket gate] "in the boundary fence" [marked A-B on the Filed Plan] "and build up the same in a style and of a construction similar to the said boundary fence as then existing the cost thereof to be borne equally by the Widow and the Purchasers or others the respective owners for the time being of Squeen Lodge and the Scheduled Property and either party paying for such work shall be entitled to recover one-half the cost thereof from the other (c) that the foregoing provisos and agreements on the part of the Widow and the Purchasers shall operate as covenants and conditions running with the land and the benefit thereof shall be deemed to pass therewith and the same may be specifically enforced by the Widow and the Purchasers or other the respective owners for the time being of Squeen Lodge and the Scheduled Property"

Burden 2
Registered on 26 July 2012
by application no 201101586
Creation date 01 December 2000
Document reference

Easement or Profit

A Deed of Easement dated 1 December 2000 and recorded as 2000/8224 between (1) Edwin Keith Cleator (Mr Cleator) and (2) Heritage Homes Limited (the Company) contained the following:- "Mr Cleator granted the Company the following in under over and upon The Squeen" [the land edged red on the Filed Plan] ":- The liberty right and easement of laying within a period of 80 years from the date of this deed" [1 December 2000] "being the applicable perpetuity period and thereafter and maintaining surface water drains and pipes in such manholes and appurtenances thereto for the drainage of 42 dwellings with outbuildings in field 7378" [now known as Glebe Aalin Estate] "and the continued drainage of 9 dwellings with outbuildings in filed 5468" [now known as Squeen Meadow Estate] "for carrying or conducting surface water in and under the fields or parcels of land part of The Squeen to the river along the appropriate route" [hatched dark green on the Filed Plan] "and of constructing within the aforesaid perpetuity period and thereafter and maintaining or such other works as may be necessary for effecting the aforesaid purpose on the appropriate route as indicated on the said plan and after the same has been laid the right to enter upon The Squeen to inspect maintain repair cleanse renew such surface water drains and pipes and appurtenances and of obtaining access to the same for all or any of the purposes aforesaid subject to the provisions of the Second Schedule" [see Appurtenance dated 1 December 2000 clause (4)]

Burden 3
Registered on 26 July 2012
by application no 201101586
Creation date 01 December 2000

Covenant or Condition

A Deed of Easement dated 1 December 2000 and recorded as 2000/8224 between (1) Edwin Keith Cleator (Mr Cleator) and (2) Heritage Homes Limited (the Company)

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Document reference

contained the following:- "Mr Cleator covenanted with the Company that he and the person or person deriving title under Mr Cleator will not at any time hereafter:- (1) erect or suffer to be erected any new building or structure over or within one metre either side of the line of the pipes to be constructed under this Agreement or (2) make any connection into the said pipes without the prior written consent of the Company but nothing herein shall prevent Mr Cleator or his successors in title installing such further underground pipes ducts or cables or above ground verges or pillars as may be required by the owner of The Squeen" [edged red on the Filed Plan] "from time to time along or either side of the said line of pipe without any such consent being necessary"

End of Part 3

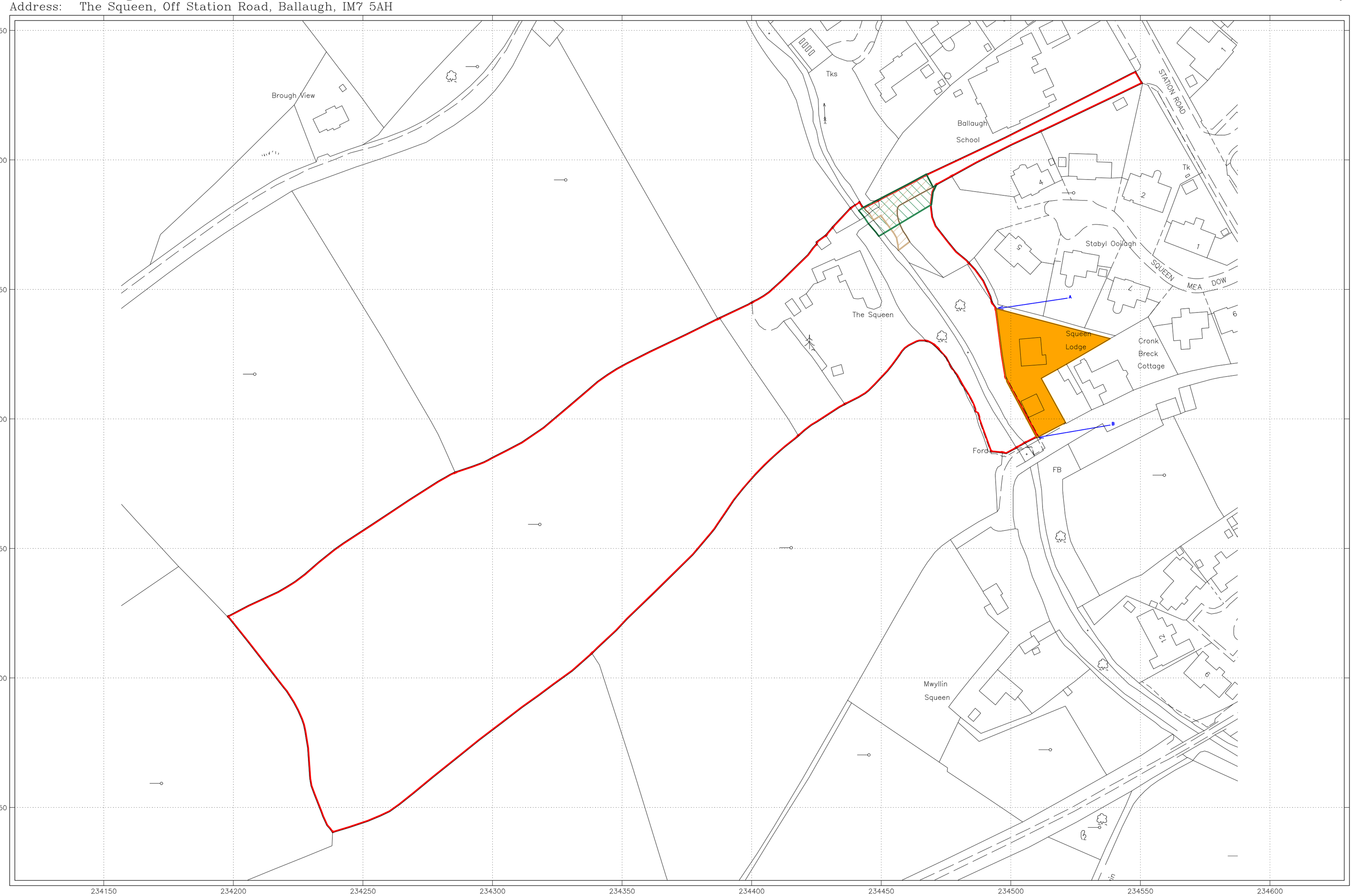
De Cagh ee Halloo

Title No.: 22-00244 Edition No.: 3
Parish: Ballaugh
Address: The Squeen, Off Station Road, Ballaugh, IM7 5AH

Isle of Man Land Registry
FILED PLAN

Tenure: Freehold

Plot Scale: 1:1000
Survey Scale: 1:2500



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Note
Map accuracy is dependant upon the scale at which the land was surveyed. For more information and a guide to the map symbols used please refer to information sheets available from the Land Registry.

Issued on:
19-Jan-2016 16:45:54
for Application no:
201301206

0 Supplementary Plan exists for this Title

For Registry Use Only

App No:

Date:
Time:

Box 1	Box 2
Signatures(s):	Signatures(s):
Witness(es): Date:	Witness(es): Date:

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IN THE LAND COURT

Between:

DR JOHN FFYNLO CRAINE & MRS ANNIE ANDREE JEANNINE HOMMET
and
MR EDWIN KEITH CLEATOR

Judgment of Her Honour Deemster Roberts

delivered on the 12th day of August 2014

Very Brief Summary

Title number 22-00244 ("Title Number 22-00244") is registered in the name of Mr Cleator. It pertains to The Property.

The Application for Rectification was lodged by the Applicants in June 2013 and seeks rectification of Title Number 22-00244. In essence the matter is a boundary dispute between the Applicants and Mr Cleator.

The Applicants reside at and have indicated that they own a property called and known as Mwyllin Squeen ("Mwyllin Squeen") which is situate off Station Road, Ballaugh.

Assistant Chief Registrar G. E. Anderson ("Mr Anderson") has provided me with a report as directed by my Order dated the 24th June 2013. ("Mr Anderson's Report"). It contains helpful appendices including the Application for Rectification.

The major area of dispute between the Applicants and Mr Cleator pertains to a portion of the accommodation road which in part abuts on The Property and which provides access to Mwyllin Squeen. Mr Cleator claims and has registered ownership of part of this accommodation road as it abuts on to The Property and to a further portion of land which forms part of a River Ford which crosses the accommodation road.

It is not disputed that the aforesaid road is an accommodation road nor that both Mwyllin Squeen and all other properties abutting on to the accommodation road have the right to use it for pedestrian access to their respective properties, although the Applicants made the point that it has not been determined whether the Property has pedestrian access to the Road. Mr Cleator also claims vehicular access and this is disputed by the Applicants.

It is Mr Cleator's registration and claim of ownership to part of the accommodation road and land under the River Ford which is challenged and disputed by the Applicants.

The Application for First Registration of The Property

On the 8th September 2011, L&H, on behalf of Mr Cleator, simultaneously lodged three applications at the Land Registry as follows:-

a) Application Number 201101585 for first registration of a small parcel of land. Title number 22-00242 was issued on the 26th July 2012. It does not form part of the land which I am required to consider, save for it forming part of the amalgamation set forth at c) below.

b) Application Number 201101586 for first registration of the house and surrounding land known as The Squeen in respect of which Title number 22-00243 was issued on the 26th July 2012. It has relevance to the Application for Rectification. This was lodged by Mr Humphrey.

c) Application Number 201101587 for the amalgamation of the two aforesaid parcels of land. The amalgamation of these two component parts resulted in a new title number 22-00244 (Edition 1) being issued in respect of the amalgamated property. ("Title Number 22-00244")

On the 18th December 2013, L&H, on behalf of Mr Cleator, lodged a fourth application in respect of The Property for the rectification of the boundary. It stated as follows:

"*The Filed Plan to be amended between the points marked A and D on the enclosed survey map extract (as submitted with the application for first registration) to follow the stated co-ordinates contained in the foot of the Map*".

I have been shown a copy of the "enclosed survey map extract" by Mr Anderson. It forms part of his report. He has called it "Plan A". I shall do likewise. The Land Registry duly rectified Title Number 22-00244 by amending the boundary line between the points marked 'A' to 'D' to follow the coordinates listed on Plan A.

As a result of this, a second edition of the title to the Property was issued together with the revised and amended Filed Plan. ("The Filed Plan") Mr Anderson has provided me with the Office Copy and Filed Plan in respect of title number 22-00244 (Edition 2). It is Title number 22-00244 Edition 2, that is the subject matter of the Application for Rectification. ("Title Number 22-00244")

The boundaries of the Property are as currently entered on the register of title number 22-00244 (Edition 2) at the Land Registry and represented by the red edging on the Filed Plan.

Attached to this Decision is a copy of The Filed Plan.

The Epitome of Title filed by Mr Cleator as part of first registration shows that Mr Cleator and Jane Cleator acquired the Property by Deed of Conveyance

dated the 11th March 1998 ("Deed 1999/1407") from Ronald Frank Stiles and Mona Stiles ("The 1998 Deed"). Sadly Jane Cleator has since died.

The Property is described in the 1998 Deed as follows:

> "*All and singular a parcel of land situate in the Parish of Ballaugh the same being represented (for identification purposes only) by the portions delineated and edged red on the plan annexed hereto TOGETHER with the dwelling home called and known as "The Squeen" and all other buildings therein erected and being the whole of the hereditaments and premises to which the vendors became entitled as joint tenants by a Deed of Conveyance bearing date the 29th day of November 1985 from Joan May Walker*".

Mr Anderson has provided me with a copy of the relevant part of the plan referred to in the 1998 Deed (magnified). I shall call it "The 1998 Deed Plan" and I attach a copy for ease of reference.

The Dispute

The dispute between the Applicants and Mr Cleator which has given rise to the Application for Rectification pertains to the length of the southern boundary line of the Property including where it crosses the River over the River Ford ("The River" and the "River Ford") to the point where it meets the boundary of the property known as Squeen Lodge. ("Ford Boundary")

The Lane or road ("The Road") which provides access to Mwyllin Squeen commences at Station Road (a public highway) and then crosses the River at the River Ford. The River Ford lies a short distance to the south east of a stone weir which is set in the River bed. The Road ends at Mwyllin Squeen, albeit there is no agreement between the parties as to the precise termination point of the Road at Mwyllin Squeen. (That point is not for me to consider in this decision).

The Applicants contend that the Ford Boundary is erroneous. The true southern boundary of The Property is as shown on the plan annexed to the 1998 Deed (that is the 1998 Deed Plan) and this excludes any ownership of the Road or the River bed over the River Ford.

Procedural Matters

I met with Mr Anderson on the 24th June 2013 to receive the Application for Rectification.

At that meeting I directed Mr Anderson as follows:

1. deliver a copy of the Application for Rectification to Mr Cleator and L&H, his Advocate.

2. convene a meeting at which the Applicants and Mr Cleator do attend (together with their respective Advocates if they so wished) in order to clarify the issues arising from the Application for Rectification.
3. provide me with a report in respect of the aforesaid meeting following which I would give further directions as appropriate.

Mr Anderson duly complied with the aforesaid directions. He provided me with a report dated the 3rd October 2013. ("Mr Anderson's Report") A copy of that report has been provided to the Applicants and Mr Cleator.

On the 14th October 2013 I wrote a joint letter to Mr Jelski and Mr Humphrey, Advocates for the Applicants and Mr Cleator respectively. In that letter I indicated that Section 81 of the Land Registry Rules 2000 dealt with Applications for Rectification but that it was not as comprehensive as I would wish in relation to the precise procedure I should adopt.

Using the yardsticks of transparency, fairness and ensuring all parties had an opportunity to put forward their arguments in full prior to determination, I proposed:

> a) Mr Cleator provide a full written response to the contents of the Application for Rectification incorporating areas of agreement and disagreement and the reasons for such disagreement and provide the Applicants with a copy;
>
> b) The Applicants be afforded an opportunity to respond;
>
> c) A Site Visit to take place with both parties (with Advocates if they so wished);
>
> d) Following this an opportunity for parties to appear before me would be afforded if the parties wished or I considered it helpful.

The parties responded with suggestions and certain documents were requested. I took all suggestions into consideration.

All documents that were requested by the parties were provided to them by Mr Anderson at my request.

By letter dated the 13th December 2013 I suggested the following procedure and timetable:

> i) Mr Cleator provide his response to the Application for Rectification no later than the 17th January 2014;
>
> ii) The Applicants provide a response to Mr Cleator's aforesaid response by no later than the 17th February 2014;

iii) Mr Cleator to submit a final statement no later than the 18th March 2014;

iv) The Advocates for the parties to provide Skeleton Arguments by no later than the 31st March 2014;

v) A Site Visit to take place mid April 2014.

A variation to the aforesaid timetable was ordered (by agreement and consent) by Deemster Montgomerie (I was off the Island at this time) whereby extensions of time were granted to the parties.

All parties complied with the rescheduled timetabling and provided the listed documents and provided copies each to the other.

The Site Visit took place on the 15th April 2014 and a report of that Site Visit forms part of this decision.

At the Site Meeting I indicated I intended to pose further questions to Mr Anderson and the parties agreed to that course and to it taking place in their absence on the basis I would provide them with a report of the outcome. This I did and the parties were permitted to submit any written comment. Both parties took the opportunity to submit comment and further submissions by the agreed final date of the 28th June 2014. I invited Mr Anderson to comment on their further submissions and he submitted further submissions and argument on the 15th July 2014.

All parties agreed at the Site Meeting that they were content with the procedure I had adopted and the opportunity was given to put forward whatever documentation and submissions they wished.

Neither party sought an oral hearing, and I did not consider an oral hearing was necessary.

The Application for Rectification

The Application for Rectification was signed by the Applicants on the 4th June 2013 and by their Advocate Mr Robert Jelski on the 11th June 2013. It comprises the following:

1. Form 25 – the Application;
2. Appendix 1 – continuation sheets to Form 25. This consists of three parts:

   a) Part A: Land Parcel;

   b) Part B: Proposed Rectification;

c) Part C: Grounds Relied upon. This section is subdivided into

i) Conveyancing history re parcel, the subject of the Application

ii) Pre-existing dispute;

d) Document referred to (enclosed therewith);

e) Correspondence between parties and their legal representatives.

The Application for Rectification states that:

> *"There are certain discrepancies between the boundaries of [The Property] shown on the Filed Plan and those shown in the [1998 Deed].*
>
> *Of particular concern to us and our property "Mwyllin Squeen" is the boundary of [The Property] adjacent to the road [The Road] leading to our property, which is now drawn south of where it was previously indicating possession of the full width of the [Road] also part of the River Ford. The parcel of land in question is shown in Part A of Appendix 1, entitled "Land Parcel". An extract of the [1998 Deed] plan and a corresponding Survey Map extract indicating the Filed Plan boundary in question are also supplied in Part A of Appendix 1.*
>
> *We propose the Filed Plan be rectified so as to restore the boundary north of the [Road] to the line shown in previous conveyances of [The Property] and as indicated by a solid line on the current and previous issues of the Survey Map.*
>
> *This section is continued in Part B of Appendix 1, entitled "Proposed Rectification" including a Survey Map Extract indicating the proposed boundary line with an accompanying description."*

Appendix 1 Part B contains a map showing the proposed boundary line rectification of The Filed Plan, which, the Applicants argue, accords with the boundary as shown in Deeds of Conveyance of the Property (including the 1998 Deed Plan) and neighbouring properties prior to registration. I have annexed a copy of the plan showing the boundary line proposed by the Applicants as being the correct boundary of the Property. ("Rectification Map Proposal")

The Documents and Narratives Accompanying the Application for Rectification in Detail

In Appendix 1 the Applicants set out the conveyancing history of the Property, "Grounds relied upon", attributes of the land and boundaries pre "works".

Appendix 1, Sheet two is an aerial photograph shown it is stated, to provide "context". The alleged true Ford Boundary is shown by a red line and the area which requires rectification is coloured blue and edged yellow. It shows what is alleged is the true Ford Boundary in accordance with the 1998 Deed Plan, when Mr Cleator bought the Property.

Sheet three is a copy of the 1998 Deed Plan. Sheet three also contains an extract of the Filed Plan. Sheet Four is the Rectification Map Proposal. It shows the true Ford Boundary as the Applicants believe it should be and the Applicants contend this accords with the boundary shown on the 1998 Deed Plan.

On the Rectification Map Proposal there are various letters. The lines A-B and C-D shown on the Rectification Map Proposal are what the Applicants call "solid" – hedges, fences or walls. Between point B and C the Applicants state there currently exists an ancient stone weir of Mwyllin Squeen set in the River bed, "retaining and demarcating the north-western edge of the River Ford". Between Points C and D a Manx stone wall once stood according to the Applicants but was demolished by Mr Cleator. Point D as shown is the southernmost corner of the boundary wall between The Property and Squeen Lodge. As to Point E the Applicants state this is the "point of intersection of two lines – the first being a projected line of the boundary wall between the [Property] and Squeen Lodge and the second line being the north-western edge of the current concrete footbridge of "Mwyllin Squeen".

The Applicants contend the distance between Points D and E is six metres.

On Sheet five the Applicants set out what they consider to be the conveyancing history of relevance – in particular the Ford Boundary which is the part requiring rectification so far as the Applicants are concerned.

Reference is made to the quarterlands of Squeen and Ballacroshey. The River crosses over the boundary of these two quarterlands. The Applicants state the boundary between the quarterlands of Squeen and Ballacroshey can be defined by (inter alia) reference to the 1786 arbitration between John Craine and Robert Gawn, the 1788 Arbitration between John Kneen and Thomas Grimshaw and the 1792 arbitration between John Craine and John Kneen. Three properties were bounded by that quarterland boundary line namely The Stable Field, Mwyllin Squeen and the Property. The Applicants have used the Ordnance Survey Map of 1869/1870 (25") ("OS 1869 Map") to demonstrate this by overlaying such map with the alleged quarterland boundary line shown in a green dashed line ("The Green Boundary Line") That Green Boundary Line lies to the north of the Road and the River Ford.

The Applicants show the Stable Field (as the Applicants call it) on the OS 1869 Map as comprising two fields numbered 997 and 996. The current corresponding field numbers are 224255 and 224254 state the Applicants.

The Stable Field is in the Quarterland of Ballacroshey. The Road - up to the River Ford is numbered 995 on the OS 1869 Map.

The Applicants contend that the Stable Field belonged to Robert Gawn "through the second half of the eighteenth century". It was created by dividing up the quarterland of Ballacroshey in 1705 and 1707. The Stable Field remained in the same family from 1707 until it was sold in 1905. The Applicants contend that there was no change in the Lord's rent during that time and its boundaries can therefore be assumed not to have changed. Reference in support of that is made to the Libri Assedationis of 1721, 1761, 1797, 1822 and 1870 and the North Side Sales October 1905/21.

The Applicants contend that Mwyllin Squeen was conveyed to John Craine in 1778. Reference is made to North Side Sales May 1778/22 in this respect. In such sale the land is described as "adjoining the rent of William Kneen on the north to the rents of Robert Gawn, Finley Stephen and William Cowley on the East "Cowley" is shown on the OS 1869 Map overlaid by the Applicants as owning Field 998 "Kneen" is shown on the OS 1869 Map overlaid by the Applicants as owning a field in the quarterland of Squeen. "Craine" is shown on the OS 1869 Map overlaid by the Applicant as owning Mwyllin Squeen.

The Applicants contend that the part of The Property which is contiguous with the Road was formerly part of a parcel of land known as Cronk Breck which was "created" when William and Catherine Kneen divided part of the Squeen quarterland that they owned along the line of the River. Cronk Breck was conveyed to Thomas Grimshaw in 1787. Reference is made to North Side Sales May 1787/9. It was described as being in the quarterland of Squeen and bounded on the south by the "rent of Robert Gawn". Cronk Breck is shown on the OS 1869 Map as overlaid by the Applicants as being to the north of the Green Boundary Line making it entirely within the quarterland of The Squeen.

The Applicants have overlaid a red line on the OS 1869 Map. They contend it represents a boundary wall. They refer to North Side Sale Oct 1799/7 and state as follows:

> "*Where the [Road] reaches the Ford at Mwyllin Squeen there is a weir across the [river] in line with what remains of the north wall of The Road. To the west of the Ford another boundary wall starts in line with the weir and the wall on the north of the [Road] and continues along a complicated path (marked red on the OS 1869 Map overlaid by the Applicant ("The Red Line")) which was arbitrated in 1792 [NSS Oct 1799/7] –*
>
> *"[….] ranging and leading from that part of the said mere adjoining the land of Robert Gawn of the said Ballacrossey [….]*"

The Applicants contend, with reference to the Rectification Map Proposal that the north wall of the Road between points C and D and the weir between points C and B and the wall west of the River (points A – B) thus mark the boundary between the quarterland of The Squeen and Ballacroshey.

The Applicants then refer to plans in certain deeds to support their argument that the aforesaid boundary as shown by the Red Line marks the southern boundary of the Property.

Copies of the plan from the following deeds are attached to the Application for Rectification in support, namely:

Deed Dec 1926/19

Deed Nov 1957/44

Deed Jan 1986/91

Deed 1997/6374

Deed 1999/01407 [The 1998 Deed]

None of the aforesaid plans show the boundary as registered and shown on the Filed Plan contend the Applicants.

The Applicants then continue to describe the conveyancing history near the disputed part of The Property. They state that the Road passes along the north of the Stable Field. Referring to OS Map 1869 the Applicants state that the Road used to run eastwards from the high road, Station Road to the Curragh along the northern edge of fields. East and adjacent to what is now Station Road the lane is shown to be walled off (No 1009. Listed as an occupation road in the Book of Reference to the Plan of the Parish of Ballaugh) whilst further east the lane is shown open and "field south-eastwards to the fields they pass through"

They state:-

> "*The Lane is also tied south-eastwards to the fields that they pass through where the lane continues west of Ballaugh River and past the mill*".

The Applicants point out that in 1832 John Grimshaw sold Cronk Breck, (described as bounded on the south by "the road or lane leading to Squeen Mill") to William Rothwell. Reference to North Side Sale Oct 1832/7 is made in this respect.

In 1839 William Rothwell conveyed the same property described as being bonded by "… the land of John Corkan on the south to Thomas Craine". Reference to North Side Sale Oct 1843/6 is made.

The Applicants refer to Tithe Plan 87 (dated 1840). It shows Cronk Breck in the ownership of Thomas Craine and being bounded on the south by "Road leading from Squeen's Mill".

The Applicants then state as follows:

> "*Thus the boundary is variously given as the road or as the land of Robert Gawn (or his nephew John Corkan who inherited the Stable Field). These differing descriptions of the boundary amount to the same, given the mill road was part of the Stable Field*".

The Applicants then refer to a Manx stone wall. They state that the part of the quarterland boundary east of the weir had a Manx stone wall built upon it between points C and D on the Rectification Map Proposal. That wall was there when Mr Cleator bought The Property. Part of the stone wall still forms the boundary of Squeen Lodge where the Property meets the Road.

The Applicants then provide a summary which states as follows:

> "*We conclude that the quarterland boundary lies at the northern edge of the [Road], the said Road running over what was the northern edge of the field that became known as the Stable Fields. The presumption of installing usque ad medium filum viae is dependent upon ownership of the underlying land being unknown but we would contest that any such presumption does not apply in this instance given that the ownership – which has been traced back to the 1703 Act of Settlement – is seen to lie with the quarterland of Ballacroshey and not with the Squeen. Conveyances of [The Property] also consistently show the boundary north of the [Road]. On this basis we believe the Filed Plan in association with Title No 22-00244 is incorrect in indicating both part of the [River Ford] and part of the [Road] as being in the possession of [The Property], the boundary line being drawn south of a line between points B and C [on the Rectification Map Proposal] the weir and a line between points C and D (the demolished wall) indicated in part B of the Appendix outside the land purchased by Mr Cleator in 1998 and therefore acquired in voluntary first registration other than by valuable consideration and without valid claim*".

In relation to the River, the Applicants state that in 1778 John Craine acquired Ellan Squeen, part of which incudes Mwyllin Squeen. It was conveyed with:

> "… *with all ways, waters, watercourse easements, Liberties appendances appurtenances Tenants Tenants rights [….] together with*

all Damns, Damn heads, weirs, races water passages or courses easements of winnowing and all rights or privileges to the said mill belonging [….]"

They state that in an Arbitration dated the 23rd January 1786 between John Craine and Robert Gawn it was decided that the boundary between them should run:

"[….] until a direct line intersecting the old Copp near the east end of the said Mill and from thence the middle of the said Copp northward into the mark set out in the said Copp as the Mere between the quarterland of Squeen and Balla crossey …. and in respect of the River Course between the said parties we are of the opinion that the said Course is to be on the west side"

The Applicants contend this places ownership of the River and the east bank with Craine. The Applicants have marked this boundary as a blue line on the OS 1869 Map overlaid by the Applicants.

The Applicants also contend that the OS 1869 Map shows the River between Mwyllin Squeen and the Stable Field as belonging to Mwyllin Squeen.

The Applicants further state that in a conveyance of the Stable Field (North Side Sale Oct 1905/21) it is described as "bounded on the south and west by the property of John Robert Craine". This is to be expected state the Applicants as the River and east bank belonged to Craine.

Regarding the River, the Applicants summarise as follows:

"*We conclude that the boundary of Mwyllin Squeen takes the full width of the river running along the edge of the property together with its east bank except where otherwise conveyed (Oct 1970/45 Jan 1972/45) as far downstream as, and including, the weir on the quarterland boundary on the basis we believe that the Filed Plan in association with Title No. 22-00244 is incorrect in indicating part of the Ford and east bank as being in the possession of [The Property], the boundary line being drawn south of a line between points B and C [on the Rectification Map Proposal] outside the land purchased by Mr Cleator in 1998 and therefore acquired in voluntary first registration other than by valuable consideration and without valid claim*".

The alleged pre-existing dispute is referred to by the Applicants in the Application for Rectification. The dispute relates to the boundary of the Property. Documented correspondence between the parties is referred to after Mr Cleator began erecting a wall on the 15th June 2010 "some metres south of the one previously demolished".

The Applicants aver it was a "demonstrable and ongoing dispute". This runs contrary to the statement in the application for first registration made by Mr Cleator wherein it was stated that he had been in "undisputed possession of the land".

That, they argue constitutes a contribution to "an error on the Title Register".

There is no consent by the Applicants to the proposed rectification set out in the Application for Rectification.

The Applicants do not believe the error can be interpreted as being of a formal or trivial nature or of a clerical nature and therefore precludes the use of Rule 82 of the Land Registry Rules.

In summary, the Applicants state as follows:

> "*We believe from our enquiries at the Land Registry that Title No. 22-00244 originates from a voluntary first registration that was made with little reason other than to assert possession of land that was already subject to a dispute and to justify further development thereon. This is borne out by the fact that the registration is now upheld as entitlement to carry out works similar to those Mr Cleator attempted prior to registration but desisted from when we demonstrated in 2010 that the [Road] was not part of his property and that he was thereby restricting our access*".

Accompanying the Application for Rectification is the affidavit of Dr Craine sworn on the 4th June 2013.

("Dr Craine's Affidavit of June 2013") In such affidavit Dr Craine states that Mr Cleator demolished a section of Manx stone wall which had hitherto been between Mr Cleator's boundary and the Road leading to Mwyllin Squeen and later constructed a second vehicular entrance to The Property through the opening thus created with a ramp of earth and gravel leading to it within the same Road.

Dr Craine also stated that after that opening had been created a heap of earth, stone and grass clippings ("The Mound of Earth") was constructed at the edge of the said ramp by Mr Cleator and was gradually extended into the Road. This caused a partial obstruction of the Road which is the access road to the Applicant's property, Mwyllin Squeen. Larger vehicles are entirely obstructed.

Dr Craine states that on 15 June 2010 Mr Cleator attempted to construct a wall on part of the Road adjacent to the Mound of Earth, but desisted following a challenge by Dr Craine.

Dr Craine further states that in November 2012 the Mound of Earth was enclosed with fencing wire and on the 29th November 2012 Mr Cleator's gardener, Mr Kewley (Mr Kewley) was seen to be erecting fencing posts into the Mound of Earth. It was on this date that Dr Craine learned that Mr Cleator had registered title to the Property.

Further in his affidavit, Dr Craine states that after careful research he has ascertained that all conveyances of the Property from the eighteenth century onwards place its southern boundary along the northern edge of the Road. Documents from the time of the Act of Settlement onwards place ownership of the Road within the land on the opposite side of the Road to The Property. The boundary of the Filed Plan overlaps the entire width of the Road across the entrance to Mwyllin Squeen. Dr Craine finds no basis for the registration by Mr Cleator of any part of the Road.

Further, Mwyllin Squeen is a former water mill and several documents place the entire width and east bank of the river in the area of the River Ford within the property boundary of Mwyllin Squeen. There is no basis for the registration by Mr Cleator of any part of the River Ford south of the property boundary of the Property as it existed at the time of and prior to Mr Cleator's acquisition.

The Applicants made further submissions relating to "new vehicular access" to the Property. It is subdivided into two sections with two appendices. The first subsection pertaining to the Registration by Mr Cleator. The Applicants contend that the disputed area of land has been registered by Mr Cleator for the purpose of obtaining vehicular access to the Property.

The Applicants contend that Mr Cleator has no "established right as to the movement of vehicles over the Disputed [Area of Land or the Road]". Conversely the Applicants assert that they do have an established right of way over the Road "as well as other rights regarding the Disputed Area of Land that must be considered".

The Applicants submit that Mr Cleator and L&H were aware of a dispute between them pertaining to the disputed area of land and yet made no reference to it when filing the application to register the same. Reference is made to correspondence in 2010 between the parties on the matter.

As to the alleged creation of what the Applicants term a new vehicular access by Mr Cleator onto the Road, The Applicants state:

> "*Mr Cleator has not established a right to vehicular access onto the [Road] at the point where he has demolished his boundary wall. As the boundary wall was demolished after his purchase of the [Property] he cannot assert that a vehicular access existed at the time of his purchase. We can also provide independent evidence to demonstrate*

the fact that from 1951 up to the time of Mr Cleator's purchase vehicular access to the [Property] has been solely via an exclusive access to the [Property] from Station Road (adjacent to Ballaugh School) an access which still exists"

The Applicants also refer to Mr Cleator driving metal bars into the Road and erecting pig wire in the area where he had previously attempted to erect a wall in 2010. They also refer to Mr Cleator erecting a wire fence but with a length of blue cable. Both of these areas are outside the boundary of the Property state the Applicants. It is an attempt by Mr Cleator to assert ownership of land he does not own.

The Applicants refer to the triangular portion of the disputed area of land as being south of the line of the weir. They contend that the land south of the line of the weir belongs to Mwyllin Squeen.

The Applicants also point out that Mr Cleator has registered the whole width of the Road south of the boundary wall demolished by Mr Cleator.

The Applicants point out that the Ford Boundary as shown on the Filed Plan is not shown on any of Mr Cleator's title deeds.

The Applicants contend that the south limit of the Road where it enters Mwyllin Squeen to be in line with the north face of the concrete footbridge. The footbridge is used exclusively for access to Mwyllin Squeen they state.

By encroaching on the Road with garden waste, gravel and fencing – the Mound of Earth – Mr Cleator has obstructed the Road making vehicular access to Mwyllin Squeen by larger vehicles impossible. It is two metres wide.

The Applicants contend that references to an established elm tree by Mr Cleator is not accurate as many parts are actually suckers coming out from the main tree resulting from damage to that tree in the past.

The Applicants annexed photographs of the footbridge at the River Ford circa 1890 and the building of the new footbridge. There are also photographs of the fencing with the blue cable and the metal bars referred to earlier.

Photographs are shown of a cement lorry on the Road which it is alleged could not access Mwyllin Squeen because of "obstruction at the Ford". Cement was conveyed from the lorry by way of dumper truck. The "limiting factor" for access for larger vehicles is the "obstruction to the east of the Ford where Mr Cleator has formed an access" state the Applicants.

Annexed to this submission is correspondence between the parties in 2010.

The Affidavits and witness statements which accompanied the Application for Rectification submitted by the Applicants in support of their submissions in addition to the affidavit of Dr Craine of the 4th June 2013 include:

i) The Affidavit of Dr Craine sworn on the 28th February 2014

Dr Craine refers to his father purchasing Mwyllin Squeen and modernising it. It had been in the family for some years previous to that. He remembers returning to the Isle of Man in 1967 and noting that the old wooden footbridge over the River had been replaced by a new bridge which actually allowed more space in the Road. Livestock went down the Road turning right through the lane to the fields. To prevent livestock straying towards the house en route, two large gateposts were erected with iron gates made from cartwheels.

Dr Craine returned to live at Mwyllin Squeen in 1997 following the death of his widowed mother.

Dr Craine indicates that the gate to the Flatt had been locked by his father and mother but that an attempt was made by someone to gain access to the Flatt through the gate. Dr Craine advised the owner of the Flatt – Mrs Llewellyn, that there was no right to use that entrance. Dr Craine erected a replacement fence across the gateway.

Dr Craine states that in 2010 he learned from Mrs Hommet that Mr Cleator was trying to build a wall across the Road.

Dr Craine also noticed "attempts to tamper with the weir and the wall to the east of it". Stones were removed. On the west bank of the River scrub had been cut from the bank and deposited in the Millrace.

On the 29th November 2012 Dr Craine discovered Mr Kewley trying to erect a post and wire fence around the Mound of Earth in the Road.

ii) The affidavit of Mrs Hommet sworn on the 28th February 2014 states that she first came to Mwyllin Squeen in 1985. At that time the Road was flanked by a slate wall with a wide opening at Squeen Lodge and a narrow gate (with a picture of a Great Dane) at the Property. On the road side of the wall, grass was growing which extended over the whole width of the Road at the Property boundary with only wheel tracks leading to Mwyllin Squeen. At the edge of the River was a 'huge white boulder' covered with algae and weeds. Mrs Hommet was told no one was to go through the gate at the Flatt.

Mrs Hommet says she moved to Mwyllin Squeen in 1997 and the aforementioned landscape was just the same. At that time the Applicants were friendly with the widowed Mr Cleator, but latterly found him rude to their guests so distanced themselves from him.

In 2010 it was Mrs Hommet and her son Euan Craine who 'caught' Mr Cleator and Mr Kewley, his employee, building a wall on the Road. Mrs Hommet told him he could not do this as it was a road. Mr Cleator was aggressive in manner she said.

On the 28th November 2012 Mrs Hommet found fencing around the mound of Earth. She removed it. The next day Mr Kewley was re-erecting the fencing and Mrs Hommet removed it again. On the third day Mrs Hommet and her son Mr Euan Craine met with Mr Kewley at the Ford where he was again erecting fencing. It was at this point Mrs Hommet learned that Mr Cleator had "registered the Road and it was now part of his property".

iii) The statement of Mr Euan P. H. Craine dated the 16th February 2014.

Mr Euan Craine states he has known Mwyllin Squeen all his life; since the time it was owned by his grandmother. He refers to the white rock ("The White Boulder") where a wooden fence hung over the River and to where that fence and the stone wall which ran the length of the north side at the Rear from Squeen Lodge.

Euan Craine remembers the wall being partially removed before 2005 and further realtered from 2009. Previously there was a gate in the wall centred nearer to Squeen Lodge than the River and on the gate was a picture of a Great Dane with 'Beware I live here' written on it. From the White Boulder to that gate the wall had lime mortar and cement coping.

Whilst growing up at Mwyllin Squeen Mr Euan Craine states there was never a "viable vehicular access to either the Flatt or The Squeen" from the Road. The tarmacadam surface of the Road only extended down to Squeen Lodge. Thereafter it was grassed. Until 2010 Euan Craine had not seen a vehicle use the Road to access The Property.

In 2010 Mr Euan Craine was on the Isle of Man and noticed the Road was narrowing with "what appeared to be garden and builders waste adjacent to the white rock".

Mr Euan Craine says that returning from a walk with his mother Mrs Hommet on the 15th June 2010 he noted Mr Cleator and Mr Kewley erecting a wall in the Road. When asked to stop Mr Cleator became irate.

Mr Euan Craine describes the increasingly poor relations between the Applicants and Mr Cleator thereafter, the general sentiment of which is that it was Mr Cleator who was the one being difficult.

Mr Euan Craine states that on the 29th November 2012 he found Mr Kewley erecting a post and wire fence with a vehicle parked across the Road. The Police became involved and it was at this point Mr Euan Craine learned of the fact "the Road had been registered". After the Police left, Mr Euan Craine recorded the "conversation he had with Mr Kewley. I have a transcript of that recording and a c.d. of the recording.

iv) The Affidavit of David Andrew Wyatt Warren sworn on the 21st May 2013 accompanied the Application for Rectification. It states that from 1987 to 2002 he was familiar with the Road. During that time he knew the occupants of Mwyllin Squeen and visited. Throughout that time the only entrance from the Road to the riverbank path was a narrow pedestrian gateway no more than three feet wide set in a Manx stone wall. There was no vehicular access. A plan is attached to the affidavit of Mr Warren.

v) The undated statement of Rodney Done states he worked as a gardener at the Property from 1975 until 1985. During that time the path leading along the riverbank was little used as most people visiting the Property came and went by the drive leading directly from Station Road. At the south end of the path was a stone wall running along the edge of the Road. The path connected to the Road by a "narrow pedestrian gateway in the wall".

Mr Done worked for the owner of Cronk Breck until 2001. Cronk Breck abuts the Road. Mr Done does not remember any change to the aforesaid gateway during that time.

vi) The undated statement of Cynthia Jane Corkill indicates she spent much of her childhood at Mwyllin Squeen from the early 1970s when she was about eight. She remembers the gateway to the field opposite the Ford being covered with weeds and cannot remember anyone going through it.

The road used to pass "quite close to the big white stone" – now she notes there is a bank of material close to the Ford by the white stone. This was not there in the past.

vii) The undated statement of Henry Ballard states he used to visit Dr Craine's mother at Mwyllin Squeen up to her death. He remembers that the gateway in the stone wall close to the Ford was a narrow pedestrian gateway with "just some weeds growing by the river and the edge of the road". The gateway to the field was overgrown and he does not recollect anybody using it.

viii) The statement of David John Fisher dated the 26th February 2014 states that he has been a visitor to Mwyllin Squeen since the 1970s. He

would take his young children to play at the Ford sometimes with their cousin Mr Euan Craine. He remembers the Road as a country lane with grass and tall weeds at the side. The road from the Ford to Mwyllin Squeen had a wire fence to one side and brambles growing and tall weeds on both sides. Close to the Ford was a field gateway which was tangled with weeds. He does not recall anyone using it.

On the "other bank of the Ford" was also tall grass and weeds on the sides of the lane. On one side was a sod hedge and on the other a wall with an opening to a footpath. There was river silt at the edge of the river and a large stone.

The transcript of the 'encounter at the Ford on the 29th November 2012'

This has been prepared by the Applicants. I have also watched the video which the Applicants have provided of the encounter. It shows feet and the ground only. The transcript states that present were Mrs Hommet, Mr Kewley, Mr Euan Craine and Dr Craine.

The Submissions of Mr Cleator in January 2014

The first submissions of Mr Cleator are contained in a document dated the 31st January 2014 ("Mr Cleator's Submissions of January 2014") Mr Cleator made a supplementary submission on the 18th March 2014. It is convenient to refer to this later as it responds to submissions by the Applicants.

Mr Cleator contends that The Road is an Occupation Road which continues across the River Ford to provide access to the field known as The Flatt ("The Flatt").

Mr Cleator notes that the Applicants do not assert ownership of the Road to the east of the River Ford.

Mr Cleator states that the Applicants did not previously assert ownership of the River bed and only latterly sought to claim this as their own. Mr Cleator refers to the Deed of Conveyance dated the 29th May 1998 ("D1998-3151") by which the Applicants become entitled to Mwyllin Squeen. This deed refers to a Vesting Assent dated the 29th May 1996 ("D1996-3537") to identify the extent of such land and it does not include any part of the Riverbed. It is only by a deed dated the 16th March 2013 ("D2013-813") that the Applicants have sought to lay claim to the riverbed.

Mr Cleator indicates he does not seek to interfere with the right of way currently enjoyed by the Applicants over the Road.

The Applicants have sought to restrict access to the Flatt by erecting a fence across its entrance. Prior to that the Road had for many years been used to

gain access to the Flatt. I should state at this point that Mr Cleator does not own the Flatt.

Mr Cleator states that the 1998 Deed and more particularly The 1998 Deed Plan as annexed thereto is not conclusive and does not take account of presumptions at law.

Mr Cleator admits that the wall erected between points C and D delineated on the Rectification Map Proposal was removed by him to restore vehicular access to the Property from the Road but avers the wall was a "relatively late addition to the southern driveway of the Property and historically vehicular access existed to and over the same".

Mr Cleator refers to the assertion in the Application for Rectification that the quarterland boundary between the quarterland of the Squeen and Ballacroshey was defined by arbitrations to which I have referred. Mr Cleator contends that these did not define the quarterland boundary as purported by the Applicants. The Green Boundary Line put forward as the quarterland boundary by the Applicants is both arbitrary and contrary to other available evidence. It is admitted that a complicated path for the quarterland boundary is shown but it is denied by Mr Cleator that it followed the path asserted by the Applicants as such path is based on an erroneous assumption that the quarterland boundary between Squeen and Ballacroshey lay at the northern edge of the Road.

The quarterland boundary between Squeen and Ballacroshey lies at the southern edge of the Road asserts Mr Cleator. In support he refers to:

> a) Tithe Plan 87 which shows the Road (referred to as "Road from Squeen Mill") as well as the Southern driveway to the Squeen (referred to as "Road to J Corletts");
>
> b) Woods Atlas in which the quarterland boundary between Squeen and Ballacroshey is shown as abutting the southern edge of the Road between parcels 87t and 66t and providing access to the Flatt.

There is no reference in any of the Deeds recited by the Applicants to suggest the Road fell within the quarterland of Ballacroshey.

Mr Cleator draws attention to the fact that the arbitrations refer to a Millrace to be constructed on the Flatt for the benefit of the then owners of Mwyllin Squeen and that such right to construct and maintain the Millrace shall not be construed as a hindrance to the owners of the Flatt to gain access to the river and highway.

Referring to paragraphs 6 vii and (ix) of Part C of Part 1 of the Application to Rectify, Mr Cleator denies that area braces or field ties on an Ordnance Survey Map denote ownership: It is averred they are used for convenience

where an area may be too small to be practically measured on its own. Furthermore the lane referred to as it moves eastward of Station Road is shown on the OS 1869 Map as being co-extensive with, and providing access to, the fields forming part of the quarterland of Squeen as shown in Woods Atlas. Tithe Plan 123 supports this further as it includes the said lane as part of The Squeen. Tithe Plan 169 represents the land sitting to the south of the said lane and does not include it within the parcel.

The lane east of Station Road (Number 1009 on the OS 1869 Map) and the Road (Number 995) are both described as Occupation Roads in the Book of Reference to the Plan of the Parish of Ballaugh.

Mr Cleator denies that the description outlined in paragraph 6(x) of Part C of Appendix 1 of the Application for Rectification shows the Road formed part of the land to its south.

Mr Cleator refers to para 6 (xi) Part C of Appendix 1 of the Application for Rectification. He asserts the wall which he has demolished was a late addition to the Property. Support for such argument includes the following:

a) Tithe Plan 87 does not show a wall. The southern driveway to the Squeen is described as a "road";

b) On the OS 1869 Map no such wall is shown;

c) The plan attached to a Deed dated the 9th March 1953 made between Catherine Isabel Craine and Alfred John Parker ("March 1953-21") shows a wall but in a different place. The drive exists on to the Road like the one that currently exists. Mr Cleator also points out that the said plan shows verges onto the Road.

In the Deed dated the 31st October 1957 ("November 1957-41") made between Elizabeth St. Charaine Gordon, Sybil Dorothy Parker and Edward Corteen and Sybil Dorothy Parker there is a plan and no wall is shown.

Mr Cleator asserts there is no evidence leading to a conclusion that the quarterland boundary lies at the northern edge of the Road. The evidence points to the contrary and it is asserted that if the presumption of *usque ad medium filum viae* ("The Presumption") (and more on that later in this decision) is to be rebutted it would be so that the boundary lies at the southern edge of the Road. Mr Cleator does not seek to rebut the Presumption.

Mr Cleator notes that the Applicants rely on previous deed plans to support their assertion that the Road lies wholly within Ballacroshey. Mr Cleator notes that previous deed plans relating to the land to the south of the Road likewise do not include the Road within their boundaries. Mr Cleator specifically refers to:

a) Office Copy of Title No: 22-00114;

b) Deed of Conveyance (Nov 1977-84) made between Marjorie Graeme Widdas and Henry Farrant Gillham and Muriel Joyce Gillham.

As to the River Ford, Mr Cleator refers to the submission of the Applicants at paragraphs 6(xiii) of Part C of Appendix 1 of the Application for Rectification, wherein the Applicants assert that the River Ford and Weir belong to and form part of Mwyllin Squeen. Mr Cleator states there is no evidence for this. The deeds referred to all relate to the River and lands south of the quarterland boundary which is to be taken from the southern edge of the Road and continue through the River across the River Ford to provide access to both the Flatt and Mwyllin Squeen. Mr Cleator refers to Woods Atlas, NSS Oct 1799/7 and a plan attached to his submissions whereon the lands of Squeen are numbered parcels 4-10 and show the area to the west of the Ford as part of the Road and no visible northern driveway to the Property as existing.

Mr Cleator denies he sought to construct a wall in replacement of a wall demolished some years earlier. Such wall was replaced by a gate which remains to date.

Mr Cleator admits he made footings to put a "dwarf wall" on the east bank of the River. Such footings did not impede the right of way. When challenged by the Applicants, Mr Cleator did not proceed further with the construction of the said wall.

Mr Cleator states he has never intended to restrict the right of way for the Applicants to Mwyllin Squeen.

Mr Cleator points out that the Applicants have not made a claim of ownership in relation to the land in this dispute and so the challenge by them was not relevant to Land Registration. The right of way over the Road would remain pursuant to Schedule 5 paragraph 4 of the Land Registration Act not withstanding registration. Attached to the submissions are various maps and plans as referred to.

Witness Statements by, and in support of, Mr Cleator

In addition to his submissions Mr Cleator has provided witness statements dated the 31st January 2014, the 18th March 2014 and provided supplemental submissions dated the 18th March 2014 and 19th June 2014.

I refer to the witness statement of Mr Cleator of the 31st January 2014 first. In it Mr Cleator states that the driveway of the Property to the Road was heavily silted up when he bought the Property. The silting was, and is, caused by river flow overspills hitting and running off the concrete road bridge which crosses the River which then runs in to and under his gate.

Squeen Lodge had a traditional dry stone garden wall which extended a short way into The Property to join an old slate pillar used to latch Mr Cleator's gate. The gate was hung from a wooden pillar to the west of which was a stone wall "running to the River". The first four or five feet from the post comprised of "round river stones". Mr Cleator states it then merged into traditional slate stone walling, again to the river. Most of that section still exists states Mr Cleator.

Mr Cleator states that he and his gardener Mr Kewley have, on occasion, crossed the Ford to gain access to the Property on the western side of the River to remove debris and such like.

Mr Cleator states that in the past, farmers used the Road, as did others whose properties abut on the Road. The Road terminates at the gates of Mwyllin Squeen he states. Mr Cleator takes the view the Road is an accommodation road. He has provided statements from John Michael Christian, Heather Quinn, Mr Kewley, John Keenan and David Nielsen. I shall refer to them shortly.

Mr Cleator confirms employing Mr Kewley in late 2000. One job was to remove the silt from the driveway of the Property leading to the Road and the garden gate (this was the one with the warning about a dog on it erected by the previous owner). This allowed access and egress for Mr Cleator's small tractor to exit, turn in the Road and return. No objection was raised by the Applicants who in fact at that time were friendly with Mr Cleator and used that same entrance to call on Mr Cleator. Mr Kewley also used the same entrance as the other entrance to the Property was near the school and often blocked by the vehicles of parents. No objections were raised.

In 2002 Mr Cleator invited Dr Craine to use his northern driveway entrance - that is the one near the school - and travel through the Property to the exit on the Road whilst work was ongoing in the Road which temporarily obstructed it. The invitation was taken up.

In 2010 Dr Craine asked Mr Cleator for "a little more width" for the Road from the bank, for access by lorries. Mr Cleator agreed and indicated he would like "to build a little retaining wall to the bank similar to the one [Dr Craine] had had built on the western corner bank of the River and Ford".

Since 2002 Mr Cleator has spent winters abroad and had experienced theft of oil and garden furniture whilst away. He thus locked the gates at the northern entrance of the Property (near the School) whilst away and only the southern driveway onto the Road can be used at those times. Mr Cleator informed the Applicants and received no objection.

On his return home in late May 2010 Mr Cleator states he discovered the eastern bank of the River where it extends towards the Road had been severely cut back and the area left untidy. He did not complain, not wanting a

dispute. Mr Cleator then started to install a small concrete footing to build the small retaining wall he had earlier discussed with Dr Craine. Mrs Hommet "remonstrated" with Mr Cleator, he said, claiming the bank was part of the Road and denying the conversation Mr Cleator had had with Dr Craine about the matter. Mr Cleator did not build the wall. The bank was therefore left exposed.

Despite correspondence between them, Mr Cleator and the Applicants were unable to agree a way forward. I should add at this point that neither have subsequent meetings between them borne fruit.

When L&H applied for Voluntary First Registration of the Property no claim to ownership of the part of the Road through the Ford was made. This was because Mr Cleator believed the Applicants claimed ownership of the same. However Mr Cleator makes the point that he believes the Road extends through the Ford to where the gate of Mwyllin Squeen once stood.

In 2012 Mr Cleator noticed that the eastern Riverbank "was still being picked away" and so placed temporary protective netting and wire around the bank to prevent further vandalism.

Prior to that Mr Cleator said that neither he or his gardener Mr Kewley had interfered with the Riverbank other than to strim it along with his other owned riverbank twice a year.

Mr Cleator states he has used gravel on the driveway from the Property onto the Road and the verge from time to time because of slippery mud.

Mr Cleator states that old photographs show that large vehicles could easily turn into Mwyllin Squeen from the Road but that this was restricted by Dr Craine's father when he built a new concrete bridge over the River to replace the wooden footbridge. This extended northwards into the Road ("The Bridge"). Thus as a result of the building of the concrete footbridge only the northern half of the Road can be used for going through the Ford with vehicles.

Mr Cleator has taken photographs of large vehicles accessing Mwyllin Squeen experiencing difficulty at the Applicant's gateway but having no such difficulty when passing between the Bridge and the bank at the Property.

Mr Cleator's second statement is dated the 13th March 2014.

He reiterates:

> i) He did widen his entrance in 2003 to the Road but has received no objection. Furthermore the said entrance had been wider in the past;

ii) He has always considered the Road to be an accommodation road;

iii) He has not constructed any bank or mound on the land side of the old garden and has no desire to restrict access over the Road by any party;

iv) He has not constructed a ramp to his entrance on the Road side. It has always been there.

Mr Cleator denies being rude to anyone (as asserted by the Applicants). All Mr Cleator's attempts to negotiate a compromise have met with a total refusal on the part of the Applicants.

Mr Cleator referred to the southern sod hedge along the Road and in his opinion this is the most likely position of the quarterland boundary as shown in Woods Atlas.

I refer now to the other affidavits and witness statements submitted by Mr Cleator.

i) The witness statement of John Michael Christian dated the 12th March 2014 and the statement of John Michael Christian dated the 16th October 2013. Mr Christian states he spent his childhood in Ballaugh. His father rented fields at Mwyllin Squeen. He states access was down the Road and through the River – there was only a footbridge.In 1965 Mr Christian did contract bailing work accessing Saddlers Flat down the Road and through the River. This continued regularly until 2000. No objection was ever raised to the access. He recalls a "big gate with 'Squeen' on it certainly wide enough to get a car through and a verge and bank outside the gate of the Property now owned by Mr. Cleator.

ii) The witness statement of Mr Kewley dated the 18th March 2014 and October (sic) 2013. Mr Kewley remembers Squeen Mill (which I take to be one and the same as Mwyllin Squeen) from his regular childhood visits. The entrance to Squeen Mill started at the gateposts which were "about halfway between the Ford and the house". He recalls small tractors travelling across the Ford to Sadlers Flatt.

Mr Kewley helped Mr Styles (the previous owner of the Property) in looking after the grounds of the Property before Mr Cleator purchased it. Whilst working for Mr Styles at the Property Mr Kewley remembers driving down the Road in a car to the Ford to clear it of debris at the flapgate. No one challenged him.

Mr Kewley remembers a "wall with a gate" in the Property at the Road. The gate was approximately 4' wide with a sign saying "warning Great Danes". He regularly used that entrance to the Property without challenge. Mr Styles had Great Dane dogs. Mr Styles used a ride on

mower and went through the aforesaid gate to turn it round and come back up the lane into the Property grounds.

Mr Kewley would clear away river silt that washed up as far as Squeen Lodge twice a year. In all the time he has worked in the area the bank has always been there. From the River the original stones/boulders can be seen to have been in place for a considerable period.

Mr Kewley worked for Mr Cleator as well and helped him to "remove the old wall". He found it to be made up of river stone for much of the way before reverting back to original older slate walling. Mr Cleator stopped Mr Kewley from removing the whole wall. The remainder of the wall has now been built around with blocks to protect and preserve what is left "as from 2010 onwards parts started to disappear".

Mr Kewley states that since 2010 whilst working at the entrance to the Property Mrs Hommet challenged him with her son Euan. ("Euan Craine") They were intimidatory. Mr Kewley phoned the Police when he found protective fencing had been removed from the bank – on two occasions in fact. The Applicants were threatening towards Mr Kewley at that time so he called the Police a third time.

Mr Kewley explained that the netting and pig wire were erected around the bank as the bank was still being "picked away at". Parts of this netting process involved erecting some posts on the access driveway leading to Mr Cleator's gate on the Road. Whilst away at lunch on the 27th November 2012 the posts had been removed and placed in the grounds of the Property. It was for this reason, and after obtaining legal advice, that Mr Kewley telephoned the Police who confirmed he should reinstate the posts. Again the posts were removed as Mr Kewley found the next day. Again the Police confirmed he could reinstate them. In the process of so doing Euan Craine and Mrs Hommet arrived and shouted at him to stop – that it wasn't Mr Cleator's land. Mr Kewley again rang the Police for help. Mrs Hommet was being derogatory about Mr Cleator. Dr Craine also arrived as did two Police Officers. Dr Craine indicated to the Police Officer that his boundary ended at the water's edge. Mrs Hommet admitted she had removed the posts on both occasions. Euan Craine argued with the Police Officers' indication that everything should be left as it was and attempted to remove the posts. After a threat from the Police that they would all have to go to the Police Station, Mrs Hommet and Euan Craine calmed down. Mr Kewley produced a sketch plan of the relevant area. It shows Cronk Breck, Squeen Lodge the entrance to the Property off the Road, the relevant part of the River, the Road, the Ford, and the Bridge over the River, the gate to the Flatt, and the pillars on the Road to Mwyllin Squeen. It is hand drawn and not to scale. This is drawn as at the time Dr Craine's mother (Mrs Craine) occupied Mwyllin Squeen.

iii) The witness statement of David Kermeen dated the 16th March 2014 states he is familiar with the Road. Mr Kermeen indicates that he and members of his family have used the Road to enter and leave the Flatt many times up until the Applicants stopped him from leaving the Flatt sometime in 2002. A short time after, someone boarded up the entrance to the Flatt and it has not been possible to use the Road for access to the Flatt since.

iv) The undated statement of John Keenan states he has lived in the village of Ballaugh for 64 years. At the time of writing his statement he was building three houses in the Stable Field which has access onto the Road. He states he is very familiar with the Road having visited the old Mill and the Property and has walked his dog down there many times over the years. He refers to Sadlers Flatt belonging to Judith Llewellyn. He refers to the concrete Bridge which is on the southern half of the Road ("The Bridge") and the fact it was built by Dr Craine's father in the late 1960s to replace an old wooden footbridge. He refers to a bank on the northern side of the Road at the point where the Road enters the Ford. The bank has been in existence all his life he says, adjacent to the original entrance to the Property and between the entrance and the River. He also states farmers always used the Road for access to Sadlers Flatt until it was boarded up.

v) The undated statement of David Nelson refers to the relationship between Squeen Lodge (where Mr Nelson lives), the Road and The Property from December 1926 to the present day. Mr Nelson notes relevant deeds namely Deed December 1926/20 , Deed March 1953/21 and Deed November 1957/888. Mr Nelson's personal observations from 1982 to the "present day" indicate that the Road has been used by "all types of road going vehicles" since 1982. The use of cattle transporters "recently ceased" he states.

The Road was tarmacadammed by the erstwhile owner of Cronk Breck – Mr Fairburn. It was also 'swept' into Squeen Lodge (financed by Mr Nelson). Mr Nelson states a cable was laid down the Road and across the Ford by Manx Telecom. Reinstatement of the Road took place in tarmacadam with the reinstatement of the Ford being in concrete thereby lifting the river bed some inches to its present level.

Mr Nelson states the 'principle boundaries' of the Road and verges belonging to Squeen Lodge have remained unchanged since 1982.

As to Squeen Lodge, the original angled gate of the original curved private road was removed leaving the entrance as it is "today". The Western boundary running parallel to the private Road to the Property was moved nine inches to one foot east to align more closely with the garage. This was done by agreement with Mr Styles, the then owner of The Property. Mr Nelson states that some years ago Mr Cleator

"reopened" the private road to the Road and when doing so "buttressed a crumbling wall" and removed "accumulated debris from the entrance". No alteration of boundaries or bank has happened at the Ford/River since 1982 he states.

The Submissions of the Applicants in response to those dated the 3rd March 2014 of Mr Cleator

The Applicants deny that the Road continues across the River Ford to provide access to the Flatt and note that Mr Cleator does not own the Flatt anyway.

The Applicants do not assert ownership of the Road to the East of the River Ford and extending to Station Road. However they note that Mr Cleator asserts he has good title to ("*inter alia*") that part of the Road which is co extensive with the Property at its Southern boundary. The correct boundary is as delineated on the Rectification Map Proposal they state.

The Applicants refer to the contention of Mr Cleator that the 1998 Deed Plan and other plans attached to other Deeds are not conclusive. That being the case, the Applicants contend that the five principles set out by Deputy Deemster Corlett in the case of Colquitt v Bell [2008] MLR 66 are applicable ("The Colquitt Case"). I shall refer to that in more detail later. The 1998 Deed Plan is not ambiguous and an independent survey has confirmed the position of the features shown on the digital base plan used in the 1998 Deed Plan and that it is accurate within the limits of the scale used. Whilst accepting that it is stated to be for identification purposes only it is the only means to show where the boundary is. The physical features on the ground (the walls either side of the River and weir and the fence across the River all in line) mean that their physical features define the natural and true position of the boundary.

The Applicants refer to the Arbitrations I have referred to and assert that the northern boundary of Mwyllin Squeen runs along the line defined in the Arbitrations and has therefore already been determined. The eastern boundary of Mwyllin Squeen runs along the eastern bank of the River along a line defined in the Arbitrations. In the case of re Gregory (1991-01 MLR N-20) it is stated that boundaries are not defined in the Isle of Man by the moving limits of a watercourse.

In the Arbitration NSS Oct 1799/7 reference is made to a boundary marker. A white boulder which still remains on the east side of the River Ford and has been treated as such boundary marker. ("The White Boulder") It lies at the point where the east and north boundaries meet. There is no evidence that the White Boulder and the marker are not one and the same thing. The boundary thus defined agrees with the description shown in the various conveyances of adjacent properties.

The Applicants assert that the true boundary of the Property lies at the northern edge of the Road.

The southern boundary of the Property was marked by a stone wall with a break for a pedestrian gateway of about 2-5 feet in width giving pedestrian access from the Property to the Road. Mr Cleator demolished the said wall to create a vehicular access from the Property onto the Road. Prior to the demolition the said wall had been in situ for some 50 years or more. Access to the Property from the high road was along a drive adjacent to Ballaugh School.

The Applicants deny closing off the entrance to the Flatt which had never been accessible over Mwyllin Squeen land in any event. Furthermore the Flatt is not an issue in the Application to Rectify.

The Applicants contend they and their predecessors in title have maintained the River Ford.

The Applicants contend that the Road continues no further westward than the eastern edge of the River. The River is included in the Deed of Sale from William Christian to John Craine (NSS May 1778-22).

The Applicants contend that the boundary as shown on the Deed whereby they became the owners of Mwyllin Squeen is certain (Deed 1998/3151) with unambiguous boundaries.

The Applicants contend that Woods Atlas can be inaccurate, inconsistent and, in some cases, wrong. The water coloured boundaries were added by hand and not printed and individual copies therefore differ.

The Applicants contend there is no credible basis for the Ford Boundary as now shown. All recorded deeds show the southern boundary of the Property as being along the northern edge of the Road.

Supplemental Submissions of Mr Cleator of the 18th March 2014

Mr Cleator states that ownership of the Road as it continues across the River Ford to provide access to the Flatt is relevant to the boundaries of the Property as the Applicants are claiming ownership of the Riverbed at the Ford and dispute the boundary in that area.

Mr Cleator argues that the Ford forms part of the Road and therefore the Presumption applies.

Mr Cleator does claim an interest in the part of the Road as it runs through the Ford and towards the Flatt based upon the Presumption. He

acknowledges he has not "as yet" sought to register the same "given the claim by the Applicants to the same".

Mr Cleator states that the Applicant's assertions about the boundaries are inconsistent and vary from the straight line as delineated as part B of Appendix 1 of the Application for Rectification to follow the features of the garden walls adjoining the Road which are not in a straight line and being represented by the White Boulder which forms part of the eastern riverbank. Furthermore the White Boulder is in approximately the same position as the registered boundary (Land Registry tolerances being applicable).

Mr Cleator notes the Applicants do not assert ownership over the Road to the east of the River Ford. That being the case they have no interest in the boundary where it abuts the Road and therefore the application to Rectify to that extent is vexatious.

The Colquitt Case does not relate to an Occupation Road and therefore can be distinguished from this case.

Mr Cleator submits that unless otherwise expressly specified, the actual boundary of the Property concerned will extend to the middle of the Road because the Presumption applies irrespective of the lines on the plan on deeds.

Mr Cleator further points out that there is no claim by him that any change in the course of the River has affected the boundaries of the Property. The Applicants assert that the White Boulder has been treated as a boundary marker. Mr Cleator denies that and asserts that the White Boulder represent "only an arbitrary point decided upon by the Applicants for convenience".

Mr Cleator submits that the more likely boundary runs along the southern edge of the Road to the Flatt as shown in Woods Atlas.

The question of pedestrian or vehicular access to the Property along the Road is irrelevant as to ownership of the Road or boundaries of the Property.

Mr Cleator admits that the southern wall of the Property leading onto the Road at one stage only had pedestrian access but asserts that prior to that it did have vehicular access. It was the only means of access to the Property prior to the opening of the driveway near the school. The OS 1869 Map shows no driveway near the school.

Mr Cleator denies that the entrance to the Flatt was never accessible through the Ford. Historic photographic evidence and witness statements from workers who used it show this until it was boarded up by the Applicant.

The Road does not form part of Mwyllin Squeen and was used as access to the Flatt.

Mr Cleator refers to the Arbitration referred to earlier and quotes as follows:

> "*that nothing herein before contained shall be construed or understood to bar or hinder the said John Kneen, his heirs or anyone from passing and repassing to and from the said river on his and their lawful occasions over the said millrace and to the said highway and from enjoying and making use of the water of the said race on all occasions whatever without prejudice to the said mill*".

Mr Cleator makes further specific references to the 1789 Enquest File Verdict in support of an argument against that of the Applicants that the Road is situate on land belonging to Mwyllin Squeen or that there was no access to the Flatt over it.

Mr Cleator acknowledges Woods Atlas can show inconsistent colouring but that it is clear from the underlying plan that the Road existed for the purpose of access to the Flatt.

Mr Cleator points out that he instructed a professional surveyor to carry out a survey of the boundaries. The co-ordinates presented by the survey and submitted with the application for registration simply represent the features on the ground together with one half of the Road on the eastern side of the Ford. Mr Cleator states that one half of the Ford and the Road to the western side of the Ford were not included "simply because the Applicants laid claim to the same".

The registered boundary line of the Property where it crosses the Ford joins the wall to the west of the Ford with the eastern bank in approximately the same position as the White Boulder. Mr Cleator makes it clear he does not accept the White Boulder as a boundary marker.

Mr Cleator states that the Application for Rectification is vexatious and made "in an effort to pursue goals which are beyond the remit of the Application" (widened access) which have, in any event been offered to the Applicants by Mr Cleator.

There is no loss to the Applicants as a result of the registration of the Property given the general classification of boundaries referred to at Section 59 of the Land Registration Act 1982 and the want of any ownership (or claim of ownership) by the Applicants of the Road and verges to the east of the river.

The Site Meeting

A Site Meeting took place on the 15th April 2014 at 14.30 hours ("The Site Meeting"). Present were Mr Humphrey and Mr Cleator with Mr Kewley and Mr Jelski, Dr Craine and Mr Euan Craine. Also in attendance were Mrs D. Davies,

clerk and note taker for Deemster Roberts and Miss Furness, Mr Jelski's assistant.

At the meeting the following features were pointed out:

The Road

The River

The River Ford

The Weir

The White Boulder

The boundary between the Property and Squeen Lodge

The stone wall of Squeen Lodge abutting on the Road

The entrance to the Property from the Road including the ramp

The pedestrian gate to the Property with the dog sign on it (removed from its original place)

The Mound of Earth with netting around it

The elm suckers on the Mound of Earth and the Elm Tree

The Bridge over the River which was concrete and used by cars as well as persons on foot

The erstwhile entrance to the Flatt

The dwarf wall erected by Dr Craine

The alleged original pier for the original wooden footbridge

The alleged entrance gate post to Mwyllin Squeen

The verges outside a property further up the Road nearer to Station Road

The position of the fence which was being erected when the Police were called

The edge of the tarmac on the Road

The line of trees along the Road

The driveway of The Property to the Road and its ramp

The Mound of Earth was the focus of much attention. There was a large old tree which leaned heavily towards the Road from the eastern riverbank. A sizeable sucker from that tree was evident in the Mound of Earth. The Mound of Earth was bounded by wire netting erected by Mr Cleator and there were wooden posts near the top. There was a wooden post with a house sign on top. Mr Cleator pointed out in the Mound of Earth where he said the remains of the original wall gable was situate.

Mr Cleator stated he was quite prepared to cut back the ramp leading to the driveway to the Property, albeit it had always been as it was now.

Mr Euan Craine indicated the principle of Mr Cleator gaining vehicular access to the Property from the Road was not the problem – the obstruction created by Mr Cleator, namely the Mound of Earth, was the problem as it seriously restricted the access to Mwyllin Squeen by large vehicles.

The Meeting with Mr Anderson on the 16th April 2014

I met with Mr Anderson on the 16th April 2014. It was held in the absence of parties and their Advocates, but with their consent.("Mr Anderson's statement of April 2014")

I asked the following theoretical question:-

I own my unregistered property and the title deeds show good root of title with a boundary abutting what I consider to be an accommodation road.

I wish to register my property and one half of the accommodation road as it abuts on my property utilising the Presumption as detailed in the Kenyon Case (I will refer to that later).

How do I go about it and how will it be treated by the Land Registrar?

In answer, Mr Anderson stated as follows:

First, I may apply for first registration of my property and in the Appendix A: Epitome of Title I should provide evidence of the devolution of the title to the property commencing with a good root of title as defined in the Conveyancing Act 1985.

Second, I may make a separate application for first registration of the one half of the accommodation road and I should likewise provide evidence of the title in Appendix A.

If my Advocate is not able to certify the title in the normal way as I do not have good root of title then my application will be rejected. There is no practice in the Land Registry for the registration of land based upon a common law presumption.

There is no practice note or direction in that respect.

The Registry does not seek to argue against the principles contained in the Kenyon Case.

There have been no applications to register title based solely on the common law principles laid down in the Kenyon Case.

I asked the following further question about the matter before me.

What factors influenced the Land Registry in registering the title to the Property?

The answer from Mr Anderson was:

> "On first registration of land the Land Registry relies on the certification of title given by the Advocate in Form 1 which was lodged at the Land Registry. In the case of The Squeen it was assumed that Mr Cleator had title to the whole property because the title was as certified by the Advocate.
>
> The Registry does not require a map with coordinates and, in general, uses the Isle of Man survey map base to enable it to record the boundaries and other information relevant for Land Registry purposes. It is understood that a map with coordinates provides a more accurate map than those provided by the Registry. It may be based on GPS co-ordinates or upon measurements.
>
> It is to be borne in mind that there is no guarantee as to boundaries by the Registry although the owners of adjoining registered lands may agree that such boundaries are conclusive. The survey maps are drawn at a scale 1:1250 in urban areas and 1:2500 in rural areas. The maps are subject to accuracy and plotting tolerances and limitations – as a general rule the width of a line on a map at a scale of 1:1250 represents 300mm (one foot) on the ground and at a scale of 1:2500 the same line represents about 600mm (two foot) on the ground".

The Skeleton Arguments of the Applicants

The provision of Section 65 of the Land Registration Act 1982 ("The Act") do not prevent the Applicants making the Application for Rectification and I have jurisdiction to deal with the same.

The Applicants made the point that they enjoy an unrestricted right of way at all times and for all purposes over the Road from the high road to Mwyllin Squeen.

The Applicants contend that the boundary of The Property has been registered as being south of its true boundary and purports to include part of the Road and part of the river Ford. The river Ford is owned by the Applicants they state.

Reference is made to the 1999 Deed and the 1998 Deed Plan. This is the deed under which Mr Cleator and his late wife purchased The Property. That 1998 Deed Plan shows the correct boundary of The Property and shows it as the boundary wall of the Property. This is also consistent with earlier deeds of Conveyance of The Property since it was separated from common ownership with the property called Cronk Breck by Deed of Conveyance (Dec 1926/19) from the Trustees of the estate of Thomas William Craine to Alfred John Parker. The plan on Deed 1926/19 clearly does not include any of the Road which is coloured yellow on the plan for its whole length and width. All subsequent deeds of The Property show the boundary as following the same line along the northern boundary of the Road.

The Applicants deny the Road continues across the River Ford to provide access to the Flatt which does not form part of The Property.

The boundary of the Property should follow an extension of the line being the northern edge of the Road and the southern boundary of Cronk Breck Cottage and Squeen Lodge straight across the River and the boundary and the River Ford should be as represented on the Rectification Map Proposal.

Contrary to the submissions made by Mr Cleator there has never been vehicular access from the Property onto the Road until Mr Cleator created the entrance. The vehicular access to the Property has always been adjacent to the school and leading off Station Road.

The Applicants contend that the evidence they have adduced that the only entrance onto the Road from the Property was a pedestrian only entrance via a gateway of some 2.5 feet in width. They highlight the affidavits of David Andrew Wyatt Warren, Dorothy Anne Thomson Corrin and the Statements of Euan Craine and Henry Ballard.

The Applicants contend that the entrance to the Flatt has never been accessible over "their land" and that this is not an issue in the Application for Rectification in any event. It has been raised by Mr Cleator and is not germane.

The Applicants contend the Road continues no further westward than the eastern edge of the River.

The Applicants contend that the photograph of the gate attached to the affidavit of the Applicant sworn on the 18th March 2014 is not the same gate as the pedestrian gate originally onto the Road from the Property.

The Applicants refer to the Kenyon Case wherein it is stated that in the absence of evidence of title the common law rule applies – The Presumption. The Applicants state that the Kenyon Case can be distinguished from this case as there is clear evidence of title from all the Deeds produced and referred to that the southern boundary of the Property lies at the northern edge of the Road and does not extend into it. Therefore the Presumption in the Kenyon Case does not apply here.

The Applicants contend that the case of Dowty and Willman (unreported CA2001/01 cited by His Honour Deemster Corlett in the case of Colquitt and Colquitt and Bell (2008 MLR 66)) is relevant and that therefore extrinsic evidence beyond what is contained in the relevant deed is admissible because Mr Cleator contends by his application for first registration that the plans attached to various deeds of Conveyance of The Property are uncertain as to the exact location of the southern boundary of The Property.

Thus the documents submitted by the Applicants in their response dated the 3rd March 2014 must be considered by me.

The Applicants invite me to find that the true southern boundary of The Property lies along the line as shown in the various conveyancing plans which have been produced, and not along the line shown on the Filed Plan and that the title register should be amended accordingly. No evidence has been produced by Mr Cleator to support his contention that he owns any of the Road beyond the southern boundary of the Property or any property across the river Ford as established by the series of Title Deeds produced covering the period from 1926 to the present date.

The Skeleton Argument of Mr Cleator

Mr Cleator states that his application to Register The Property was made in good faith and in the belief that no contrary claim as to ownership was asserted by the Applicants or any third party.

Section 65 of the Act gives me discretion to rectify the Registrar and Section 59(1) provides that except as provided by the Act the description of any land in the title register shall not be conclusive as to the boundaries or extent of the land. ("The General Classification Rule")

Section 59(2) of the Act provides that the Registrar may on the application of the registered owners of adjoining registered land or of the registered owner of any registered land and of the owner of any adjoining unregistered land and upon the prescribed conditions being complied with settle and enter on the title register as conclusive the boundaries between those lands or any

part thereof with such alterations, if any, as may from time to time be agreed upon.

Section 35 of the Act provides that the burdens specified in Part 1 of Schedule 5 of the Act will affect registered land whether or not the same are noted on the title register.

Part 1 of Schedule 5 of the Act includes customary rights.

Mr Cleator argues that the effects of the aforesaid provisions are as follows:-

> 1) Whether or not rectification is ordered the boundaries of the Property will not be conclusive;
>
> 2) Whether or not rectification is ordered any right existing over the Road to the south of the Property will not be affected;
>
> 3) If the Applicants wish the boundaries to be conclusively determined application should have been made to the Registrar under Section 59(2) of the Act and not for rectification.

The Applicants are not prejudicially affected by the registration of the Property in its current form.

Mr Cleator states that it is clear that the Applicants' main issue is the extent of their rights over the Road and their concern that they feel the same have been restricted by alleged actions on the part of Mr Cleator. Mr Cleator notes that the Applicants do not claim an interest in that part of the Road that is registered and as such the Application to Rectify is either made on a false premise that rectification will enhance their rights over the Road or is simply vexatious.

As to the area of the Property which crosses the River Ford (and which Mr Cleator claims to be within his ownership) Mr Cleator states that such is the limited size of that piece of land that even if it was registered in error rectification is unwarranted given the General Classification Rule. Furthermore, if an error does exist it could have been corrected under Section 65 of the Act as being of a formal trivial or clerical nature. Alternatively the River Ford and the land to the west of it are an extension of the Road and the Presumption applies.

Mr Cleator submits it is "appropriate" for the Land Registry to register titles including private roads as it is in the public interest that ownership of the same are on record. If the Land Registry were to take the view that the General Classification Rule means that private roads should be treated in the same manner as public highways and not included within a title register then:

a) No application to the Land Commissioner for rectification would be necessary as the Registrar would have the ability to rectify the title register as the mistake on the Registered Title would be of a clerical nature;

b) There would be a contradiction should application be made under Section 59(2) for the boundaries of the land to be entered on the title register as conclusive.

Mr Cleator submits the five principles in the Colquitt Case are not directly applicable in this case as they do not relate to an occupation road.

The Kenyon Case is relevant. It confirms the application of the common law principle of *usque ad medium filum viae* in relation to private roads running between two properties following the case of Holman v Bellingham [1859] 29 LJCP 52 (The Presumption)

Mr Cleator submits the Presumption is a strong presumption not easily rebutted and the Applicants have not produced evidence of ownership either in relation to themselves or any third party sufficient to rebut the Presumption.

The fact the plans attached to conveyances have not expressly referred to the Road is insufficient in itself to rebut the Presumption.

Mr Cleator refers to the case of Berridge v Ward ("The Berridge Case") (1861) 142 ER 507 and quotes from it as follows:

> *"Where a piece of land which adjoins a highway is conveyed by general words the presumption of law is that the soil of the highway usque ad medium filum [up to the medium line] passes by the conveyance, even though reference is made to a plan annexed, the measurement and colouring of which would exclude it".*

Mr Cleator also refers to the case of Lord v Commissioners for the City of Sydney [1859] 12 MOO P.C.473 where it is established that reference in a description of land to it as being abutted by a highway or other land is likewise insufficient to rebut the Presumption.

Mr Cleator points out what he considers to be "strong indications" which connote that the Road is in the presumed ownership from its junction with Station Road to the "historic entrance" to the Flatt and Mwyllin Squeen. These are:

a) There is no reference in any deeds to rights over the Road. If the land upon which the Road sits was wholly owned by one party it would be "usual to expect rights to be granted over the same". The fact no such rights are granted is entirely consistent with the Presumption.

b) There is evidence produced by Mr Cleator of consistent and historic use of the Road for access to and from the Flatt which has only ceased in the last ten years.

c) The existence of a gate to the Flatt would suggest historic access to the Road. Again there are no references to rights granted over the same.

d) Historic photographs show the entrance to Mwyllin Squeen as being a gate adjacent to the entrance to the Flatt.

e) Historic documents refer to the road crossing the River belonging to the owner of the Flatt (1790 Inquest File Verdict). This is inconsistent with ownership of the Road being with the Applicants or their predecessors.

f) Historic documents refer to consent being given to the owner of Mwyllin Squeen to carry out works on the Road and to pass and repass over the same (Agreement dated 22nd March 1808). That is inconsistent with ownership of the Road resting with the Applicants or their predecessors in title.

The Applicants have produced "little credible evidence" to rebut the presumption in relation to the Road. The evidence produced strongly points to it being rebutted in favour of falling wholly within the Squeen quarterland rather than the Ballacroshey quarterland to the south.

The arbitrary point chosen by the Applicant to base their projection as to the boundary lines is just that and not supported by any other evidence.

There is no justification for rectification and no basis upon which rectification should be ordered.

The Final Submissions of the Applicants and Mr Cleator following Mr Anderson's statement of April 2014 and the Site Visit

The Applicant's submissions were received on the 18th June 2014

The Applicants refer to the Statutory Good Root of Title and refer to the root of the title to the Property commencing with the Deed dated the 12th November 1957 from the Trustees of the will and codicil of Alfred John Parkes and another to Richard Garnet Waller and Joan May Waller and ending with the 1998 Deed when Mr Cleator and his late wife acquired the Property. They point out that all the relevant deeds show the southern boundary of the Property ("The Ford Boundary") to be "lying along the wall to the north edge of the Road, continuing in a straight line across the River to the wall on the west bank and turning northward along the west bank of the River between the River and the mill race."

There is no good root of title to any part of The Road.

Squeen Lodge shares root of title with the Property and shows the stone wall of Squeen Lodge on the boundary with no extension into the Road.

The Mound of Earth was constructed in "2009-2012".

The boundary of Cronk Breck (a property further up the Road nearer the highway) is consistently shown in Deed plans as running along the wall in line with the twin gables thereof. The flower bed outside the wall does not obstruct vehicles. There is no legal basis for interpreting that the edge of the bed is a "legal boundary".

The Road originally formed part of the field to its south as demonstrated by the arbitration in 1792 and as detailed earlier in this decision. The Presumption therefore does not apply as ownership is known. The present developer of the Stable Field intends to recombine the Road with the Stable Field and as part of the planning application has submitted a statement certifying ownership of the whole width of the Eastern end of the Road.

There has been no determination as to whether private roads should be treated in similar manner as public road (i.e. not registered).

Vehicular access to the Property was solely via the drive adjacent to the School for the duration of all deeds detailed in the Epitome of title to the Property until Mr Cleator widened his entrance at the Road. Access to the Property from the Road is not necessary. Mr Cleator has no easement, prescriptive or statutory right. It is not an easement of necessity as Mr Cleator has access to the highway at his entrance near the School.

The Applicants contend that Mr Cleator has not sought to establish a vehicular access to the Property from the Road for the benefit of the Property but "rather with the aspiration of establishing an access to Sadlers Flatt over Mwyllin Squeen".

It has not been determined whether the Property enjoys "prescriptive pedestrian access to the Road".

Mr Humphrey failed to disclose the pre-existing dispute about the Ford Boundary when registering the title to the property. The Applicants were not advised of the intended registration. The Epitome of title does not disclose good title to any part of the Road or River Bed despite Mr Humphrey's declaration and he does not cite the Presumption.

The Applicants remind the reader that the Ford Boundary first registered by Mr Cleator on the 26th July 2012 was based on the Land Registry Plan. The Application for Rectification of the 18th December 2012 sought amendment of the Ford Boundary in accordance with the Filed Plan. This does not accord

with the Land Registry Plan. It was based on co-ordinates from a GPS Survey by W.G.S. That plan does not show the nature of the points surveyed. No survey points are recorded in the River. It describes a boundary drawn on the basis of features that did not exist when Mr Cleator bought the Property.

All the conveyances of the Property up to and including when Mr Cleator bought it and of Squeen Lodge and Cronk Breck (the other properties bounding the Road on the north side) use the straight line of their boundary walls as the boundary.

A GPS Survey obtained by the Applicants from Dalrymple Associates confirms the Isle of Man Survey Map and it accordingly represents well within the tolerance levels the features on the ground such as the boundary wall that was present at the time Mr Cleator bought the Property.

Mr Cleator's submissions and statement both dated the 19th June 2014

Mr Cleator argues that Mr Anderson is erroneous in law and practice when he states that there is no practice in the Land Registry for registration of land based upon a common law presumption.

Mr Anderson fails to acknowledge that the Presumption in relation to one half of the Road, as put forward by Mr Cleator, has its origins in the title to the Property which it adjoins. There is no need for separate applications as they are borne of the same title. One half of an accommodation road is deemed to be included within the conveyance relating to the main land notwithstanding that it is not shown delineated on the Deed Plan.

Common Law Presumptions do apply and must be addressed as part of land registration in the Isle of Man argues Mr Cleator. Mr Humphrey, on behalf of Mr Cleator states:

> "*The importance of recognition of the principle [The Presumption] in the Land Registry System cannot be underestimated as it may apply in a number of situations and have a significant impact on the utility and value of land. For example, land which is owned both sides of an accommodation road by a developer who may not be able to develop and sell the site if the principle is not recognised by the Land Registry and the presumption applied to the registered title*".

Whilst acknowledging that the Presumption is rebuttable, in this case the Applicants have not produced anything to rebut the Presumption. Furthermore, the evidence points to the origin of the Road lying within the quarterland of Squeen, not Ballacroshey, as argued by the Applicants.

No application has been submitted by the Applicants in terms of Section 59(2) of the Act for the Ford Boundary to be entered as conclusive.

Mr Humphrey points out that prior to registration of the Property, meetings were held with Land Registry staff to discuss the question of the plans to be submitted. Mr Humphrey believes the staff were aware that one half of the Road included within the application for registration was based on the Presumption. In any event it was obvious on viewing the 1998 Deed Plan and the Filed Plan that the difference between the two could not be explained by reference to plotting tolerances and limitations.

Thorough investigations of title to the Road had been carried out which led to the conclusion that the Presumption could properly be applied.

Mr Humphrey states the position of recognition of common law presumptions exists in England and Wales as demonstrated in the Land Registry Practice Guide 40 which provided at paragraph 40: "As registration with general boundaries leaves the exact line of the boundary undetermined, the effect of a legal presumption may be carried forward into registered title".

The Practice Guide 40 also refers to "general boundaries (under Section60(1) of the UK Land Registry Act 2002)" indicating the majority of registered titles show only general boundaries. Mr Humphrey argues Section 60(2) aforesaid has its equivalent in the Land Registry Act 1982 Section 59(2). No application has been made under Section 59(2). The Presumption may therefore be applied until an application under Section 59(2) is made.

In his statement of the 19th June 2014 Mr Cleator concentrates on matters raised at the Site Meeting.

Mr Cleator points out that the Applicants have not produced evidence that they own the Bridge over the River despite their assertions that it is part of Mwyllin Squeen.

Mr Cleator states that the Bridge was erected by the Applicants with the intention of it being used by vehicular traffic as it has a sign warning of a safe load limit of three tons. Furthermore, the Bridge is not the same size as the old footbridge shown on the photograph already produced. Thus, argues Mr Cleator, the Applicants cannot argue that the Bridge encroaches no further into the Road than the old footbridge did. It is the "sheer size" of the Bridge which has caused the Applicants to experience problems of access to Mwyllin Squeen by large vehicles.

The Bridge has also contributed to flooding to the Property and Squeen Lodge. Mr Cleator has produced photographs showing a flow of water from the flooding River and over the Bridge spilling onto the River Ford.

Only by through the construction of a high footbridge can that problem be solved but that would encroach further onto the Road.

Mr Cleator's view is that the most likely boundary of the Squeen quarterland is to the south of the Road and including the Bridge and the River Ford giving access to Squeen Mill and the Flatt.

Mr Anderson was invited by me to respond to the two aforesaid final submissions by the Applicants and Mr Cleator. He took up the invitation and provided me with his final submissions and arguments on the 15th July 2014.

He states that the boundaries of the Property marked on the Survey Map extract lodged with the application for first Registration should correspond with the relevant deed plans. Mr Anderson states that the application must be accompanied by the survey map extract on which the boundaries are accurately marked. These should correspond with relevant deed plans. He accepts that can sometimes be difficult if the deed plan is poorly drawn. Mr Anderson takes the view the 1998 Deed Plan delineates the boundary of The Property and is clear and unequivocal as is a preceding Deed Plan (Nov 1957/44) Sybil Dorothy Parker et ors to Richard Garnet Waller and Joan May Waller.

In particular, the disputed Ford Boundary follows an existing boundary feature on the survey map which is a straight line across the Ford and in line with the gable wall of Cronk Breck. Mr Cleator has not disputed the boundary line as shown on the Deed Plans.

Mr Anderson states that the representation of the boundary to the Property is as set out in the 1998 Deed Plan and did not require any common law presumptions to clarify the position.

Mr Anderson next points out that Mr Cleator applied for registration of a freehold estate with an absolute class of title. To qualify for that Mr Cleator had to demonstrate a good root of title as defined in Section 2(5) of the Conveyancing Act 1985.

Mr Anderson states that the part of the application which pertained to the Road did not comply with the good root of title requirement and should not have been included in the application. The Land Registry had relied on the Certificate of Title by the Advocate when registering Title Number 22-00244.

Mr Anderson indicates that the description of the land described in Title Number 22-00244 is not conclusive as to the boundaries or extent of the land in question. The boundaries of the Property are subject to the general boundaries rule: (Mr Anderson quoted from The Law of Real Property (7th edition) Megarry & Wade)): "Unless a boundary has been determined, all boundaries that are shown in the register of title are general boundaries and do not determine the exact line of the boundary".

Section 59(2) of the Land Registry Act makes provision to settle as conclusive the boundaries between lands. That is 'fixing' or 'determining' boundaries

states Mr Anderson. In this case no application has been made under Section 59(2) and Mr Anderson therefore submits that the general boundaries rule prevails.

The General Boundaries Rule applies to the presumptions of ownership of boundaries. Mr Anderson quotes as follows from Megarry & Wade:

> "*The General Boundary will extend to cases where there is a presumption of ownership as to where the owner of land adjacent to a non-tidal river or a road is rebuttably presumed to own the bed of the river or the soil under the highway to the mid-point. By reason of the general boundaries rule, such land is within the registered title although not shown on the title plan. This was clear prior to the Land Registration Act 2002 and it is not thought that the 2002 Act has changed the position*".

Mr Anderson also quotes from the textbook "Boundary Disputes: A Practitioners Handbook" by W. Hanbury as follows:

> "*In registered land it is a feature of the general boundaries rule reflected in Land Registry practice that no part of the highway is shown as being part of an adjoining owners registered title even where the presumption of 50% ownership applies"*. ("The Hanbury Textbook")

In essence, the Presumption, if applicable, regarding ownership of the soil of the Road should not find expression in land registration in the Isle of Man.

<u>The Law</u>

The following sections of the Land Registration Act 1982 are relevant.

Part 1 of Schedule 5

Paragraph 3. Customary rights.

Paragraph 4 – Easements and profits á prendre, unless they are created by express grant or reservation after the 31st December 1911 or are referred to in any document of title recorded in the General Registry after that date.

Section 2The Land Commissioner

Paragraph (3)

The practice and procedure in proceedings before the Land Commissioner shall be such as may be prescribed.

Section 6Appeal and reference to Land Commissioner

Paragraph (2)

Whenever the Registrar entertains a doubt as to any question of law or of fact arising in the course of registration under this Act, he may make an order referring the question to the Land Commissioner.

Section 9Registrar to obey orders of Land Commissioner and courts

(1) The Registrar shall obey every order of the Land Commissioner and of any court of competent jurisdiction in relation to registered land on being served with the order or any office copy thereof.

(2) The Registrar may, where he considers it necessary, apply personally and without notice or formality to the Land Commissioner or, as the case may require, the court which has made such an order either to vary the same or to give directions as to the mode in which it is to be obeyed, and, thereupon, the Land Commissioner or, as the case may be, that court may, after such notice, if any, as he or, as the case may be, it may direct, vary the order in such manner, or make such new order, or give such directions, as he or, as the case may be, it may think fit.

Section 11Conclusiveness of registers

(1) Save as is otherwise provided by or under this Act, the title register shall be conclusive evidence of the titles shown on that register and of any right, privilege, appurtenance or burden as shown thereon, and the title of any person shown thereon shall not, in the absence of actual fraud, be in any way affected in consequence of his having notice of any deed, document or matter relating to or affecting the title so shown.

(2) [Repealed]

(3) Subject to any entry to the contrary on the title register, any disposition of registered land for valuable consideration shall operate in like manner as if the transferor or grantor were –

(a) entitled to the land for his own benefit;

(b) not under any disability; and

(c) entitled to deal with the land without obtaining any such consent or complying with any such requirement as is mentioned in section 64;

notwithstanding any enactment (other than an enactment contained in this Act or, in the case of a limited owner, the Settled Land Act) or rule of law to the contrary.

Section 13Classes of title with which owners may be registered

(1) On first registration of the ownership of a freehold estate, a person may be registered with –

(a) an absolute title; or

(b) a possessory title; or

(c) a qualified title.

(2) On first registration of the ownership of a leasehold estate, a person may be registered with –

(a) an absolute title; or

(b) a good leasehold title; or

(c) a possessory title; or

(d) a qualified title.

(3) It shall not be necessary for the Registrar to approve any title which is proposed to be registered under this Act, but he shall be entitled to withhold registration until he has received such information and documents as he considers necessary to justify him in registering the title applied for.

Section 14Application for first registration of freehold estate

Paragraph (5)

A person shall not be registered under this section with an absolute title under this section until his right to be so registered has been shown to the satisfaction of the Registrar.

Section 15Effect of first registration of freehold estate with absolute title

Paragraph (3)

In either of the cases specified in subsections (1) and (2), the estate of the registered owner shall be subject to –

(a) any registered burdens affecting the estate;

(b) any other matters appearing from the register to affect the estate; and

(c) unless the contrary is expressed in the register, any Schedule 5 burdens affecting the estate;

but shall be free from all other rights, including rights of the Crown.

Section 27Examination of title

Subject to the following provisions, where the examination of title is required under this Act or is necessary to facilitate any registration, such examination shall be conducted by such person and in such manner as may be prescribed –

(a) due notice shall be given, where the giving of such notice is prescribed, and where notice is given, an opportunity shall be afforded to any person desirous of objecting to submit his objections to the Registrar;

(b) the Registrar shall have jurisdiction to hear and determine any such objection;

(c) if the Registrar, on examination of any title, is of the opinion that the title is,

notwithstanding a defect therein, a title the holding under which will not be disturbed, he may in his discretion, register the title, or may require the applicant to apply to the Land Commissioner, upon a statement signed by the Registrar, for his sanction to the registration.

Section 35Matters which are burdens affecting registered land without registration

(1) Notice of the existence of any of the burdens specified in Part I of Schedule 5, as for the time being subsist, may, subject to such conditions as may be prescribed, be entered on the title register, but every such burden shall, unless under the provisions of Part II of that Schedule the contrary is expressed on that register, affect the land whether or not such notice is so entered.

(2) The provisions of Part II of Schedule 5 shall apply in relation to Schedule 5 burdens.

Section 57The Registry map

(1) There shall be maintained by or on behalf of the Registrar a series of maps (in this Act referred to as 'the registry map'), based on –

(a) Maps prepared pursuant to the *Isle of Man Survey Act 1992*; or

(b) Where no suitable maps so prepared exist, Ordnance Survey maps.

(2) On the registry map there shall be marked or defined, in such manner as may be prescribed, the land the title to which has been registered under this Act.

(3) The Registry map shall be open to public inspection during the hours referred to in section 73(1).

Section 59Effect of description of registered land

(1) Except as provided by this Act, the description of any land in the title register shall not be conclusive as to the boundaries or extent of the land.

(2) The Registrar may at any time, on the application of the registered owners of adjoining registered lands or of the registered owner of any registered land and of the owner of any adjoining unregistered land, and on the prescribed conditions being complied with, settle and enter on the title register as conclusive the boundaries between those lands or any part thereof, with such alterations, if any, as may from time to time be agreed upon.

(3) For the purposes of subsection (2), an entry in the title register made pursuant to an application under that subsection shall be conclusive only as between the parties to the application and their respective successors in title, and shall not operate to confirm the title to the lands the boundaries whereof are settled.

(4) On the transfer of part of any registered land, the Registrar, on the prescribed conditions being complied with may enter on the title register as conclusive the boundaries between the part transferred and the part not transferred.

(5) If, on the transfer of any registered land, any question arises as to the boundaries or extent of the land, the Registrar shall, on the application of the transferor or of the transferee, have jurisdiction to decide the question as between them, and, for that purpose, the Registrar may, if he thinks fit, adopt the decision of any person agreed on by them or appointed by him.

Section 65Rectification of errors

(1) Subject to subsection (3), where any error (whether of misstatement, misdescription, omission or otherwise) occurs in the title register, the Land Commissioner, upon such application and in such manner as may be prescribed and after such notices, if any, as he may direct, may order such error to be rectified upon such terms as to costs or otherwise as he may think fit.

(2) Where an incorrect entry in, or omission from the register is of a formal or trivial nature, the Registrar may, after making such enquiries (if any) and serving such notices (if any) as he considers necessary, rectify the register.

(2A) The Registrar may in his discretion, after making such enquiries (if any), serving such notices (if any) and obtaining such consents (if any) as he considers necessary, amend any mistake in, or omission from, any document presented to the Land Registry, if in his opinion the mistake or omission is of a clerical nature.

(2B) The Registrar may, after making such enquiries (if any) and serving such notices (if any) as he considers necessary, order the rectification of the register where all persons interested –

(a) consent to the rectification, or

(b) do not, within such time as may be prescribed after being served with notice of the Registrar's intention to order the rectification, notify the Registrar in writing that they object to the proposed rectification.

(2C) Where the Registrar exercises the power conferred by subsection (2) or (2B) he may make such order as to the costs of rectification as the persons interested may in writing agree.

(3) The title register shall not be rectified under subsection (1) to affect the title of a registered owner, unless such rectification can be made without loss or damage to any person claiming for valuable consideration and in good faith through such registered owner and unless –

(a) the registered owner or, as the case may be, a person claiming as aforesaid through the registered owner or anyone acting on behalf of either has, by fraud or lack of proper care on his part, been in any way responsible for, or has contributed to, the error; or

(b) in the case of an error made before such registered owner was so registered, he was in fact, aware of the error at the time of his registration as owner; or

(c) in the case of an error made after such registered owner was so registered, he or an advocate acting on his behalf became aware of the error at a time when the error was capable of being rectified without causing loss or damage to any person except the expense of such rectification; or

(d) the immediate disposition to such registered owner, or the disposition to any person through whom he claims otherwise than for valuable consideration, was void; or

(e) such registered owner acquired the land otherwise than for valuable consideration and rectification of the error could have been made against the person through whom he claims if such person had been the registered owner; or

(f) the registered owner consents to rectification;

but so that this subsection shall –

(i) limit the power of the Land Commissioner to rectify the title register only where the registered owner of the land is in possession thereof; and

(ii) not limit the power of the Land Commissioner to rectify the title register against the registered owner.

(4) The provisions of subsections (1) and (3) shall extend, with any necessary modifications, to the rectification of the title register by order of a court of competent jurisdiction, exercising any jurisdiction based on the ground of fraud or mistake, in like manner as those subsections apply to the rectification of errors by order of the Land Commissioner.

Section 66 deals with claims for compensation for any loss arising out of the rectification of the register in terms of Section 65.

The following sections of the Land Registry Rules 2000 are relevant

Rule 16 – Form of application

Every application for first registration shall be in Form 1.

Rule 17 – Documents to be presented with application

These are listed in Rule 17(1) and include:-

"(k) a certificate by an advocate in the form included in Form 1."

Rule 75 The registry map

(1) The registry map required to be maintained under section 57 of the Act may be created by and maintained in computerised form.

Rule 78 Application to make boundaries conclusive

(1) An application under section 59(2) of the Act to settle and enter on the register as conclusive any boundaries of registered land –

(a) shall be in Form 23 and include a description of the land sufficient to clearly define the proposed fixed boundaries;
and
(b) shall be supported by an extract from the survey map on which the precise position of the boundaries to which the application relates is clearly indicated.

(2) Before making any entry on the register pursuant to such an application the Registrar shall give notice of the application, with a copy of the map accompanying the application, to anyone (other than the applicants) whose interest the Registrar considers may be adversely affected by such application.

(3) When the Registrar is satisfied that the position and description of the boundaries have been determined precisely, and that the applicants are in agreement with such determination, all necessary entries or alterations shall be made on the registry map and a note shall be entered on every registered title affected, stating which boundaries are entered as conclusive.

(4) On the registration of a transfer of part of the land comprised in a registered title, the boundaries between the land transferred and the land retained may be registered where –
(a) an application for the purpose is made by the transferor and the transferee, and
(b) the written consent of every other person whose interest the Registrar considers may be adversely affected by the registration is given;
and paragraphs (1) to (3) apply with any necessary modifications to an application under this paragraph.

Rule 79 Application to determine boundaries or extent of registered land

(1) An application to the Registrar under section 59(5) of the Act to determine the boundaries or the extent of land transferred shall be in Form 24.

(2) The application shall –
(a) specify the question to be decided by the Registrar, and
(b) be supported by a statutory declaration setting out the grounds of the application and exhibiting plans showing the position of the existing registered boundary and the position in which it is claimed to be.

(3) Upon receiving such an application the Registrar may –
(a) require the parties to attend before him for directions, and
(b) after considering any applications for directions made by either party, give such directions as he shall think necessary or desirable.

Rule 81 Application to the Land Commissioner for rectification

(1) An application to the Land Commissioner under section 65(1) of the Act shall be in Form 25 supported by an affidavit setting out the facts upon which the application is based and the grounds on which it is made.

(2) The application shall be presented to the Registry, and the Registrar shall –

(a) enter notice of the application on each title stated in the application to be affected by it,
(b) deliver the application to the Land Commissioner, and
(c) comply with any directions given by the Land Commissioner at that time.

(3) The Land Commissioner may give to the parties to the application, and to such other persons as he shall determine, notice to attend before him for such directions as he may consider necessary or desirable upon application or otherwise.

(4) The Land Commissioner may direct that the Registrar or any other officer of the Registry shall appear before him at any time after an application under paragraph (1) has been made and the Registrar or such other officer shall comply with any direction given at that time.

(5) After final determination of the application by the Land Commissioner, the Registrar shall take all such steps as may be necessary to comply with such determination.

Rule 82 Application to the Registrar for rectification

(1) An application to the Registrar under section 65(2) or (2A) of the Act shall be in Form 26.

(2) The prescribed time after service of a notice under section 65(2B) of the Act for lodging an objection is 21 days.

Rule 127 Additional powers of Registrar and Land Commissioner

In any proceedings before either of them the Registrar or the Land Commissioner may –

(a) extend any period of time specified in or under these Rules even though the period has already expired (excluding the periods of time specified in rules 11, 114 and 123(3));
(b) adjourn any proceedings at any time;
(c) where he is of the opinion that the production or supply of further documents or evidence or the giving of any notice is necessary or desirable, refuse to complete or proceed with a registration, make an entry or do any other act as the case may be until such

documents, evidence or notice have been produced, supplied or given;

(d) where any irregularity in procedure has occurred, take such action as he considers desirable or expedient to rectify the irregularity;

(e) disregard any failure to comply with a provision of the Rules relating to procedure.

Rule 135 Award and taxation of costs of hearings

(1) Subject to any provision as to costs contained in the Act and these rules, the award of costs in respect of any proceedings on a hearing before the Land Commissioner or the Registrar shall be in his discretion, and he may direct by and to whom costs are to be paid.

(2) The Land Commissioner or the Registrar, as the case may be, may, with the consent of all the parties concerned, assess such costs.

(3) The amount of any costs awarded by the Land Commissioner or the Registrar under paragraph (1) shall be taxed unless the parties agree the amount thereof or the costs are assessed under paragraph (2).

(4) The rules of Court relating to the taxation of costs in the High Court shall apply in any case where costs are to be taxed under paragraph (3).

The Conveyancing Act 1985

Section 2(5) In this section –

'encumbrance' has the same meaning as in the *Registration of Deeds Act 1961*;

'good root of title' means a conveyance for valuable consideration which –

(a) is dated more than 21 years before the date of the contract;

(b) purports to convey or create the estate contracted to be sold or otherwise disposed of;

(c) is not expressed to be made in exercise of a statutory or other power to convey land; and

(d) contains a covenant by the conveying part to maintain the premises to the purchaser thereof free from encumbrances.

("Statutory Good Root of Title")

Cases

In the matter of Kenyon 1996-98 MLR ("The Kenyon Case")

In this matter the petitioner sought a declaration that he had the benefit of an unrestricted right of way along a road between the highway and two fields owned by him ("the Road") and a declaration as to the ownership of the Road where it ran between his two fields. The cross petitioner (Mrs Kenyon) sought a declaration that the right title and interest of the Road was vested in her subject to the rights of access of the owners of land abutting on the Road, a declaration on the ownership of a large field through which the Road ran ("The Lough Field") and an order preventing the petitioner from widening the gates from the Road into his two fields.

In essence the issue to be determined by His Honour Deemster Cain was in whom was the soil of the Road vested and in whom was the Lough Field vested. There was no dispute that whoever owns the soil of the Road and the Lough Field all the persons who own properties adjoining the Road had unrestricted rights over and along the Road to and from the highway to gain access to their respective properties. It was undisputed that the Road commenced at the high road and terminated at property owned by Mrs Kenyon.

It was confirmed that the Ordnance Survey Plan of 1869 was admissible as evidence of the physical condition of the land in 1869 as were Tithe Plans to 1839 and Asylum Plans as to 1861.

Deemster Cain was satisfied from the evidence before him that the Road was "what is usually called an occupation or accommodation road, i.e. a road over which there is no public right of way, but over which all the owners of the lands abutting upon the road have rights of way for all purposes in order to gain access to and from the highway from and to their respective properties".

Deemster Cain examined the evidence as to ownership of the Road. He referred to the Judgment of Deemster Farrant in the case of Quine v Mitchell CLA 1939/22 in which Deemster Farrant stated as follows:

> "*In the absence of evidence to title it seems I must fall back on the common law rule that in the case of a private way or occupation road between two properties, as in the case of a highway, the presumption arises that the soil of the road usque ad medium filium viae belongs to the owner of the adjoining land, provided that there be no other evidence of ownership to rebut such presumption (Holmes v Bellingham (1859) 29 L.J.C. P132, per Cockburn, C.J.)" ("The Rule")*

(I have been provided with a copy of the Quine v Mitchell case by Mr Humphrey).

Deemster Cain indicated the Rule must apply to the Road which was an occupation road in 1839.

Deemster Cain considered ownership of the Lough Field and notes that in a Deed of 1907 there is no reference to rights of way over the Road. The land purported to be conveyed by the 1907 deed includes (*inter alia)* the Lough Field through which the Road travels. Deemster Cain states it is clearly an error not to make reference to any rights of way over the Road as there were clearly parties at that time who had rights over the Road.

No clear owner of the Road was discernible from the evidence before Deemster Cain.

Deemster Cain made an order that the Road was an occupation road vested in the adjoining landowners where their properties abut upon the Road, in each case up to the middle of the Road.

Colquitt and Colquitt v Bell [2008] MLR 66 ("The Colquitt Case")

This case pertains to a boundary between two properties and a declaration was sought as to the boundary between the two properties.

One of the arguments for the plaintiffs was that the Court ought to rely solely on the plans annexed to the deeds of the properties as they were perfectly clear. In other words, extrinsic evidence was inadmissible to prove the boundary between the two properties.

The defendants submitted (*inter alia)* that the deeds of the properties were not accurate enough to determine the position of the boundary and extrinsic evidence was therefore admissible to prove the boundary. Deemster Corlett indicated in his decision that the following principles were applicable to boundary disputes and therefore generally where a plan was uncertain as to the precise position of a disputed boundary extrinsic evidence was admissible of material facts existing at the time of the execution of the relevant deed.

> i) Even a well-drawn plan was accurate only within the limits of the scale adopted;
>
> ii) A plan stated to be "for the purposes of identification only" could not control the verbal description of the land, although the plan could be used to determine a true boundary where that was the only means afforded to show where the boundary was;
>
> iii) Where there were no such controlling words but the land was described by reference to a plan the natural inference was that the plan was intended to "show the relevant boundaries" and;

iv) As a general rule when a plan was stated to be for identification purposes only and there was a physical boundary feature on the ground in the general area of the boundary shown on the plan, then the physical feature would define the natural position of the bound. ("The Four Principles")

Deemster Corlett referred to the case of Dowty v Willman (Chancery Division CA2001101 Judgment 21 December 2001 unreported) which in turn referred to Halsbury's Laws of England (4th Ed) re-issue Volume 4(1) at paragraph 904. Deemster Corlett indicated this passage summarised both Manx and English law. In essence it set out the five principles Deemster Corlett cited in his Judgment in the Colquitt Case. It also stated that if the terms of the transfer [of Property] clearly define the land transferred extrinsic evidence is not admissible to contradict the transfer.

Holmes v Bellingham 1859 29 LSCP 132 ("The Bellingham Case")

This case pertained to The Presumption. In this case the defendant having failed to establish a right of way to the extent necessary to justify what had been a trespass rested his defence upon the fact the soil of the land *usque ad medium filum viae* vested in the relevant owner. There was an argument that the presumption although applying to a public road did not apply to a private road. It is stated that there is a presumption in the case of a private way or occupation road between two properties that the soil of the road belongs *usque ad medium filum viae* to the owners of the adjoining property on either side but that this presumption can be rebutted by evidence of acts of ownership.

Berridge and another v Ward 1861 142ER 507 ("The Berridge Case") In this case it was stated that:

> "*where a piece of land which adjoins a highway is conveyed by general words the presumption of law is that the soil of the highway usque ad medium filum, passes by the conveyance even though reference is made to a plan annexed, the measurement and colours of which would exclude it".*

Lord v The Commissioners for the City of Sydney [1859] 12 MOO P.C. 473 ("The Lord Case")

In this case it was stated that reference in a description of land to it as being abutted by a highway or other land is insufficient to rebut the Presumption.

Parton and another v Todd [2012] EWCH 1248

This was a complex decision involving not only the Presumption but a further different presumption. This has been brought to my attention by Mr

Humphrey but no specific factors in the very lengthy, and, to some extent, fact specific points, have been highlighted by him.

Hesketh v Willis Cruisers Ltd [1968] 19 P.&C.R. 573 ("The Hesketh Case")

This Court of Appeal decision held there was a rebuttable presumption that transfer of the river bed and Island in question included the bed of the river adjacent to the land as far as the median line thereof. The Hesketh Case is referred to in a leading textbook on land law by "The Law of Real Property (7th Edition) by Megarry & Wade. It is stated at paragraph 7-118:

> "*The General boundary will extend to cases where there is a presumption of ownership as where the owner of land adjacent to a non-tidal river or a road is rebuttably presumed to own the bed of the river or the soil under the highway to the mid-point. By reason of the General Boundaries Rule, such land is within the registered title although not shown on the title plan. This was clear prior to the Land Registration Act 2002 and it is not thought that the 2002 Act has changed the position".*

Russell v London Borough of Barnet [1984] 2 EGLR 44 ("The Russell Case")

This case involved subsidence caused by tree roots. The Claimant sought damages in nuisance and negligence in respect of subsidence to their house by the extraction of moisture from the subsoil by the roots of trees encroaching from under the pavement. The trees had been planted in the road by the Defendant before the road was adopted. The Claimants were the owners of the property abutting the road on which the trees were planted. The Presumption applied, it had not been rebutted, and therefore the Claimants owned the trees. I should add for the sake of completeness, (although not relevant to this matter), The Presumption was not a bar to an action in nuisance against the Defendant if they were in control of the trees.

The Russell Case was referred to in the textbook "Boundary Disputes: A Practitioners Handbook" by William Hanbury, at page 71:-

> "*In registered land it is a feature of the General Boundaries Rule, reflected in Land Registry practise that no part of the highway is shown as being part of an adjoining owner's registered title even where the presumption of 50% ownership applies*".

The Decision

This decision has general application beyond its particular facts and circumstances as it raises the issue of whether common law presumptions can give rise to registration of the same in the Land Registry.

Jurisdiction

1. No party has sought to argue that I do not have jurisdiction to make decisions in relation to the Application for Rectification. Notwithstanding the conclusiveness of the register set out in Section 11(1) of the Act, Section 65 of the Act provides the ability of the Applicants to make the Application for Rectification.

2. Where I find there has been any error (whether of misstatement, misdescription omission or otherwise) in the title register I may order such error to be rectified upon such terms as to costs or otherwise as I may think fit. I therefore have a wide discretion.

3. The exercise of discretion is subject to the provisions of Section 65(3) of the Act. I may not rectify the title register so as to affect the title of a registered owner unless such rectification can be made without loss or damage to any person claiming for valuable consideration in good faith through such registered owner. No party has raised the issue of such potential loss or damage.

4. The subsequent subsections of Section 65 of the Act do not come into play unless there is an issue of loss or damage as aforesaid.

5. As I stated, no claim for compensation for any loss arising out of rectification of the register in terms of Section 65 of the Act has been made and therefore section 66 and schedule 10 of the Act do not come into play.

6. Rule 81 of the Rules makes provision for the procedure to be adopted in an application to the Land Commissioner and no party has sought to argue any irregularity in this matter in this respect.

7. Mr Cleator argues that the Application for Rectification will not have the effect of making the boundaries, (the subject matter herein), conclusive as section 59(1) of the Act states as such. Mr Cleator argues that Section 59(2) should have been utilised by the Applicants to obtain conclusive boundaries if that is what they seek. Mr Anderson is the correct person to deal with Section 59(2) matters.

8. I agree with Mr Cleator to some extent that, even if I order rectification as requested it will not necessarily create conclusive boundaries. However Section 65(1) gives me wide powers – to order rectification upon such terms as to costs or otherwise (my underlining) as I think fit.

9. However there is nothing to prohibit the Applicants from making the Application for Rectification. Neither does it preclude a subsequent application under Section 59(2) to Mr Anderson.

10. Mr Cleator further argues that the area of dispute where the Property crosses the River is of limited size. Therefore in respect of this limited piece of land, even if it has been registered in error, rectification is unwarranted given the General Classification Rule and also that it could have been corrected under Section 65(2) of the Act – being of a formal, trivial or clerical nature which Mr Anderson could have dealt with.

11. Had the only portion of land at issue been the area where it crosses the River I may have agreed with Mr Cleator on this point. However, it is not the only portion of land at issue and it seems to me it would not be sensible to deal with that portion and the portion of the Road as two separate issues to be dealt with in two separate ways. There is nothing precluding the Applicants from putting both these portions of land in the Application for Rectification.

Ownership of the Road

12. No party argued that the Road from the highway to the east of the River is not an occupation road. There is argument between the parties as to the ownership of the Road from the eastern river bank as it crosses the River to Mwyllin Squeen from the high road to the eastern bank of the River. I find that the Road is an Occupation Road or accommodation road (they are one and the same). It has been used by several properties along its length without dispute or limitation for access to and from their properties to the main Highway. The statements of the various parties I have detailed in this decision make that abundantly clear. It has been tarmacadamed by Manx Telecom following the digging of a channel from the highway to the River without argument by any person. It is undisputed that properties adjoining the Road (save for Mr Cleator to which I will make specific reference later) have had unrestricted vehicular access for all purposes along the Road to their respective properties. All, including Mr Cleator, have enjoyed pedestrian access. It is undisputed that Mwyllin Squeen has vehicular and pedestrian access to Mwyllin Squeen along the Road from the highway.

13. The Book of Reference to the Plan of the Parish of Ballaugh describes the Road as an occupation road. It is also undisputed that the Road is not a public right of way or an adopted highway.

14. I find that the Road is an occupation road which runs from Station Road to the eastern boundary of the River.

15. The Presumption as described in the *Kenyon* case has been raised by Mr Cleator. His argument is that it applies and is not rebutted. The undenied fact that the plan attached to the 1998 Deed clearly excludes ownership of any part of the Road is not conclusive states Mr Cleator. (The *Berridge* Case is cited in support). The undeniable fact that the words of description in the 1998 Deed do not include the Road " – a

parcel of land situate in the Parish of Ballaugh the same being represented (for identification purposes only) by the portion delineated and edged red on the plan annexed hereto…") is not conclusive as to ownership of the Road states Mr Cleator (the *Lord* Case is cited in support). In any event the words "for identification purposes only "means just that – it is not an accurate depiction he argues.

16. The Presumption requires there to be no evidence of title to the Road for it to apply. Deemster Cain also notes that in none of the relevant Deeds in the Kenyon Case was there any reference to rights of way over the Road. There should have been if it were included in the lands being conveyed.

17. The Applicants have gone to great lengths to investigate title to the Property and Mwyllin Squeen and the Road. I have detailed these in the decision. I need not repeat them here but careful account has been taken of them all.

18. The Applicants have concentrated on the lack of inclusion of the Road in any Deeds relating to the Property. In fact that is not denied by Mr Cleator. It is undeniable. However, for the Presumption to come into play there needs to be examination of the title to the Road.

19. The Applicants have sought to argue that the Road is in the quarterland of Ballacroshey and not the quarterland of Squeen. This has significance they argue as the Property is in the quarterland of Squeen. The implication being, that if the Property is in the quarterland of Squeen and the Road in the quarterland of Ballacroshey, the Road is not part of the Property.

20. The Applicants make reference to the Stable Field – formerly fields numbered 997 and 996 (shown on the OS Map of 1869) of Robert Gawn through the second half of the eighteenth century. They are now fields numbered 224255 and 224554. They are in the quarterland of Ballacroshey and remain so as shown in the Lord's Rent (Lib Assed and NSS Oct 1905/21). However the Road is clearly shown on the OS Map of 1869 as a separate number and a separate plot of land. It runs from the highway – Station Road, to the Ford where it turns at a right angle to the north along the eastern boundary of property called Squeen Lodge.

21. The Applicants argue that when William and Catherine Kneen sold Cronk Breck (in the quarterland of Squeen) to Thomas Grimshaw in 1787, Cronk Breck was described as lying in the quarterland of Squeen and bounded on the south by the rent of Robert Gawn (part of the Property was originally part of Cronk Breck). That, argues the Applicants, means the quarterland boundary of Squeen and Ballacroshey lies to the North of the Road and that description therefore means Gawn owns the Road. It is a fair argument but it is an equally fair argument that such

description could mean that the Road is part of the Squeen quarterland if one accepts that Gawn is not the owner of the Road numbered 995. Certainly the Stable Field does not appear to include the Road. In much later deeds of sale of part of what was Gawn's Stable Field the Road is excluded. The Applicants refer to NSS Oct 1799/7 wherein it was stated that the relevant boundary was "ranging and leading from that part of the said mere (which is taken to be the Weir in the River) adjoining the land of Robert Gawn…" Given the weir follows a line of the north wall of the Road according to the Applicants this means Robert Gawn owned the Road.

22. The Applicants pointed out that in 1832 when John Grimshaw sold Cronk Breck to William Rothwell the description of the land sold was "bounded on the south by the road or lane leading to Squeen Mill". In 1839 William Rothwell conveyed the same property to Thomas Craine. It was described as being bounded by "the land of John Corkan to the South (John Corkan had inherited The Stable Field). Tithe Plan 87 (of 1840) shows Cronk Breck in the ownership of Thomas Craine and bounded "on the south by the Road leading from Squeen Mill".

23. In summary, the Applicants conclude the Road is in the quarterland of Ballacroshey and not the quarterland of Squeen.

24. Conversely Mr Cleator argues the quarterland boundary between Squeen and Ballacroshey lies at the Southern edge of the Road. Tithe Plan 87 shows the Road and the Tithe plan 87 is entitled 'Part of Squeen'. Tithe Plan 123 appears to show the Road as part of the Squeen. Tithe plan 169 represents land sitting to the South of the Road and does not include the Road as part of the title.

25. Mr Cleator makes several other arguments as to the position of the Road in the quaterland of Squeen. Again I need not repeat them here as I have already set them out and have considered them carefully.

26. Woods Atlas is, in my view, unhelpful in this case as the Road is entirely covered by colouring showing boundary lines so that it is impossible to argue from the Woods Atlas whether the land to the North or the South included the Road or indeed that it was a separate parcel.

27. After careful scrutiny of all the extensive and well researched evidence before me from both parties (for which I am most grateful) I have to find that the exact position of the quarterland boundary between Ballacroshey and Squeen is ambiguous, very unclear and inconclusive at the relevant position i.e. Ford Boundary. Arguments by both the Applicants and Mr Cleator have weight but are contrary leading inevitably to a lack of certainty one way or the other.

28. The boundary between the quarterlands of Squeen and Ballacroshey is not the decisive factor in any event. It is title to the Road which is important. I quite see why the parties have utilised arguments as to the quarterland boundaries in an attempt to show ownership of the Road. However, as I say, that has proved inconclusive.

29. I have considered the other evidence put forward to support an argument as to title to the Road. The Applicants do not claim title to the Road east of the River. They do not state who has Title to the Road – rather that Mr Cleator has not.

30. The Applicants make reference to previous deeds (Nov 1957/44, Jan 1986/61, 1997/6374) all of which show the Southern boundary of the Property being bounded by the Road – rather than including it.

31. The Applicants state:-
"The [Presumption] is dependent upon ownership of the underlying land being unknown but we would contest that any such presumption does not apply in this instance, given that the ownership – which has been traced back to the 1703 Act of Settlement – is seen to lie with the quarterland of Ballacroshey and not with the Squeen".

32. At the Site Meeting when I enquired of Dr Craine as to ownership of the Road from the highroad to the eastern bank of the River he was unable to name any owner or identify the ownership by reference to a particular parcel of land or Deed. Indeed Mr Cleator has not attempted to do this either.

33. I have been shown plans and various deeds of properties abutting the Road as detailed previously in this decision. None have shown any claim to ownership of the Road (save for the claims the Applicants make as to part of the Road beyond the eastern River bank).

34. I have not been shown any reference in any Deed to a right of way over the Road either to anyone having the benefit of such right or being subject to such right. Had there been such reference it may have helped to support an argument as to title to the Road or a part thereof. Had there been title to the Road one would have expected reference in the title to what clearly are rights for owners of properties along the Road.

35. I have not been provided with any evidence of exclusive possession of the Road up to the eastern bank of the River. Quite the contrary. I have found it to be an occupation road. An undisputed finding.

36. The matter is not helped by what all agree to be an error in the OS Map of 1869. Ballacrosha (sic) is detailed as being to the north of the Road which all agree is not the case.

37. The evidence presented to me by the parties is insufficient to indicate any title to the Road from the highway to the eastern bank of the River. Woods Atlas was ambiguous. The boundary between the quarterlands of Squeen and Ballacroshy is not clear as to which quarterland includes the Road. No affidavit or statement has been produced which indicates title to the Road by any person or that permission to use the Road or tend verges has been obtained or refused by any person. No title to the Road by means of adverse possession has been suggested by any party. It would be very difficult indeed to establish that given it is an occupation road.

38. Taking all the aforesaid into account, having particularly taken into account all the plans, deeds, statements, photographs and arguments put forward by the parties, I find that there is no evidence of title to the Road from the highway to the eastern boundary of the River.

The Ford Boundary

39. I have taken account of the Registry Map made and prepared pursuant to the Isle of Man Survey Act 1991. ("The Registry Map") As Mr Anderson pointed out in his report, this map shows the physical boundary features on the map base and it is these features which are normally used to delineate the boundaries of land to be registered in the Land Registry.

40. I have examined the 1998 Deed Plan and the Rectification Map Proposal.

41. I have examined the plans annexed to the Deeds numbered December 1926/19 and January 1986/61 which the Applicants contend show the boundaries of the Property at the River and the wall west of the River. They state these show the southern limit of the Property.

42. It is the case for the Applicants that the boundaries of the Property should follow an extension of the line being the northern edge of the Road and the southern boundary of Cronk Breck Cottage and Squeen Lodge straight across the River following the solid lines shown on the Registry Map. Mr Anderson notes that Mr Cleator conceded that the 1998 Deed Plan showed that the boundary followed a straight line along the gable wall of Cronk Breck Cottage, the Southern boundary of Squeen Lodge and straight across the Ford.

43. However, Mr Cleator argues the 1998 Deed Plan is for identification purposes only and does not accurately reflect the physical boundary of the Property on the ground. The plan obtained by him from a Land Surveyor uses coordinates to mark the position of the boundaries rather than following the boundary features as are shown on the Registry Map.

44. Mr Cleator places part of his argument as to the position of the Ford boundary on the existence of the Road beyond the eastern boundary of

the River. He argues the Road, as an occupation road – continues over the River and to what was a former gateway to the Flatt. The Presumption therefore comes into play for this part as well.

45. Mr Cleator denies the Applicants have any title to the River Ford and Weir. There is no evidence of that he says. Mr Cleator states that the deeds referred to by the Applicants in support of an argument that the River Ford and Weir belong to Mwyllin Squeen all relate to the River and lands south of the quarterland boundary. Mr Cleator takes that boundary to be the southern edge of the Road.

46. Mr Cleator refers to Woods Atlas and states it indicates the Road extends to the land known as Flatt or Sadlers Flatt ("The Flatt").

47. References are also made to the plan showing the land known as the Flatt which shows the Road continuing over the Ford and beyond. Mr Cleator produced evidence that the owner of the Flatt for some time enjoyed access to the Flatt along the Road.

48. Mr. John Michael Christian stated access to the Flatt was along the Road from Station Road. Likewise Heather Quinn. Likewise Mr Kewley. Likewise John Keenan. None of this of course shows ownership of the Road or any part thereof but does give an indication of use of the same and lends support to an argument that the Road was an occupation road from Station Road to the erstwhile entrance to the Flatt.

49. Mr Cleator produced photographs showing the gate to the Flatt circa 1890 which has the entrance gates to both the Flatt and Mwyllin Squeen as being beyond the Ford.

50. I note that Mr Cleator has not applied for registration to part of the Road beyond the eastern boundary of the River, save for the small portion of the Ford Boundary, because he notes the Applicants were seeking to assert ownership of the same.

51. Dr Craine in his statement remembers in 1969 Colonel Edye (the then owner of the Flatt) moved the gate for the Flatt "closer to the Ford". Dr Craine's father insisted on the aforesaid gate being kept locked he said. An attempt by Mrs Llewellyn, the present owner of the Flatt, to use the Road to access the Flatt through the aforesaid gate was thwarted by Dr Craine with the help of advocates.

52. Mr Euan Craine confirms in his statement that there has been no "viable vehicular access" to the Flatt throughout his childhood. Ms J M O Bird also confirms that from 1964 there has been no access to Broughjiarg (which includes the Flatt presumably) along the Road.

53. In summary, Mr. Cleator is not able to produce the title to the Road including also the land at the Ford Boundary but relies on the Presumption and the coordinated map produced by his surveyor. In support of that he contends that the Road extends beyond the eastern boundary of the River to at least the position where the gate to the Flatt was placed. The Road went through the River and the River ford was an occupation road for the use of the owner of the Flatt for the purposes of access to and from the highroad.

54. The Applicants on the other hand, state there never was an undisputed right for the owner of the Flatt to access the Flatt through the erstwhile gate once the Flatt had been separated by sales from the other Mwyllin Squeen lands.

55. The Applicant states the Road ceases at the eastern bank of the River. The only person who used the Road after the eastern boundary of the Ford River was the owner of Mwyllin Squeen. It is part of their property they state. The site inspection revealed no gate at the Flatt but a boarded up section of fencing which was clearly not of recent making. Mr Cleator has not sought to register title to the Road through the Ford and beyond save for the Ford Boundary but I note he contends that it is an Occupation Road to the point where the gates to Mwyllin Squeen once stood. I note he has filed a caveat in the Deeds Registry in respect of the land "to protect his interest in it".

56. I note there was a gate to the Flatt in 1890 but Dr Craine asserts that at that time the Flatt and Mwyllin Squeen comprised one parcel of land. I note Dr Craine refers to the gate being "moved closer to the Ford" which indicates a gate was in that vicinity before.

57. Dr Craine has referred to Deed April 1964-52 which was a conveyance of (inter alia) Mwyllin Squeen to Dr Craine's father Charles Cowell Craine from his sister in law following the death of her brother John Douglas Craine. The Map attached to this Deed shows the boundary of Mwyllin Squeen abutting against the western boundary of the River. It does not include the River. The Road is shown as number 995 which commences at the highway – Station Road and turns a sharp right angle along the eastern bank of the River having passed along the Southern boundary of the Property. Dr Craine also refers to the plan attached to the Deed dated the 12th May 1965 when Dr Craine's aunt (the mother of John Douglas Craine) sold a parcel of land to George Maitland Edye (Deed Nov 1965/36). This includes the Flatt which abutted the boundary of Mwyllin Squeen. The River is not included. The sale of the Flatt to Ms Llewellyn uses the same plan as in the sale to George Maitland Edye. Dr Craine asserts that the Flatt, prior to the sale to George Maitland Edye in 1965, was part of the same parcel of land now known as Mwyllin Squeen. Therefore no specific right of way between the Flatt and Mwyllin Squeen was necessary. It was all part of the same parcel of

land. No right of way was created for the owner of the Flatt in the sale of the Flatt to George Maitland Edye onto the Road as access to and from the Flatt to the Highway was via an entirely different route. There is no right of way detailed in the Deed Nov 1965/36 states Dr Craine. This is not denied by Mr Cleator.

58. From the evidence before me there is an argument that Title to the Road west of the River may (and I put it no stronger) form part of the Title to Mwyllin Squeen. However, I am not prepared to be more definitive and neither is it necessary that I am. Ms Llewellyn may have a view on the matter. She has not had an opportunity to do so in this matter and the Applicants may wish to expand further if they seek to register a title.

59. There is also an argument that the Road to the west of the River is not an occupation road but for the same reason I am not prepared to be more definitive. I note attempts by Ms Llewellyn to access the erstwhile gate to the Flatt were thwarted by the Applicants at some stage. I do not have Ms Llewellyn's input on this aspect of course.

Title to the Ford

60. Title to the Ford or the Road as it travels over the River appear to be uncertain. The Deeds I have been directed to by Dr Craine appear to show the River at this point is not in the ownership of Mwyllin Squeen. The Deeds I have been shown by Mr Cleator do not show he owns the Road at this point. I note on the OS Map 1869 there is a marker or tie which may suggest the River forms part of the same parcel of land to its western bank but I agree with Mr Cleator that such tie or marker is insufficient of itself to denote ownership of adjoining plots.

61. I find no title to the Road as it travels over the River (the Ford in fact) has been established. I make no finding as to whether the Ford is an accommodation road as Ms Llewellyn may have a view on that.

The Mound of Earth

62. Much play has been made about the Mound of Earth and indeed to a large extent it appears to me to form a major part of much of the dispute between the parties. The Applicants contend the boundary of the Property is north of the Mound of Earth and that Mr Cleator has been 'building up' the Mound of earth with garden detritus deliberately so that it now encroaches on what was part of the Road. Mr Kewley said this is not so as it was there when the previous owner Mr Styles owned the Property.

63. Mr Cleator has now fenced it off with netting and posts and appears to claim ownership. Mr Cleator contends it marks the true boundary of the Property. It has elm suckers on it one of which is well established.

64. The Site Visit made very clear that the Mound of Earth forms a protrusion from what would otherwise be a more straight line boundary along the Property. The sucker from the old and sizeable elm tree is fairly tall and thick. Mr Kewley contends that it is 20 years old. The Mound of Earth is not grass cuttings. It appears more solid so much so that wooden posts have been inserted in it.

65. Mr Cleator showed me on the Mound of Earth where an original wall post is still discernible and it is evident from that the Mound of Earth is more forward into the Road from such post.

66. Mr Cleator states that he fenced in the Mound of Earth to contain it from the vagaries of the winter full flow of the River. As to building a wall round the Mound of Earth Mr Cleator agrees he did commence this but desisted when confronted by Mrs Hommet. The object of the exercise was simply to 'tidy up' the Mound of Earth and make it look more attractive with a dwarf wall rather like Mr Craine had done in the region of the west bank of the River.

67. Mr Cleator denies that he is trying to restrict the right of way over the Road. He had not interfered with the Mound of Earth at all save to put netting round it and strim it twice yearly.

68. At the Site Visit Mr Kewley showed me where the stone wall from the River to the wooden pillar from which the gate used to hang at the Property had been. It is to the north of the majority of the Mound of Earth as it fronts the Road. Mr Kewley stated the old wall was made up of river stone for most of the way before reverting back to the older slate walls. What remains of that wall has now been built around with blocks to protect and preserve what was left says Mr Kewley as "from 2010 onwards parts started to disappear".

69. Mr Cleator exhibited a photo of the River in heavy flood conditions. Mr Cleator states that if his old wall (the remains of which still exist) did not have the Mound of Earth in front of it then it would "have been effortlessly swept away by river flows".

70. The White Boulder does not extend into the Ford so as to be in a line with the outer reaches of the Mound of Earth into the Road.

71. Mr Cleator claims the Mound of Earth has been "picked away at" by "persons unknown" from time to time and the netting he has erected around it is to contain it.

72. The Applicants believe that the Mound of Earth restricts the accessibility of larger vehicles to Mwyllin Squeen. I have been shown photographs by both parties of larger vehicles at the site in question. The Bridge is not a footbridge. It is a substantial concrete bridge accessible by cars but with

weight restrictions in respect of large vehicles. It appears to me from photographs to be significantly different from the wooden footbridge shown in a photograph of 1890. Dr Craine says the pier of both are in the same position – the argument being that the new Bridge has not encroached on the Road so as to restrict access.

73. Dr Craine contends the width of the Road is from where he states the Southern boundary of the Property is up to the Bridge. In other words the Bridge is not part and parcel of the Road.

74. I have considered all the documentation and submissions and deeds. I note that good root of title requirement (as defined in the Conveyancing Act 1985 as amended).

75. I have not been shown such a conveyance which includes the land with the Mound of Earth. The conveyance which I have been shown is the 1998 Deed and the epitome of title quotes such deed.

76. The certificate of title in Form 1 states (inter alia), the title is good. In relation to the Mound of Earth and the Road and the Ford boundary I find it is not good in accordance with the good root of title definition in the Conveyancing Act 1985. I take account of the fact the plan on the 1998 Deed is for identification purposes only but there is no other evidence that the land under the Mound of Earth forms part of the Title of the Property. There is no application for possessory title to the Mound of Earth and in fact there is evidence of dispute about its ownership. There is no proof of adverse possession for the required statutory period.

77. A claim for ownership to part of the Road can be raised at common law (and I stress 'common law') based on the Presumption as I have found the Road up to the eastern boundary of the River is an occupation road and that there is no evident title to it. However, such common law claim would be subject to the rights of other occupation road users to have access along it. The Right over the Road in favour of the Applicants is not denied by Mr Cleator.

78. Even if Mr Cleator establishes at common law a right of ownership to the Road up to the eastern boundary of the River on the basis of the Presumption that does not give him right to obstruct it with the Mound of Earth which he has enclosed and fenced. It seems to me that at common law any rightful user of the Road could argue for the removal of the Mound of Earth as it protrudes into the Road.

79. In short, I find Mr Cleator has no good title to the land under the Mound of Earth. The Mound of Earth forms part of the Road and there is no title to that.

The Vehicular access to the Property from the Road

80. Strictly speaking it is arguable that my task is not to consider vehicular access to the Road by Mr Cleator, my task relates to boundaries.

81. The Applicants sought to argue that Mr Cleator constructed a vehicular access to the Property from the Road where there had only been pedestrian access before. Planning law considerations were raised by the Applicants. These do not fall for consideration by me. Mr Cleator does not deny he has widened the access from a pedestrian access to a vehicular access but contends there was an unrestricted wider access before the previous owner erected a pedestrian gate only. Reference is made to Tithe Plan 87 which shows no wall to the southern driveway to the Property. It states 'road'.

82. Mr Cleator referred me to the Deed March 1953/21 from Craine to Parkes. This shows a wall but in a different place and shows a verge to the fore of the wall. Similarly no solid wall boundary is shown in the Deed November 1957/41. The OS Map 1869 shows no solid boundary to the Road.

83. I have considered the various statements produced by the Applicant indicating only pedestrian access existing to the Property from the Road.

84. I take note of the statement by Mr Euan Craine at the Site Meeting when he said vehicular access was not an issue in principle but encroachment into the Road by the driveway of the Property was.

85. At the Site Meeting it was evident that a concrete threshold existed at the driveway to the Property and to the fore of that going onto the Road was a ramp or incline of gravel and earth. Mr Cleator said he had added gravel to this from time to time as otherwise it was slippery with mud but the ramp or incline existed beforehand.

86. Mr Cleator said he was happy to cut back this incline or ramp if it helped matters.

87. No prohibition of any sort on vehicular access to the Road from the Property has been shown to me. Squeen Lodge had vehicular access as does Mwyllin Squeen of course. Planning matters apart, I cannot see any reason why Mr Cleator should not have vehicular access from the Property to the Road. He accepts he has demolished the wall which restricted vehicular access but I cannot see why he should not be permitted to do so. Additionally Mr Cleator's common law claim to one half of the Road to the east of the River (which it will be seen later I accept) adds weight to the power to create a vehicular access onto the Road. I have not been able to identify who could stop Mr Cleator from

having vehicular access on to the Road. Furthermore, there is evidence that the opening on to the Road was not always pedestrian width only.

88. I accept the evidence that there did not appear to be only a pedestrian gate in 1957. The access was wider at that time. Insertion by a former owner of a pedestrian gate does not of itself extinguish a former wider access. This is not to say I believe those who remember a pedestrian access are not telling the truth. Memories going back as far as 1951 are bound to be unreliable. Many of the statements refer to a period after 1957 in any event.

89. Given I have found no title to the Road at that point where this driveway is situate I cannot see who can object to the creation of a vehicular access. The objection of the Applicants appears to be largely the position of the exact southern boundary of the Property rather than the issue of vehicles in and out of it. I should make it clear I am not making any findings on this aspect of the matter.

<u>The Claim of Mr Cleator to one half of the Road</u>

90. I have found that there is no Title to the Road from the highway to the eastern bank of the River. I have found that the Road from the highway to the eastern bank of the River is an accommodation Road. I have found there is no title to the Road as it crosses the River – the Ford in fact. I have stated that it may be the Ford is not an accommodation Road but I have not gone so far as to make a finding. I have stated that it appears the Road from the western bank of the River to Mwyllin Squeen may be owned by the Applicants and is not an accommodation road but I have not gone so far as to make a finding as I have had no input from Ms Llewellyn as owner of the Flatt and am mindful the Applicants may wish to expand on this and may wish to attempt to register the same.

91. I have found that Mr Cleator does not have good title to the land under the Mound of Earth and that it forms part of the Road.

92. Given the aforesaid I now turn to the matter of the title by Mr Cleator to one half of the Road. It is based on the Presumption as there was no other evidence of title. At common law I agree Mr Cleator may lay claim to the soil under one half of the Road as it fronts the southern boundary to the Property so far as the eastern boundary of the River, and possibly (in the event it is an accommodation road) one half of the Road at the Ford at Common Law subject to the right of access by the Applicants (which is not denied) and any others with a like right. That means it cannot be obstructed.

93. I have considered the requirements for Land Registration. The classes of owners who may be registered are set out in clause 12 of the Act. The

relevant class in this matter can only be "full owner" i.e. the owner is fee simple. Clause 12 of the Act sets out the classes of title with which owners may be registered at first registration. The only relevant registration in this matter can be "an absolute title" of the freehold estate as a possessory title is not claimed to the Road and neither is a qualified title. An absolute title is subject to Schedule 5 of the Act burdens affecting it (such as rights of way for example).

94. Rule 16 indicates an application for first registration shall be in Form 1. Form 1 contains a Certificate of Title which must be signed by an advocate. It states that 'I have made full title investigation and declare that the title is good … and that the epitome of title set out in Appendix A of the application gives particulars of all instruments acts and events relevant to the title of the applicant to the land".

95. The relevant words seem to me to be 'the title is good'. To create a good title I take the view that this means good root of title as defined in the Conveyancing Act 1985. I can find no provision in the Act or the Rules which permits the inclusion of common law created ownership. That is not to say of course that common law ownership of the type created by the Presumption cannot exist. It clearly can but there is no provision in the Act or Rules which permits registration of the same.

96. I have considered carefully the arguments of Mr Cleator as to registration of common law title to the Road. I need not repeat them here. I have also considered the arguments of Mr Anderson. I note the provisions as to general boundaries and agree these are all boundaries save for those that have been determined under Section 59(2) of the Act. I note that in England no part of the highway is shown as part of a registered title, even where the Presumption applies.

97. I note that the effect of the Presumption is that one half of the Road is presumed to be within the registered title although it is not shown on the title plan.

98. I agree with Mr Anderson that the common law rule in the Presumption regarding the ownership of the soil of the Road and the part of the River Ford should not find expression in land registration in the Isle of Man.

99. On that basis I find that the registration of part of the Road by Mr Cleator was erroneous. I do not level criticism at Mr Humphrey or Mr Cleator in that respect. I understand an attempt at registration of a common law ownership of land has not occurred before. It represented an uncertain area in the registration of land in the Isle of Man.

100. This decision was, so far as I am aware, the first decision as to registration of common law ownership of land. Mr Humphrey's contention was that a common law title was a good title in terms of the

Act. He indicates that the Presumption as to the Road ownership was not a separate matter but forms part of the title as culminated in the 1998 Deed. Until this decision that was a stance he could take. For the avoidance of doubt I do not seek to deny the Presumption in the Kenyon case, quite the contrary – or that it applies in this case. I deny the right to register title based on it.

Mr Cleator's title to the Ford Boundary

101. I have found there is no title to the Ford. Mr Cleator's title to the Ford boundary is not supported by the title deeds to the Property. It can only therefore be based on the Presumption i.e. common law ownership. As I have stated there is nothing in the Act or Rules which permits registration of the same. On that basis I find that the registration of the Ford boundary by Mr Cleator was erroneous. I make the same point about lack of criticism of Mr Humphrey in this respect also.

The Southern Boundary to the Property

102. I have already found that the Road follows the southern boundary to the Property, that there is no title to it, and that it is an Occupation road and that title to the Road cannot be registered by Mr Cleator. Part of the Application for Rectification pertains to the actual southern boundary of the Property. The Applicants contend it does not include the Mound of Earth or the ramp to the now vehicular entrance to the Property from the Road. I have examined the plan attached to the 1998 Deed. I accept it is for identification purposes only. I have examined the map prepared by W.G.S. I have examined the Registry Map and note that the part of the boundary wall of the Road has now been demolished. That is shown on the registry map as a solid line - a physical boundary. I have taken note of the position of the remainder of the original wall from the eastern River bank as shown to me on site by Mr Cleator and Mr Kewley.

103. I take little note of the White Boulder as it seems to me to be an entirely arbitrary point not referred to in a specific deed sufficient to afford any degree of certainty as to its importance or applicability.

104. It will be noted I have not made a finding as to whether the width of the Road at the Concrete Bridge includes or excludes the Concrete Bridge. I do not need to do so. My decision pertains to the boundary of The Property.

105. It is clear to me and I find that the southern boundary of the Property is as shown on the Rectification Map Proposal as denoted by the solid red lines thereon. This follows accurately the boundary line shown in the 1998 Deed Plan. I accept that was for identification purposes only, but it is the best recorded plan that exists. I have already found there is no title to the Mound of Earth. Good title to a boundary other than as

shown on the Rectification Map Proposal has not been established or proved.

106. I ORDER rectification of the Title to the Property so that the Southern boundary of the Property is as shown on the Rectification Map Proposal by the solid red line delineated thereon.

107. I ORDER Mr Anderson to take the necessary steps to rectify the title to the Property to accord with the aforesaid Order.

108. I make no order as to costs as I have found Mr Humphrey's error was not founded in carelessness or malintent or negligence.

109. I am mindful that s.59(1) of the Act applies still. I do not seek to override that as I am not requiring co-ordinated scaled plans to be prepared by either party. It is given to either party to prepare those and submit them to Mr Anderson in terms of s.59(2) if they so wish. I believe I have the power under section 65(1) to require scaled co-ordinated plans but I do not wish either party to have the expense of what has no doubt already proved to be a costly exercise.

110. As stated, the Mound of Earth has been a vexing matter for both parties. It appeared from the Site Meeting that the parties hoped I would make a decision about either its removal or its retention. That is not a decision for me to make (my decision relates to rectification of boundaries). The consequences of the Orders I have made are not matters for me.

111. I thank all parties for the very extensive and helpful research they have carried out. It has been thorough and at times illuminating. I do hope the parties can now revert to the friendly neighbour relationship they used to have now this decision has issued.

In Summary

112. I have found the Road from Station Road to the Eastern boundary of the River is an occupation road and there is no title to it. I have found there is no title to land under the River at the River Ford.

113. I have stated it is inconclusive as to whether the River Ford forms part of the occupation road. I have not made a finding as to whether there is title to the Road to the west of the River Ford or whether it is an occupation road. I have found Mr Cleator does not have good title to the land under the Mound of Earth.

114. I have Ordered rectification of the Title to the Property so that the southern boundary of the Property is as shown on the Rectification Map Proposal by the solid red line delineated thereon.

115. I have found the Presumption in the Kenyon case is accepted and applicable in this case. I have found there is no provision in the Act or Rules whereby common law property provisions in accordance with the Presumption in the *Kenyon* case can be registered.

IN THE MATTER OF KENYON

CHANCERY DIVISION (Deemster Cain): December 18th, 1996

Land Law—conveyancing—misdescription of land—inaccuracy in 1907 conveyance, ostensibly conveying common land, not ratified by passage of time unless possessory title to land obtained subsequently

Land Law—adverse possession—root of title—claimant to show intention to possess, assumption of actual possession and discontinuance of possession by others—using common pasturage to graze cattle and keep pigs not sufficient to establish exclusive possession—repair by holder of right of way to road crossing pasturage not in itself proof of possession since right of way entitles holder to carry out repairs

Land Law—boundaries—roadside boundaries—presumption that owner of land abutting on to occupation road owns up to middle of road

The petitioner sought a declaration that he had the benefit of an unrestricted right of way along a road between the highway and two fields owned by him and a declaration as to the ownership of the road where it ran between his two fields. The cross-petitioner sought (a) a declaration that the right, title and interest of the road was vested in her, subject to the rights of access of the owners of land abutting on the road; (b) a declaration as to the ownership of a large field through which the road ran, and (c) (in a separate petition) a *status quo* order preventing the petitioner from widening the gates from the road into his two fields.

The road in question ran from the highway between fields, then through a large field partly under water ("the lough field"), between two fields owned by the petitioner, and eventually into a large estate owned by the cross-petitioner ("the estate"). The petitioner and owners of other land bordering on the road were made noticed parties to the cross-petition, and claimed that the disputed stretch of road was an occupation road and the lough field was common land.

There was undisputed evidence that in 1730 the lough field was common land for the watering of cattle and the road through it was an occupation road, and there was nothing on subsequent official plans of the area, prepared under the Tithe Commutation Act 1839, the Lunatic Asylum Act 1860 and the 1869 Ordnance Survey, to indicate any change in that situation. Furthermore, there were no physical remains—traces of old posts, walls or hedges—which might have indicated possession of the lough field before 1907.

In 1907, however, on a plan annexed to a deed of conveyance of the estate, the lough field was shown (clearly) and the whole of the road (ambiguously) as part of the estate, and that attribution was not changed in several subsequent conveyances of the estate (including the 1951 conveyance to the cross-petitioner and her husband), although in none of them was there any reference to rights of way over the road, as there should have been if it were indeed included in the lands being conveyed.

There was no evidence before the court of any change in the physical condition of the field between 1907 and 1951, when the cross-petitioner and her husband acquired the estate. Nevertheless, they had always regarded the lough field as part of the estate. They had kept pigs on two dry areas of the field, using electric fencing; their son had grazed cattle there, repaired a drain that crossed the road, dumped rubble on the road verges to use for road repairs, and in the 1970s had applied for planning permission to build a bungalow on the field.

None of the other interested parties had grazed or watered cattle there, but some of them had cleared drains crossing the road in the lough field, had kept hedges and verges along the road in order, had used the field for access with agricultural equipment and had repaired parts of the road surface.

In the present proceedings, the cross-petitioner submitted that (a) between 1839 and 1907 her predecessors in title must have acquired title to the field and the road by adverse possession; (b) s.3 of the Conveyancing Act 1908, by which "descriptions . . . in deeds . . . twenty years old at the date of the contract, shall, unless . . . proved to be inaccurate . . . be taken to be sufficient evidence of the truth of such . . . descriptions," shifted the burden of proving that there had *not* been adverse possession prior to the 1907 conveyance on to the noticed parties; (c) a deed registered as long ago as 1907 should now be treated as conclusive evidence that the vendor was entitled to convey what he then purported to convey; and (d) since acquiring the estate in 1951 her family had treated the field as their property and no-one else had attempted to exercise rights over it.

Held, making a declaration as to ownership of the disputed land:

(1) The court was satisfied on the evidence that the lough field was common land and the disputed stretch of road was an occupation road. To establish that her predecessors had acquired title to the land before 1907 by adverse possession, the cross-petitioner needed evidence of an intention to possess, of actual possession and of discontinuance of possession by the other occupiers, but there was no such evidence. The official plans tendered, which were admissible as evidence of the physical condition of the land, showed only the undisputed section of the road, and none of the lough field, as part of the estate and contained no indication of change; the physical evidence—the absence of traces of posts, walls and hedges on or around the field—went to confirm that there had been no change. The 1907 conveyance was therefore inaccurate and that

inaccuracy could not be ratified by the passage of time unless a possessory title to the land had subsequently been obtained (page 125, lines 8–12; page 129, lines 31–35; page 139, lines 17–24; page 140, line 25 – page 141, line 11; page 144, lines 15–24).

(2) The available evidence as to the use of the lough field since 1907 did not indicate exclusive possession by any one party. The activities described by the cross-petitioner and her family—keeping pigs and grazing cattle—were not inconsistent with the use of the field as common pasturage, and the carrying out of repairs to the road where it passed through the field, by someone with a right of way over it, was not in itself evidence of exclusive possession since anyone with a right of way over an occupation road was entitled to carry out repairs to maintain it. Since neither the cross-petitioner nor her predecessors had acquired a possessory title since 1907, the lough field remained an area of common pasturage to which the cross-petitioner and all the other neighbouring land owners had access (page 137, lines 14–22; page 141, lines 12–38).

(3) Nor was there evidence to suggest that the cross-petitioner or her predecessors had at any time been in exclusive possession of the disputed section of the road. It had always been and still was an occupation road over which the owners of abutting properties had a right of way. Moreover, since at common law the owner of land adjoining an occupation road was presumed to own up to the middle of the road, the section of the road running between the petitioner's two fields vested in him, he was entitled to widen the gates from the road into his fields, and the *status quo* petition would therefore be dismissed (page 132, lines 1–7; page 141, line 39 – page 142, line 24; page 145, lines 6–11).

Cases cited:

(1) *Buckinghamshire C.C.* v. *Moran*, [1990] Ch. 623; [1989] 2 All E.R. 225; (1989), 88 L.G.R. 145; 56 P. & C.R. 372; 139 N.L.J. 257, *dicta* of Nourse and Slade, L.JJ. applied.

(2) *Marshall* v. *Taylor*, [1895] 1 Ch. 641; (1895), 64 L.J. Ch. 416; 72 L.T. 670, *dicta* of A.L. Smith, L.J. applied.

(3) *Quine* v. *Mitchell*, C.L.D., June 22nd, 1942, unreported, Farrant, *Digest of Manx Cases 1925 to 1947*, 11, *dicta* of Deemster Farrant applied.

Legislation construed:

Conveyancing Act 1908 (Statutes of the Isle of Man, VIII, p. 241), s.3: The relevant terms of this section are set out at page 137, lines 31–35.

Conveyancing Act 1985 (c.9), s.2(5): The relevant terms of this sub-section are set out at page 137, lines 24–26.

Registration of Deeds Act 1961 (Statutes of the Isle of Man, XIX, p. 273), s.30: The relevant terms of this section are set out at page 143, lines 34–41.

s.32: The relevant terms of this section are set out at page 144, lines 2–14.
Statute of Limitations 1891 (Statutes of the Isle of Man, VI, p. 240), s.5: The relevant terms of this section are set out at page 138, lines 31–37.

Miss S.M. Bolton for the cross-petitioner;
P.B. Clucas for the noticed parties.

DEEMSTER CAIN: These proceedings began with the filing of a petition by Mr. John Kenneth Teare on December 21st, 1994. Mr. Teare owns and farms Ballavair in the Parish of Bride. He sought a declaration that he had the benefit of an unrestricted right of way to and from the highway (that is the Bride Road) over and along Kionlough Road in the Parish of Bride from and to each of the two fields, forming part of Ballavair, which abut upon Kionlough Road.

The 1869 Ordnance Survey of the Isle of Man (Ayre Sheading) Sheet 111.14 ("the Ordnance Sheet") was produced to the court in evidence as part of the agreed bundle of documents. For convenience I shall describe the various plots and parcels of land mentioned in these proceedings by reference to the field numbers on the Ordnance Sheet. The two fields referred to in Mr. Teare's petition are field 1171, which lies to the north-west of Kionlough Road, and field 1176, which lies to the south-east of Kionlough Road. Mr. Teare also sought a declaration with regard to the ownership of Kionlough Road where it abuts upon and runs between fields 1171 and 1176.

The petition was brought with notice to the owners of the various properties which abut upon Kionlough Road, including Mrs. Edith Edna Kenyon, who owns more than 20 acres of land, with a dwelling house and other buildings, which lie between the north-east end of Kionlough Road and the coast. This property ("the Kionlough Estate") includes, amongst others, fields 1135, 1340, 1342, 1184, 1174 and at least part of 1173. On March 1st, 1995 Mrs. Kenyon filed an answer to the petition, in which she took issue with Mr. Teare. In particular she denied that Mr. Teare owned Kionlough Road where it abuts upon fields 1171 and 1176. On March 13th, 1995 Mr. Teare filed his reply to the answer.

At a sitting of the court on May 22nd, 1995, there being no appearance by or on behalf of any of the noticed parties other than Mrs. Kenyon, an order was made that Mr. Teare had the benefit of an unrestricted right of way for domestic and agricultural purposes to the land belonging to him abutting upon Kionlough Road (that is

fields 1171 and 1176) over and along Kionlough Road to and from the highway, known as Bride Road. Leave was also granted to Mrs. Kenyon to file a cross-petition to enable her to claim ownership of Kionlough Road subject to the rights of adjoining landowners thereover.

On June 12th, 1995 Mrs. Kenyon duly filed her cross-petition, in which she asked the court to make a declaration that "the right, title and interest of Kionlough Road" and of an area described in the petition as the Dub (or Dubh) was vested in Mrs. Kenyon "subject to the rights of access of owners of land abutting upon Kionlough Road." The area described as the Dub is shown on the Ordnance Sheet as field 1210. It comprises 1.307 acres, about a third of which is under water. This is known as the lough or dub. I shall refer to this area, that is field 1210, as "the Lough field." Presumably Kionlough Road takes its name from the lough in this field.

On June 21st, 1995 the cross-petition was called in the court and appearances were entered on behalf of the noticed parties, Mr. J.K. Teare, Mr. and Mrs. E. Annison, Mrs. P. Garner, Mr. and Mrs. W. Radcliffe, Mr. William Cormode and Mr. J.J. Teare. No appearance was entered by or on behalf of Mr. and Mrs. R.G. Jones who had also been noticed under the cross-petition. A further order was then made by the court in the following terms:

> "The cross-petitioner and all of the noticed parties to the cross-petition have the benefit of an unrestricted right of way for domestic and agricultural purposes to the land belonging to John Kenneth Teare abutting upon Kionlough Road, over and along Kionlough Road to and from Bride Road."

Unfortunately, although the intention of the court was clear, the wording of this order is not clear. It is not in dispute, however, that all those persons who own property abutting upon Kionlough Road have the benefit of an unrestricted right of way, for all purposes, over and along Kionlough Road, to and from the highway from and to their respective properties.

On July 25th, 1995, Mr. J.K. Teare, Mr. and Mrs. Annison, Mrs. Garner, Mr. and Mrs. Radcliffe, Mr. Cormode and Mr. J.J. Teare filed an answer to the cross-petition. In their answer they denied that Mrs. Kenyon was the owner of Kionlough Road and the Lough field and they claimed that Kionlough Road was an occupation road.

On September 15th, 1995, Mrs. Kenyon filed a further petition ("the *status quo* petition"), complaining about the widening by Mr. J.K. Teare of two existing field gates on either side of Kionlough

Road giving access to fields 1171 and 1176. Mrs. Kenyon asked the court to make an order that the *status quo* prior to September 14th, 1995 should continue and that the hedges removed by Mr. Teare in widening the two gateways, about 6 ft. of hedge on each side of Kionlough Road, should be restored to their former position. Mr. Teare filed an answer opposing the *status quo* petition. However, at a sitting of the court on November 2nd, 1995 Mr. Teare gave a formal undertaking that he would not either by himself or his servants or agents or by any other means carry out any works of whatsoever nature on Kionlough Road or hedges, hedgerows, trees or bushes abutting thereon pending the determination by the High Court of the cross-petition and the *status quo* petition. There are now therefore two petitions before the court for determination, namely the cross-petition seeking a declaration that Kionlough Road and the Lough field are vested in Mrs. Kenyon, and the *status quo* petition concerning the two gateways abutting upon Kionlough Road.

The matter came before the court for hearing on November 4th, 1996. Mrs. Kenyon was represented by Miss Bolton. Mrs. Kenyon was unable to attend the court in view of her age and state of health, but her son, Mr. Stanley Kenyon, who lives in a house called "Clagh Bane" which he built on Kionlough Estate in 1975, gave evidence on her behalf, as did Mr. R.J. Hickson, who had owned and occupied Kionlough Cottage, which is field 1172 on the Ordnance Sheet, between 1977 and 1985.

Mr. Clucas represented the noticed parties to the cross-petition, namely Mr. J.K. Teare, Mr. and Mrs. Annison, Mr. and Mrs. Radcliffe, Mr. Cormode and Mr. John James Teare, the son of Mr. J.K. Teare. Mrs. P. Garner, who had entered an appearance, was not represented at the hearing and wished to take no further part in the proceedings. Mr. and Mrs. R.G. Jones, the other noticed parties, had not entered an appearance to the cross-petition and took no part in the proceedings. Evidence was given on behalf of the noticed parties by Mr. Cormode, who owns field 1175, by Mr. J.K. Teare and by his son, Mr. J.J. Teare, who owns field 1214 and the field abutting on the south side of the Lough field, which in 1869 had formed part of field 1240. Statements were given in evidence, under the Civil Evidence Act 1973, from Mr. and Mrs. Radcliffe, who occupy the house and land comprising, more or less, fields 1211, 1212 and 1213. The property is owned by Mrs. Radcliffe. As, confusingly, this house is called Kionlough Farmhouse, or sometimes Lower Kionlough, I will call it "the Radcliffe property."

The taking of evidence was concluded on November 6th, 1996 and on November 7th the court viewed Kionlough Road, when I walked the length of the road with the advocates, Miss Bolton and Mr. Clucas. Mr. Kenyon was also present. I heard legal argument on November 13th and this was concluded at a short hearing on November 20th, when I reserved judgment. Although these proceedings have been rather protracted, the issue to be determined is quite simple, namely, in whom is Kionlough Road and the Lough field now vested?

It is not in dispute that, whoever owns Kionlough Road and the Lough field, all those persons who own properties adjoining Kionlough Road have an unrestricted access over and along Kionlough Road to and from the highway from and to their respective properties for all purposes. The question as to who owns Kionlough Road, in particular, may therefore appear to be of academic interest only. However, it has assumed some importance because of the dispute between Mrs. Kenyon and Mr. Teare over the widening of the two gateways from fields 1171 and 1176 which abut upon Kionlough Road. It may also be of significance in the future, as Mr. Teare may wish to create a new entrance from field 1176 onto Kionlough Road, to provide an entrance to a new dwelling house ("the new house") which has recently been erected in the south-west corner of field 1176.

The ownership of Kionlough Road has been in dispute for many years, but the issue was brought to a head by the proposal of Mr. Teare to erect the new house in field 1176. The ownership of the Lough field has also been raised in these proceedings, although that has no bearing on whether Mr. Teare was entitled to widen the two gateways on to Kionlough Road, or would be entitled to create a new entrance on to Kionlough Road from field 1176 to serve the new house. Mrs. Kenyon, in the cross-petition, has asked for a declaration that she owns both Kionlough Road and the Lough field.

I will now describe Kionlough Road and the Lough field and the adjoining properties. Kionlough Road is approximately 600 yds. in length from the highway to the point where it reaches field 1174, part of which is now an orchard, which undoubtedly forms part of Kionlough Estate, the property of Mrs. Kenyon. At that point there are slight indications in the hedges on each side of Kionlough Road of there having been gateposts at some time in the past. There are also marks on the Ordnance Sheet which indicate that there were

gateposts at that point in 1869. Mr. Cormode, who is now aged 71, said in evidence that he had known Kionlough Road since he was four or five years old, and that he remembered a rickety old gate hanging on an old Manx gatepost at this point when he was young. I shall refer to this point as the "Kionlough Estate entrance."

During the hearing I was referred to the judgment of Deemster Farrant in an unreported case, *Quine* v. *Mitchell* (3). That case was an action for damages for trespass. Deemster Farrant stated that the Ordnance Survey plan was "admissible as evidence of the physical condition of the land in 1869. . . ." The Ordnance Sheet may therefore be accepted as evidence of the condition of Kionlough Road and the adjoining properties in 1869. Having viewed the property on November 7th, 1996, it is clear to me that there has been no material change in the condition of Kionlough Road since 1869, apart from a widening of the entrance on to the highway and the erection of one house on the south-west side of field 1208 adjoining the south-west corner of the Lough field. This house was erected in about 1951 on a plot of land which had been conveyed by the late Mr. John Kenneth Cannell Teare, the father of Mr. J.K. Teare, to Mr. John James Crellin on March 6th, 1951. The Lough field and its boundaries and drainage ditch remain precisely as they are shown on the Ordnance Sheet.

Mr. Cormode said in evidence that Kionlough Road had changed very little during his lifetime, apart from the lower section of the road being tarmacadamed, and the building of the house by Mr. Crellin in about 1951. He said that the entrance into Kionlough Road from the main road or highway had been widened by Mrs. Livesy when she lived at Sycamore Cottage, which is the house at the junction of Kionlough Road and the highway.

Kionlough Road can be divided into three sections. The lower section of the road, which is numbered 1209 on the Ordnance Sheet, runs from the highway to the Lough field. This section abuts upon field 1208, now the property of Mr. J.K. Teare and Mrs. Garner, who owns the house built by Mr. Crellin in 1951, on the north-west side. On the south-east side Kionlough Road abuts upon fields 1238 and 1239, now the property of Mr. and Mrs. Annison of Sycamore Cottage and a field now the property of Mr. J.J. Teare which originally formed part of field 1240. This part of Kionlough Road is about 100 yds. long. It has a tarmacadam surface which was laid about 30 years ago by Messrs. Millers of Douglas on the instructions of Mr. Radcliffe. Mr. Crellin made a contribution to

the cost of the work. Since 1981 part of the road surface has been re-tarmacadamed at the expense of Mr. Radcliffe.

The middle section of Kionlough Road then runs through the Lough field. As I have mentioned, the Lough field contains 1.307 acres and is described in the book of reference to the 1869 Ordnance Survey as being "rough pasture *etc.*" The lough, which occupies about one-third of the field, takes water from Ballavair, the property of Mr. J.K. Teare, to the north. Water drains out of the lough through a deep ditch, which runs under Kionlough Road in a southerly direction on to field 1214, which is now owned by Mr. J.J. Teare. Thereafter the stream runs in a south-easterly direction to the sea.

Kionlough Road runs to the south of the lough and then forks, one part of the road continuing to the Radcliffe property, and the other part continuing in a northerly direction past the lough and then in a north-easterly direction at the point where it leaves the Lough field. The road on the south side of the lough, up to the point where it enters the Radcliffe property, was tarmacadamed by Mr. Radcliffe at the same time as the lower section of the road. To the north of the point where the road forks, it has never been tarmacadamed, although Mr. Kenyon said that he had repaired this section of the road from time to time with loose stone. The section of the road which runs through the Lough field is about 140 yds.

The upper section of Kionlough Road then runs from the north-west corner of the Lough field, between high sod hedges, up to the Kionlough Estate entrance. This section of the road is about 315 yds. long. The road then continues past the Kionlough Estate entrance for about another 35 yds. towards the buildings on Kionlough Estate, and thereafter it continues across the Kionlough Estate. There has never been any question but that the road to the north-east of the Kionlough Estate entrance is part of Kionlough Estate and is the property of Mrs. Kenyon.

The whole of the north-west side of the upper section of the road abuts upon field 1171, the property of Mr. J.K. Teare. But on the south-east side the road abuts first upon field 1211, part of the Radcliffe property, for a short distance, and then abuts upon field 1176, the property of Mr. J.K. Teare, then upon field 1172 (Kionlough Cottage), the property of Mr. and Mrs. Jones, and finally upon field 1175, now the property of Mr. Cormode. There appears to have been a slight change in the boundary between field 1176 and field 1211, but otherwise there has been no change in the

boundaries of these properties abutting upon the south-east side of Kionlough Road since 1869. For a distance of about 100 yds. the road is abutted on both sides by the property of Mr. J.K. Teare, that is by field 1171 on the north-west and by field 1176 on the south-east. In this section of the road there are the two field gates on to the road, from fields 1171 and 1176 respectively, which are the subject of the *status quo* petition. The field gates are opposite to each other, so that a farm vehicle can move directly from field 1171 to field 1176 crossing over the road. Evidence was given by Mr. Teare that the field gates were widened in 1959 by his father and were widened again in 1969. In 1995 Mr. Teare again widened both gateways to 15 ft. in order to accommodate modern farming equipment. Mr. Teare said that a number of other field gates on Ballavair have recently been widened to 15 ft.

What then is the evidence about the ownership of Kionlough Road and the Lough field?

The road was subject to dispute as long ago as 1730. There was produced to the court the finding of a Long Jury, extracted from the Enquest Files, now in the Manx Museum library, in the following terms:

> "We whose names are hereunto subscribed being a Long Jury convened by the Honourable Governor's Authority relating to a way and wattering place in dispute betwixt Christopher Cowle and partners plaintiffs and the occupants of Kionlough in Kirk Bride defendants and having taken the annexed depositions and perused the records and after due consideration had of the same we find that the occupants of Kionlough aforesaid passed and repassed in the said way upon allocations from their own habitations to the end of the lane called Lough Moar and so through the said lane southward by Mark Camaishes house where it joins the highway which said way we leave to be frequented by the occupants of Kionlough aforesaid as formerly; reserving the benefit of necessary watter in the same for the said Christopher Cowle and the rest of the neighbours as usually And we leave all parties concerned to repair and make the same a firm passable way by draining the same with a trench in each side of the lane each trench to be a yard broad and a foot deep where they are to keep necessary watter as aforesaid with two gutters crossways the said lane where it is most convenient and proper from the one trench to the other And this we return for our Answer in

the premises according to the best of our judgement as witness our subscriptions this 3rd day of March 1730."

Later in 1730, the dispute flared up again when Christopher Cowle took action against three of his neighbours, Samuel Christian, Jon Camaish and John Castil, who thereupon petitioned the Governor in the following terms:

"Showing that your petitioners are confined in Ramsey prison upon a presentment taken by Christopher Cowle against them for not stopping some trenches to keep up a watering place for his cattle (as he alleges) allowed him by the verdict of a Long Jury lately passed in the said Difference which said Long Jury allowed your petitioners a sufficient way to pass and repass through the said wattering place being in and through a lane or Common way anciently belonging to your petitioners' respective tenements which they daily use and cannot possibly subsist without the benefit thereof.

That your petitioners as soon as required by your Honour's order dated 22nd August 1730 cleansed the trenches on both sides the said way in order to keep sufficient watter therein for the said Cowle's cattle which Cowle in presence of Mr. Deemster Christian (who came to view the way and watter in dispute by Your Honour's directions) seemed to be then well satisfied therewith, yet has since proceeded to put a presentment obtained before that time in force against your petitioners until there be an entire stopp put to the said watter to overflow the lane or way through which and of necessity they must lead their hay and other necessaries to their tenaments aforesaid this very season and by complying with such a proceeding will inevitably render the said way (allowed by two former Enquests as well as the Long Jury) useless and of no manner of advantage to your petitioners and posterity hereafter."

In consequence an order was made on October 1st, 1730 by the Governor, Thomas Horton, at a Sheading Court at Peel that—

"the benefit of necessary water be reserved for Christopher Cowle according to the Enquests and Long Jury's proceedings in that behalf And that he as well as all other partys concerned do join in making and repairing the Lane where the said water is reserved, a firm passable way by draining the same with a trench on each side in such manner as is directed by the verdict of the Long Jury beforementioned and this to conclude

> the differences between the said partys in this case without further trouble."

Apart from noting that the hope of the Governor that the differences between the parties would be concluded without further trouble seems to have been unduly optimistic, two points are clear from those proceedings, first, the importance of access to the lough for watering cattle, and secondly, the importance of the road across the Lough field for the adjoining landowners, to enable them to gain access to and from their respective properties. Mr. J.K. Teare, in his evidence, referred to the importance of watering places for cattle in the days before there was piped water on farms. Control of the water level in the lough was clearly important in 1730. If the lough had been allowed to dry out, Christopher Cowle would have had no water for his cattle, but if the lough had been allowed to overflow this would have made the road impassable for the adjoining landowners.

I am satisfied that in 1730 Kionlough Road was what is usually called an occupation or accommodation road, *i.e.* a road over which there is no public right of way, but over which all the owners of the lands abutting upon the road have rights of way for all purposes in order to gain access to and from the highway from and to their respective properties. I am also satisfied that the owners of Kionlough Estate and the other neighbouring landowners had access to the Lough field for watering cattle.

The court was then provided with evidence about Kionlough Road and the Lough field in 1839. This evidence consisted of the plans furnished by the various owners in the district under the Tithe Commutation Act 1839. Deemster Farrant, in *Quine* v. *Mitchell* (3), referred to above, made the following comment about the Tithe plans, as they are known:

> "The plan returned by the then owner under the Tithe Commutation Act 1839 is evidence of what land is titheable and what is non-productive and not titheable, and it has been held that the Tithe plan is admissible as evidence of the physical condition of the property at that time."

There was produced to the court Tithe plan 48 for Bride which sets out the lands belonging to William Camaish. It is dated November 1834, but I will treat it as setting out the position in 1839. These included the lands now comprising Kionlough Estate, the property of Mrs. Kenyon. William Camaish was therefore the predecessor in title to Mrs. Kenyon. Tithe plan 48 shows that part of the upper

section of Kionlough Road was claimed by William Camaish as being part of his property. It clearly shows the road running south-west from the Kionlough Estate entrance as far as plot 1172 (Kionlough Cottage) as being part of the titheable property of William Camaish.

Mr. Kenyon said in evidence that he believed that Tithe plan 48 showed that the road claimed by William Camaish ran from the Kionlough Estate entrance in a south-westerly direction to the telegraph pole which now stands by the modern entrance to Kionlough Cottage, at the northern corner of field 1172. Having compared Tithe plan 48 with the Ordnance Sheet, it appears to me more likely that the road shown on the plan terminated at the south-western corner of field 1172. In fact Tithe plan 48 shows an entrance into field 1172 and the roadside verge alongside field 1172, which can be seen today. This puts the south-western end of the road shown on Tithe plan 48 at the south-western corner of field 1172.

The court has also been shown a copy of Asylum plan 48 for the Parish of Bride, representing fields 1172 and 1175. Asylum plan 48, furnished by the owner, Catherine Cottier, under the Lunatic Asylum Act 1860, is evidence of the condition of the property in 1861, when it was filed. It was stated to be copied from Tithe plan 45. The significance of Asylum plan 48 is that along the northern boundary of fields 1172 and 1175, which were then in common ownership, the words "Mark Commaish" appear, indicating that fields 1172 and 1175, the property of Catherine Cottier, were bounded on the north, not by an occupation road, but by the property of Mark Commaish (presumably, correctly spelt, Mark Camaish, and presumably the heir-at-law of William Camaish). This provides confirmation that in 1861, as in 1834, the upper part of Kionlough Road where it abuts upon fields 1172 and 1175 formed part of Kionlough Estate.

However, on Tithe plan 48, where Kionlough Road runs to the south-west of plot 1172, are the words "occupation road." These words run from a sketch of the lower section of Kionlough Road up to field 1172. The lower section of Kionlough Road is not shown as being part of any particular property. The clear indication is that Kionlough Road was, from the highway up to the south-western corner of plot 1172, an occupation road, not forming part of the property of William Camaish. Tithe plan 48 also shows field 1240 as being part of the property of William Camaish, but the Lough

field is not included. From the evidence of Tithe plan 48, it is therefore clear that the Lough field was not claimed by William Camaish as his property and did not form part of Kionlough Estate.

The court has also been shown Tithe plan 110. This plan is of the lands of F.J.D. LaMothe, the predecessor in title to Mr. J.K. Teare, including fields 1171 and 1176 which lie on either side of Kionlough Road. Significantly, the Lough field is identifiable with marks which indicate the presence of the lough, and on which appears the word "common" and the measurement "1–2–16," being acres, roods and perches. The Ordnance Sheet, as I have said, gives the measurement of the Lough field as 1.307 acres, which is a similar but not an identical area. Kionlough Road is also shown, but not as part of the property of F.J.D. LaMothe.

The court was also shown Tithe plan 127. This plan is of the lands which now comprise field 1214 and also fields 1213 and 1212 (the Radcliffe property). The significance of Tithe plan 127 is that it clearly shows the Lough field, with the lough and the drain running south under Kionlough Road into field 1214, exactly as it is today. It also shows field 1240 as belonging to W. Camaish. Significantly, the Lough field and the lower section of Kionlough Road are not shown as the property of William Camaish. This plan therefore further confirms that the lower section of Kionlough Road and the Lough field were not the property of William Camaish in 1839.

Finally, the court was shown Asylum plan 43 showing the property of F.J.D. LaMothe in 1862. The boundaries of Kionlough Road and the Lough field appear as they were shown on the Tithe plans in 1834. Unfortunately there is no Asylum plan for Kionlough Estate. Asylum plan 43 has the words "Committee of Mark Commaish" written across the area of Kionlough Estate and it may be that no plan was filed by Mark Commaish (or Camaish) under the Lunatic Asylum Act 1860 as he had been committed as a lunatic. We do not therefore know what lands Mark Commaish (or Camaish) claimed as part of Kionlough Estate in 1861 or 1862.

From an examination of these plans, which are consistent with the finding of the Long Jury in 1730, I am satisfied that in 1839 the Lough field was common land and that Kionlough Road, from the highway up to the south-west corner of field 1172, was an occupation road.

I now refer again to the judgment of Deemster Farrant in *Quine* v. *Mitchell* (3). He said:

"In the absence of evidence of title it seems I must fall back on the common law rule that in the case of a private way or occupation road between two properties, as in the case of a highway, the presumption arises that the soil of the road *usque ad medium filium viae* belongs to the owner of the adjoining land, provided that there be no other evidence of ownership to rebut such presumption (*Holmes* v. *Bellingham* (1859), 29 L.J.C.P. 132, *per* Cockburn, C.J.)."

This rule must apply to the part of Kionlough Road which was an occupation road in 1839.

It is not necessary to consider the devolution of the title to Kionlough Estate in detail, but I take note of the deed of conveyance dated March 29th, 1870, which conveyed to Daniel John Joughin the lands to which Philip Caley had become entitled as heir at law of Mark Camaish. The 1870 deed describes the lands conveyed by reference to the adjoining properties. They appear to correspond to the lands held by William Camaish in 1839. No reference was made to Kionlough Road. However, the description was insufficiently precise to indicate whether the Lough field was intended to be included in the lands conveyed by the 1870 deed. There is no indication that it was.

The next significant deed was the deed of conveyance, dated April 23rd, 1907, from John Joughin Quilleash and others to William Thomas Caley ("the 1907 deed"). It is of very great importance in this case. By this deed the vendors, who were the successors in title to Daniel John Joughin, conveyed to William Thomas Caley—

"All and Singular that and those lands and premises called Kionlough being in two separate portions containing in the whole 29 acres 3 roods and 35 perches or thereabouts and also All and Singular those lands and premises part of Grenaby-beg containing 15 acres or thereabouts the whole of such lands and premises being situate in the parish of Bride and delineated and coloured pink on the plan hereto annexed."

The 15 acres which were part of Grenaby-beg have no relevance to this case. However, the section of the plan annexed to the 1907 deed which purports to delineate the 29 acres, 3 roods and 35 perches includes, unambiguously, the Lough field, both by its being coloured pink and also by its being edged in a heavy dark red line which was used to delineate on the plan the boundaries of the other lands being conveyed. Kionlough Road from the highway as far as

the south-west corner of the Lough field and from the north-east corner of the Lough field up to the Kionlough Estate entrance is coloured pink. For some reason, however, the boundaries of Kionlough Road are not delineated with the heavy dark red line which delineates the other boundaries. Whether the person who coloured the plan was intending to distinguish Kionlough Road from the other lands is not clear.

The 1907 deed makes no reference to any rights of way over Kionlough Road, which was clearly an error if the deed was purporting to include the whole of Kionlough Road in the lands being conveyed. There is now no dispute that the owners of the properties abutting upon Kionlough Road do have rights of way over Kionlough Road, and that must have been the position in 1907, and indeed at least since the decision of the Long Jury in 1730.

Before considering the effect of the 1907 deed, it is sufficient to say that by deed dated November 12th, 1924 William Thomas Caley and his wife conveyed the same property to Charles Halsall Kee. The property was described in the same way as in the 1907 deed and as including—"the whole of the hereditaments conveyed to the vendor by John Joughin Quilleash and others by deed bearing date the 23rd April 1907."

By deed dated November 13th, 1924, Charles Halsall Kee and his wife conveyed to Frank Clarke Gourlay the 29 acres, 3 roods and 35 perches which had been conveyed by the 1907 deed. There was annexed to the 1924 deed a plan which reproduced the relevant parts of the plan annexed to the 1907 deed. Once again the Lough field was not only coloured pink on the plan but was delineated with a heavy line, as were the other fields forming part of the property being conveyed. Kionlough Road was again coloured pink on the plan, but it was not delineated with a heavy line.

By deed dated July 14th, 1928 Frank Clarke Gourlay conveyed the same property to Daniel Caley, who by deed dated December 20th, 1932 conveyed the same property to Thomas Frost. By deed dated July 24th, 1946 Thomas Frost and his wife conveyed to Eric Frost the same property, but excluding field 1240, part of which had been conveyed by Thomas Frost and his wife to Edith Corlett and others by deed dated November 5th, 1934 and the other part of which had been conveyed by Thomas Frost and his wife to Thomas Devitt by deed dated July 22nd, 1946.

Finally, by deed dated September 12th, 1951 Eric Frost conveyed the whole of the property which he had purchased from

Thomas Frost and his wife (which was stated to contain 27½ acres) to the late Stanley Kenyon and Mrs. Kenyon as joint tenants. On the death of the late Stanley Kenyon some years ago, the same property became solely vested in Mrs. Kenyon.

None of the conveyances of Kionlough Estate since 1907 to which I have referred make any references to any rights of way over Kionlough Road, even though they clearly existed. However, the conveyance to Thomas Devitt does refer to—

> "a right of way over and along the farm road leading from the highway to Kionlough the property of the Vendor at all times and with or without horses or other vehicles for the purpose of ingress to and egress from the Scheduled property."

As I have already said, it has now been determined that all the owners of properties abutting upon Kionlough Road have always had such a right of way.

The ownership of Kionlough Road was the subject of correspondence in 1966 and in 1974. On June 13th, 1966, Mrs. Kenyon sent a note to Mr. Radcliffe in the following terms:

> "You may not be aware, so this is to inform you—
>
> The land adjoining what was the Devitts' is the property of my husband and myself as is the whole area of the Kionlough Dub.
>
> Please remove the ballast you have placed on both sides. There is only one entrance to what [is] now Skinners."

On November 22nd, 1974, Messrs. Dickinson, Cruickshank & Co., Advocates, on behalf of Mr. J.K.C. Teare, Mrs. Radcliffe, Mr. Crellin and Mrs. Livesey (of Sycamore Cottage) wrote to the late Mr. Stanley Kenyon and Mrs. Kenyon challenging their claim to own Kionlough Road and the Lough field. It was said that the plans annexed to the 1907 and 1924 deeds were incorrect in purporting to show that the portion of Kionlough Road between the high road and the western end of Mr. Cormode's property and the Lough field were part of Kionlough Estate.

In the letter it was said that the area of 29 acres, 3 roods and 35 perches, referred to in both the 1907 deed and the 1924 deed, did not support their claim to own the Lough field and Kionlough Road. It was pointed out that, on the basis of the measurements set out in Tithe plan 48, the area of Kionlough Estate in 1907 and 1924 was 29 acres and 13 perches. The corresponding area in *Wood's Atlas* is 29 acres and 15 perches. The Lough field contains 1 acre, 2 roods and 16 perches or thereabouts, so that if it had been intended

that the Lough field was to have been included, the correct acreage for the whole property would have been greater. By my calculation it should have been 30 acres, 2 roods and 39 perches. The difference between 29 acres and 13 perches and the areas stated in the 1907 and 1924 deeds, namely 29 acres, 3 roods and 35 perches, is 3 roods and 22 perches (or 20 perches based on *Wood's Atlas*), which is considerably less than the 1 acre, 2 roods and 16 perches of the Lough field.

Messrs. Dickinson, Cruickshank & Co. considered that the difference of 3 roods and 20 or 22 perches must merely have represented an error. Miss Bolton argued that the area "29 acres 3 roods and 35 perches" stated in the 1907 deed was a deliberately calculated figure, although she accepted it was not clear where it came from. I have to say that that measurement does not now assist me in determining what was intended to be conveyed by the 1907 deed.

What then is the effect of the 1907 deed and the 1924 deed? I will consider the position of the Lough field first. The plans annexed to both deeds clearly show that the Lough field was intended to be included in the lands which were conveyed.

Mr. Kenyon, in his evidence, made it quite clear that after his parents purchased Kionlough Estate in 1951, they always treated the Lough field as being part of Kionlough Estate and vested in them. That is not surprising as the plans annexed to the 1907 and 1924 deeds are clear in this respect. Mr. Kenyon gave evidence about the use of the Lough field since 1951. He said that during the 1950s pigs were kept by his parents on the two dry parts of the Lough field, using electric fencing. Mr. Kenyon said that no one ever challenged their right to keep pigs there. He said that he himself had applied for planning permission to build a bungalow on the Lough field some years ago, on the clear understanding that it was the property of his parents. Planning permission was refused on planning grounds.

Mr. Kenyon said that in the 1970s he grazed cattle on the Lough field. He would have about eight cattle there for about two hours at a time. He said that he also repaired the drain which crosses Kionlough Road at the north-west corner of the Lough field. Mr. Hickson had assisted him. This was confirmed by Mr. Hickson in his evidence. Mr. Kenyon said that he had dumped two loads of rubble for road repairs on the road verges in the Lough field and some years ago he had dumped several corrugated sheets near the

road which are still visible. He has used the rubble to fill in potholes in the untarmacadamed part of the road through the Lough field.

No evidence was given that any other person, within living memory, has used the Lough field for the watering of cattle. However, Mr. J.K. Teare said that he had regularly used a field entrance from field 1214 on to the Lough field, with agricultural equipment, on behalf of his father, between 1955 and 1957. His father was then the tenant of field 1214. Mr. J.J. Teare, who is aged 32, said that he and his father recently had to clear the drain on the Lough field, which runs under Kionlough Road and takes water from the lough into field 1214, which he now owns. He did not seek anyone's permission to do the work which he did in clearing the drain. He also said that as a child he used to walk on the Lough field, and there was nothing to stop him going into the lough.

Mr. Radcliffe, in the statement which was given in evidence, said that since he and his wife moved to Kionlough Farmhouse (the Radcliffe property) in 1981, he has kept the verges and hedges of Kionlough Road between his property and the highway in a neat and tidy condition by trimming at least twice a year. He said that in recent years he has had this work carried out by Mr. J.J. Teare. He said that at no time did he seek anyone's permission or consent to carry out such work, nor did anyone tell him that he needed anyone's permission. Mr. Radcliffe went on to say that during the period he has lived at Kionlough Farmhouse he has also regularly filled potholes in the road surface. He produced a copy of an invoice from "Builder Center," dated June 17th, 1996, for 25kg. of Rake and Roll Macadam which he purchased for surface repairs. Mr. Radcliffe said that in 1991 he had a length of Kionlough Road tarmaced and he produced a copy of an invoice dated January 16th, 1991 from T. Barton, Road Construction, for such work. He said that he did not seek anyone's permission or consent to carry out those works or repairs, nor did he seek or receive any contribution from anyone for the cost of repairs.

The evidence about the use of the Lough field during the last 45 years is that it has not been in the exclusive occupation of any one party. Pigs were kept by the Kenyons on two dry parts of the Lough field for a period in the 1950s, and cattle have in the past been occasionally grazed there by Mr. Kenyon. Mr. Kenyon has left rubble on the road verges, to be used for repairing pot holes. Work on cleaning or maintaining drains has been carried out by Mr.

Kenyon, by Mr. J.K. Teare and his son Mr. J.J. Teare. The Lough field was used by Mr. J.K. Teare, on behalf of his father, as a means of access to field 1214 for some two years between 1955 and 1957 when his father was the tenant of field 1214. Mr. Radcliffe has kept the verges and hedges of Kionlough Road, between his property and the highway, trimmed twice a year.

Kionlough Road, from the entrance to the Radcliffe property to the highway, was tarmacadamed by Mr. Radcliffe about 30 years ago with a contribution towards the cost from Mr. Crellin. Mr. Radcliffe has since had repairs to the road surface carried out. Mr. Kenyon has also maintained the part of the road that has not been tarmacadamed, that is to the north of the entrance to the Radcliffe property, by filling in holes with rubble.

Anyone who has a right of way is entitled to maintain that right of way and to carry out works necessary for that purpose. This was made clear by the Long Jury in 1730 and the order of the Sheading Court on October 1st, 1730. The fact that Mr. Radcliffe and Mr. Kenyon have both carried out maintenance work on Kionlough Road does not determine the question, who owns the Lough field, as both Mr. Radcliffe and Mr. Kenyon would have been entitled to do such work in exercise of their rights of way, whoever owns the Lough field.

Miss Bolton referred me to s.2(5) of the Conveyancing Act 1985, which provides that "a good root of title" means "a conveyance for valuable consideration" which amongst other things "is dated more than 30 years before the date of the contract." Mr. Clucas, however, argued that s.2 essentially regulates matters between a vendor and purchaser. Section 3 of the Conveyancing Act 1908 is perhaps of more significance in this case. Section 3 reads:

> "Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Tynwald, affidavits, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters and descriptions."

Miss Bolton argued that the effect of this provision is to alter the burden of proof. The 1907 deed and the 1924 deed must be taken to be correct unless they are proved to be inaccurate, and the onus of proving that they are inaccurate rests on whoever asserts the inaccuracy. Miss Bolton argued that, although there appears to be

good evidence that the Lough field was common land in 1839, we have no evidence of what occurred between 1839 and 1907. Miss Bolton argued that between 1839 and 1907 the predecessors in title to Mrs. Kenyon must have acquired title to the Lough field by adverse possession. In any event, Miss Bolton argued, the Kenyons have, since 1951, treated the Lough field as their property and no-one else has attempted to exercise any rights over the Lough field.

I will consider these two issues separately, namely the evidence of events before 1907, which would lead to the conclusion that the 1907 deed was inaccurate, and the evidence of events since 1907, which would establish that a possessory title has been acquired by Mrs. Kenyon in any event.

I have already considered the evidence of the Tithe and Asylum plans and I have concluded that the Lough field did not form part of Kionlough Estate in 1839, but that it was then common land, a common pasturage and a watering place for cattle. There is no evidence that there had been any change by 1861 or 1862, when the Asylum plans were filed, although no plan was filed in respect of Kionlough Estate. The Ordnance Sheet does not indicate any change in the physical condition of the Lough field as compared with Tithe plan 110 and Tithe plan 127. I have also said that there has been no apparent change in the condition of the Lough field between 1869 and the present day.

As I have said, Miss Bolton argued that before 1907 the predecessors in title to Mrs. Kenyon must have acquired a possessory title to the Lough field. The limitation period for actions to recover land in the Isle of Man has, since the Customary Laws of 1593, always been 21 years. This period was continued by the Statute of Limitations 1891 and by the Limitation Act 1984.

Section 5 of the Statute of Limitations 1891 stated:

> "No person shall sue for the recovery of land or rent but within twenty-one years next after the time at which the right to do so first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims, then within twenty-one years next after the time at which the right to sue as aforesaid shall have first accrued to the person suing."

By s.50, the Act was stated to have retrospective effect, at least in so far it concerns this case. Section 5 was equivalent to s.1 of the Real Property Limitation Act 1874 (of Parliament), although in that Act the limitation period was 12 years.

The court was referred to the case of *Marshall* v. *Taylor* (2). This case was decided when the Real Property Limitation Acts 1833 and 1874 were still in force in England. It concerned a dispute between the owners of adjacent houses. The gardens of the two houses were formerly separated by an open ditch and on the plaintiff's side of the ditch was a hedge. Drain pipes had been laid in the ditch by the owner of the plaintiff's house. Thereafter the ditch was covered and it was used by the owner of the defendant's house as part of his garden, and more than 12 years before the action the defendant paved part of the surface with cobble-stones and laid cinders on part and also planted a rose garden and made a fowl-house on other parts. The plaintiff continued to cut his hedge from the defendant's side and on two occasions opened the ditch to clean out the drains. The court, on appeal, held that the acts of the defendant had been sufficient to dispossess the plaintiff. A.L. Smith, L.J. summarized the law in the following terms ([1895] 1 Ch. at 650):

> "It is this: there must be actual possession by the one and a discontinuance of possession by the other; or, in other words, in this case it must be proved by the Defendant, who is setting up the *Statute of Limitations*, that there has been an actual possession of land in dispute by him for the statutory period, and during that period a discontinuance of possession by the Plaintiff. These two facts must be always proved to constitute a defence under the statute."

He continued (*ibid.*):

> "Now comes the other question. Although the Defendant has been in actual possession of this land for the necessary period of twelve years, has the Plaintiff at the same time been out of possession—has he discontinued possession of this land?."

In a recent case, *Buckinghamshire C.C.* v. *Moran* (1), the law was summarized by Nourse, L.J. in the following terms ([1989] 2 All E.R. at 238–239):

> "In order that title to land may be acquired by limitation, (1) the true owner must either (a) have been dispossessed or (b) have discontinued his possession, of the land and (2) the squatter must have been in adverse possession of it for the statutory period before action brought."

Mr. Clucas referred me to *Emmett on Title*, 19th ed., Reissue 30.7.96, para. 5.117, at 5/192, where the statement is made with regard to the elements of adverse possession: "What is required is

not an intention to own or even an intention to acquire ownership but an intention to possess." These words are taken from the judgment of Slade, L.J. in *Buckinghamshire C.C.* v. *Moran* (1) ([1989] 2 All E.R. at 238).

The character of the land is also significant. In his judgment in *Buckinghamshire C.C.* v. *Moran*, Slade L.J. said (*ibid.*, at 235):

> "I agree entirely with the following passage from the dissenting judgment of Stamp, L.J. in *Wallis's Cayton Bay Holiday Camp Ltd. v. Shell-Mex and B.P. Ltd.* . . . [1974] 3 All E.R. 575 at 585, [1975] Q.B. 94 at 109–110:
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> > 'Reading the judgments in *Leigh v. Jack* and *Williams Brothers Direct Supply Store Ltd. v. Raftery*, I conclude that they establish that in order to determine whether the acts of user do or do not amount to dispossession of the owner, the character of the land, the nature of the acts done on it and the intention of the squatter fall to be considered. Where the land is waste land and the true owner cannot and does not for the time being use it for the purpose for which he acquired it, one may more readily conclude that the acts done on the waste land do not amount to dispossession of the owner. But I find it impossible to regard those cases as establishing that so long as the true owner cannot use his land for the purpose for which he acquired it the acts done by the squatter do not amount to possession of the land. One must look at the facts and circumstances and determine whether what has been done in relation to the land constitutes possession.'"

Is there the slightest evidence that Mrs. Kenyon's predecessors in title before 1907 had been in actual possession of the Lough field? I fear there is not. There is no physical indication of any such occupation. There are no traces of old hedges or posts or stone walls which may have indicated exclusive possession by any one party. On the contrary the evidence points the other way. The open nature of the Lough field and the absence of any hedges or fences or walls restricting access to the different parts of the Lough field on either side of Kionlough Road, or restricting access to the lough itself, indicate that the status of the Lough field as an area of common pasturage and a watering place had not changed by 1907. Unless the predecessors in title of Mrs. Kenyon had been in actual possession of the Lough field they could not have acquired a possessory title.

It is not known whether the neighbouring owners had discontinued their use of the Lough field as a watering place for cattle by 1907. Even if they had, however, that in itself would not have given Mrs. Kenyon's predecessors in title a possessory title to the Lough field. I do not therefore consider that the predecessors in title to Mrs. Kenyon could have acquired a possessory title to the Lough field before 1907. I am satisfied, therefore, that the 1907 deed, and therefore the subsequent deeds which copied it, in particular the 1924 deed, have been proved to be inaccurate as regards the Lough field, in terms of s.3 of the Conveyancing Act 1908.

Has a possessory title been acquired since 1907 by Mrs. Kenyon's predecessors in title? I have already said that the evidence in this case indicates that the Lough field has not, during the last 45 years, been in the exclusive occupation of any one party. There is no evidence before the court that the situation was any different between 1907 and 1951. The various activities described by Mr. Kenyon in relation to the Lough field, including the keeping of pigs on two parts of the Lough field in the 1950s, were not inconsistent with the use of the Lough field as a common pasturage. I am not satisfied that any of the acts done on the Lough field, which is effectively "waste land," amounted to dispossession of the rights of other neighbouring landowners in the Lough field. I am not therefore satisfied that Mrs. Kenyon, or her predecessors in title, have acquired a possessory title to the Lough field since 1907.

It therefore follows that the Lough field is not vested in Mrs. Kenyon, but remains as an area of common, or common pasturage, with neighbouring landowners including, of course, Mrs. Kenyon, continuing to have rights of access to the lough for watering cattle. That means that Mrs. Kenyon may continue to graze stock on the Lough field, if she so wishes. Mr. Kenyon may continue to maintain the road and ditches, as he has done in the past. Mr. Radcliffe may also continue to trim the verges and the hedges as at present. Both Mr. Kenyon and Mr. Radcliffe, and indeed all those with rights of way, can carry out repairs to the road surface. The Lough field, however, is not the exclusive property of any one party.

I now turn to Kionlough Road. The evidence that the 1907 deed and the 1924 deed were inaccurate in relation to Kionlough Road is overwhelming. Not only do we have the evidence of Tithe plan 48,

but also the earlier proceedings in 1730. The 1907 deed, and the 1924 deed, are in any event ambiguous in that, as I have already pointed out, while the road is coloured pink on both plans, on neither plan is the road delineated by the black edging line which delineated all the other property on the plan. In addition, it has already been determined in these proceedings that all persons owning properties abutting upon Kionlough Road have a right of way over the road from the highway to and from their respective properties. Kionlough Road must clearly have been an occupation road in 1907 and in 1924. Is it possible that Mrs. Kenyon and her predecessors have acquired a possessory title to Kionlough Road? Miss Bolton accepted that it is particularly difficult to show adverse possession of a road as it is difficult to show exclusivity. In fact there has been no evidence that Mrs. Kenyon and her predecessors in title have at any time been in exclusive possession of Kionlough Road, or that other persons who claim an interest in the road have been dispossessed or discontinued possession of the road. It is true that Mr. Kenyon said that he and his parents have from time to time carried out repairs to the road, particularly the untarmacadamed section of the road running through the Lough field and also the upper section of the road from field 1172 to the Kionlough Estate entrance. But the carrying out of repairs to a road by a person who has a right of way over it, is not in itself evidence of exclusive occupation.

Although the 1907 deed and the 1924 deed were both inaccurate in relation to Kionlough Road, and no title by means of adverse possession could have been obtained by Mrs. Kenyon or her predecessors in title to Kionlough Road, I am satisfied that Tithe plan 48 is good evidence to support the claim of Mrs. Kenyon to own the section of Kionlough Road which runs south-west from the Kionlough Estate entrance to the south-west corner of field 1172, and I will make a declaration to that effect.

I have also considered the deeds relating to Ballavair, produced by Mr. J.K. Teare. These do not lend any weight to arguments that Kionlough Road is vested in Mrs. Kenyon or was vested in her predecessors in title.

By a deed dated September 15th, 1913, Thomas Vondy and his wife conveyed to Edward Henry Kelly the estate of Ballavair. Annexed to the deed was a plan on which the lands conveyed were delineated by being coloured pink and being edged by a red line. Both fields 1171 and 1176 were coloured pink on the plan and the

part of Kionlough Road lying between fields 1171 and 1176 was also coloured pink and included within the red line. On the basis that Kionlough Road was an occupation road, the soil of that part of Kionlough Road would have been owned by the person who owned fields 1171 and 1176. Applying s.3 of the Conveyancing Act 1908, there is no evidence before the court that that deed of conveyance was inaccurate in relation to the portion of Kionlough Road that lies between field 1171 and field 1176.

By deed dated November 12th, 1948 William Kelly, who had inherited Ballavair, and his wife conveyed Ballavair, being the whole of the property acquired by Edward Henry Kelly in 1913, to Mr. J.K.C. Teare, the father of Mr. J.K. Teare. In that deed the lands conveyed were described by reference to the deed of September 15th, 1913. By deed dated February 13th, 1989 Mr. J.K.C. Teare conveyed the property to his son, Mr. J.K. Teare. The two deeds of September 15th, 1913 and November 12th, 1948 are in conformity with my view that Kionlough Road, from the south-west corner of field 1172 to the highway, was and remains an occupation road.

It is also interesting to note that in the deed dated March 6th, 1951, by which Mr. J.K.C. Teare conveyed to Mr. Crellin the building plot which abuts on the Lough field, the plot is described in the following terms:

> "A certain plot of land containing 400 square yards or thereabouts situate adjoining Kionlough Road in the Parish of Bride and being part of the estate of Ballavair such plot of land being bounded on the East partly by the Common Land and partly by Kionlough Road and on all other sides by the said estate of Ballavair. . . ."

The description of the Lough field as common land in 1951 in that deed is further confirmation of its status as such at that time.

Miss Bolton also referred the court to s.30 of the Registration of Deeds Act 1961. Section 30 states:

> "The registration in the Deeds Registry of any deed whereby any land in this Island shall have been alienated, charged, or encumbered, whether such registration shall be made by any purchaser or encumbrancer, or by any vendor or the lender, who shall have furnished the moneys paid and by the same contract shall be substituted in the right of the vendor of any land, shall, when once made, extend to the preservation of all rights appearing by such deed."

However, this section has to be read with s.32, which states:

"No registration shall confer any title upon, or confirm any title derived from, a person who may not have any just claim or title at law, to the land, so registered at the time of such registry, and who never had any just title or claim at law thereto, save and except as against prior purchasers and encumbrancers not registered, claiming under the same person; but all purchasers and holders of security upon land shall be held and bound to satisfy themselves of the right and title of every vendor and encumbrancer, to alienate or encumber such land, as they would have been if this Act had not been promulgated, save and except as to all prior sales and encumbrances by the party selling or encumbering such land, of which such registry shall be conclusive evidence."

Miss Bolton argued, in effect, that a deed registered as long ago as 1907 should now be treated as conclusive evidence that the vendor was entitled to convey what he then purported to convey. Miss Bolton suggested that if this were not the case, Manx conveyancing practice would need to be substantially revised. I am afraid that I cannot accept that argument. If a plan annexed to a conveyance is inaccurate, that inaccuracy will not be corrected by the passage of time, unless subsequently a possessory title to the land in question is obtained. That requires adverse possession.

The system of registration of title under the Land Registration Acts 1982 and 1995, which is now at an advanced state of preparation, will in due course provide for purchasers of land a guarantee that what they believe they have bought, they will in fact own. Unfortunately, the present system of conveyancing cannot provide that guarantee. This case illustrates the defects of the present system.

I will therefore make a declaration, on the cross-petition—

(a) that Kionlough Road in the Parish of Bride, from the Kionlough Estate entrance to the south-western corner of field 1172, is vested in Mrs. Kenyon;

(b) that Kionlough Road, from the south-western corner of field 1172 to the highway, is an occupation road vested in the adjoining landowners where their properties abut upon the road, in each case up to the middle of the road;

(c) that the Lough field is an area of common land, or common pasturage;

(d) that the owners of the properties which abut upon Kionlough Road, including the section which is vested in Mrs. Kenyon, and persons authorized by them, have a right of way over and along the road for all purposes and at all times to and from the highway from and to their respective properties.

Having disposed of the question of the ownership of Kionlough Road and the Lough field, I must now turn to the *status quo* petition. As I have found that the section of Kionlough Road which lies between the two Ballavair fields, fields 1171 and 1176, is vested in Mr. J.K. Teare, it must follow that the *status quo* petition should be dismissed.

I have considerable sympathy for all the parties to this case. This long-standing dispute derives from inaccuracies in the 1907 deed and the 1924 deed. Mrs. Kenyon, and her son Mr. Kenyon, have acted quite properly in accordance with what the title deeds to Kionlough Estate appeared to make clear. Mr. Kenyon gave his evidence fairly. All parties to this unfortunate matter have acted honourably. However, as Mrs. Kenyon has been unsuccessful in this case, I consider that the normal course should follow, and that Mrs. Kenyon should pay the costs of the noticed parties.

Order accordingly.

ENQUIRIES BEFORE CONTRACT

Short description of property: ~

Vendor(s): ~

Purchaser(s) : ~

This form has been drafted in accordance with the Isle of Man Law Society Conveyancing Committee's recommendations and has the approval of the Council of the Society

Advocates reference: ~

Replies are requested to the following enquiries:

The replies are as follows:

Proposed Purchaser(s) Advocate(s)

Date: 18 January 2016

~

Proposed Vendor(s) Advocate(s)

Date:

For mutual convenience and to avoid unnecessary delay in this transaction, we have framed our enquiries in accordance with the published recommendations of the Isle of Man Law Society's Conveyancing Committee. In doing so we are assuming that you will also have observed their recommendations in including all relevant documents. If any have been omitted, please supply them when replying.

Unless otherwise indicated, replies will be assumed to be those of the Vendor who has (so far as necessary) consulted his Advocate or any other agent.

ENQUIRIES	REPLIES
1. **BOUNDARIES**	
(a) Who owns all the boundary walls, fences, hedges or ditches or other boundary features and who is responsible for repairing them?	
(b) In the absence of any definite indication please indicate which boundary features have been maintained or repaired by the Vendor(s) or considered the responsibility of the vendor(s)	
(c) Has the position of any such boundary feature been moved during the last twenty years?	
2. **DISPUTES**	
Please disclose any past or current disputes relating to the property or its use or adjoining or neighbouring property or their use or covenants or boundaries affecting the same.	

3. **NOTICES**

Please disclose all notices given or received that relate to the property or to its use or adjoining or neighbouring properties or to covenants or boundaries affecting the same.

4. **SERVICES**

Please indicate if any pipes, wires, cables, sewers or drains serving this property pass over or under any adjoining or neighbouring property and if so, please give full details and particulars of all legal rights enjoyed to ensure an uninterrupted service such as easements wayleaves licences etc. or any such services for which there is no agreement in writing.

5. **FACILITIES**

With regard to the renewal, repair or maintenance or the use of any facilities such as access, ways or drainage please supply details of all contributions or obligations for contributions or the collection of contributions or otherwise towards such renewal, repair or maintenance and give details of all sums paid and owing and indicate whether the payments are of a regular nature.

6. **ADVERSE RIGHTS**

(a) Other than the Vendor(s) please provide the full names, and ages if under 18, of all persons who are in occupation of the property. Do they have any legal or equitable interest in the property or any rights of occupation?

(b) Does the Vendor(s) know of any rights or other arrangements of a formal or informal nature which affect the property other than those already disclosed in the Contract?

7. **RESTRICTIONS**

If the property is subject to restrictive covenants or other restrictions requiring consent to be given for certain acts or plans, please provide written evidence of any such consent or approval.

8. **PLANNING**

(a) Since 6th July 1973 has the Vendor(s) or any previous owner, carried out any alterations or additions to the property and if so, did such alterations or additions require planning consent, building regulations approval or bye-law approval?

(b) What is the established use of the property under the Town and Country Planning Acts?

9. **OUTGOINGS**

(a) Have any works been carried out at the property which might result in a revision of the rateable value?

(b) What annual or periodic charges other than general rates, affect the property?

10. **GENERAL**

Please confirm that nothing affixed to the property at the time of the Purchasers viewing will be removed.

11. **GUARANTEES INDEMNITIES ETC AND CLAIMS THEREUNDER**

Is the Purchaser to have (whether by assignment or otherwise) the benefit of any of the following, and if so which:-

(a) any insurance policy, indemnity or guarantee in respect of any defect in the title to the property or breach of any covenant to which the property is subject?

(b) any guarantee, warranty, certificate, insurance policy or other agreement relating to any repair, replacement, treatment or improvement of any building or part thereof built on the property?

(c) any National House Building Council Agreement and certificate/policy relating to any such building?

(d) any covenant, indemnity, guarantee bond or agreement relating to the maintenance or cost of construction or charges payable on adoption of any road or path over which the owner of the property has rights of way (not being already disclosed in any reply herein to any previous enquiry)?

(e) any other insurance policy, guarantee, indemnity, warranty, covenant or other agreement relating to the property? If so please supply copies of any relevant documents.

(f) What event has occurred or defect or other matter become apparent which has given or might give rise to any claim under any such documents as is referred to in enquiry (e).

(g) Has notice of such event, defect or matter been given or received? If so please give details.

(h) Have any claims been made and, if made, settled? Please give details.

12. Please confirm that any fixtures, fittings and chattels included in the sale are owned absolutely by the Vendor free from any third party rights.

ADDITIONAL ENQUIRIES

13. Has the Vendor(s) or any predecessor in title entered into or agreed to enter into any agreement in relation to the property with the Department of Local Government and the Environment under Section 18 (sub-Section 1) of the Town and Country Planning Act 1999, if so, please specify.

14. If the Vendor(s) or any predecessor in title has entered into any such agreement, has the Vendor(s) or any predecessor in title been served with an Enforcement Notice or been made aware of any pending service of such Notice, in respect of any such agreement under Section 19 (sub-Section 4) of the Town and Country Planning Act 1999.

15. Is the property entered in the Protected Buildings Register?

16. Is the property situated within a Conservation Area?

17. Has the property to the Vendor(s) knowledge ever suffered:-

    (a) flooding
    (b) rising dampness
    (c) settlement
    (d) dry rot
    (e) woodworm

18. When was the central heating boiler last serviced and is there a service maintenance contract in force.

19. Does the property have a wood or multi-fuel burning stove? If so, has a completion certificate been issued?

20. Has any electrical work or re-wiring been carried out in the property? If so, has a completion certificate been issued?

21. Please confirm the location of the stop cock

Health Act. In this case the receiver may act on behalf of the patient and he must be so treated by the Registrar.

The President: I think that is self-explanatory. Are you all agreed to that?

It was agreed.

The President: Clause 57.

The Attorney-General: Now we come to Part VI. I fully appreciate that this is a part which may be regarded as putting a terrible financial burden on the Isle of Man Government in the future. I disagree with that. What I do accept is that until there are maps available the scheme will not proceed and the scheme depends on maps being available, but it is quite obvious that clear definition of the boundaries of land is essential for any efficient registration of title scheme and that must depend on maps, and before I deal with the clause in detail in the example of a register, an entry from a register which I circulated, I attached to it a map on which there was indicated the property which was being described in the register. That gives I think, Mr. President and members of Council, some idea of the purpose of maps so that one can clearly see the land which is being referred to. Now this clause requires maps to be kept at the Registry and to be marked to show the land the title to which is registered. The maps will be open to inspection so that anyone can see whether title to any land is registered or not. Now in my view, if I can just speak generally on that topic, I think this would be a tremendous advantage. At the present time it is extremely difficult for any member of the public to find out who actually owns a bit of land in the neighbourhood or a bit of land which one may be interested in buying or something of the sort. There is nowhere you can go and look at a map where it will say this is the property of Mr. X. I think the use of maps in the registry which will be available for members of the public which will be marked will be extremely valuable in years to come, quite apart from any advantages this scheme may have in simplifying the transfer of land. I do accept, however, that of course it will hold up the scheme until maps are prepared. I move that clause 57 stands part of the Bill.

The President: Is that seconded? On my map there is a street called Duchess Street. That surely is Allan Street. Most of the others are named correctly or appear to be.

Mr. Crellin: I would just like to ask hon. members of Council, when you look at this clause 57 and the remaining clauses of Part VI, from the point of view of two questions or four questions. First of all who supervises this? It says here that there shall be kept in Land Registry such maps of the Island as may be prescribed. Now this will be prescribed by the Land Registry Rules Committee. Now the Land Registry Rules Committee do not contain an architect, so they will have to be advised. They will have to be advised by an architect and I envisage that there will be a fully trained architect as part of this structure in order to do this. Who advises the Registrar on this matter? Who supervises? Can the advisor and the supervisor be one and the same person? And who draws the maps when they are required, because I am quite certain the architect is not necessarily going to draw the map. He is going to have draughtsmen who will do that sort of thing. So let us be sure and the learned Attorney-General has already been very honest about this and he says he appreciates that this thing is going to be quite a complex affair and it will not be proceeded with until maps are available and he knows these

maps are going to cost a lot of money too. It is all right in a street like Douglas where you can draw a map like this, but you go to Derbyhaven or Ronague or some place like that then you have got to have a proper plan and they will insist upon a proper plan to replace these horrible things that have been a disgrace for so many years.

Mr. Kerruish: Can I ask the Attorney-General, sir, supposing it was to be decided that, say, the parish of Kirk Michael, not the village, the parish district of Kirk Michael would be the first launching pad of this new scheme. Do I take it that all that would be required would be to have somewhere in the Registry a map, the most up-to-date map probably obtained from the Local Government Board of the parish of Kirk Michael and then as title was registered over a given area of land that would be imposed on that existing map, probably with a farm where a field had been added to or taken from, or a holding had been attached to it. That would be imposed as an area of land registered in the names of John Donne or someone else. Is that the way this would be played could I ask through you, Mr. President?

The Attorney-General: Yes, Mr. President, that is the way I envisage it. The actual details of this, of course, would be prescribed by rules and the details of this are not therefore contained in the Bill. I cannot comment exactly on it, precisely how it will work. Clearly the scheme will depend on up-to-date ordnance survey maps. Now we have up-to-date ordnance survey maps for some parts of the Island but not for other parts. Now one of the things which is quite clear to me is that it is only going to be those parts of the Island for which this scheme will be appropriate, but when those maps become available then I envisage the scheme working in exactly the way my learned friend, Mr. Kerruish, has mentioned.

Mr. MacDonald: Could I ask, Mr. President? We have got our map and we are going to register a property on the map. I presume all the adjacent landowners will be notified of this registration because people can make mistakes and what you do not want to do is to transfer a bit of somebody else's land on to the register and on to the map without the adjacent landowner realising he has lost a piece of his land. They will all have to be given the opportunity to look at it. Everybody in the surrounding area or surrounding piece of land.

Mr. Kerruish: Is that correct, Mr. President? I feel that would be making this whole exercise extremely complicated and it will, I take my hon. and gallant colleague's point it is quite a serious question, I had the rather different impression that a person having to have a deal transacted would furnish to the Registrar the title in what might be termed the old form. A whole big sheaf of documents going back I think someone said 50 or 60 years showing how he had become possessed of that land and no doubt it would be vetted as to any charges or covenants that existed on it and when the person concerned lodged that, it would really have nothing to do with adjoining landowners.

Mr. Simcocks: Providing it did not accidentally involve their land.

Mr. Kerruish: Well, this is the point. Is the onus not solely on the applicant for registration to prove his title having if he can do that the satisfaction of the Land Commissioner, well that is really the end of the story and there is no onus on him or anyone else to notify any adjoining landowners. I am glad Mr. MacDonald raised this

point. I think it is a very important one, sir, and I would welcome the comments of the Attorney-General.

Mr. MacDonald: The reason I asked this, I remember going a few years ago to look at a bit of property my wife owned. She wanted me to look at it and I found that there was a plan when I saw it first of all. When I went back to the registry they could not trace it. It had gone somewhere. It was a boundary I was trying to find out first which we have never been able to trace since. Now unless the original owner has a plan showing what he owns and can bring it in, that is fair enough, but where no original plans exist anybody could go along and mark on a map or on a plan what he is getting and the adjoining landowners would not know.

The President: Maybe it will clarify the position if there is a common map held by the Registrar. At the moment if a person purchases a property invariably there is the part coloured pink or whatever it is, is the part involved in the individual, well, he checks that, the Registrar will check that with his master plan as you might say and this will become . . .

Mr. MacDonald: Well once it is set up, Mr. President, it is the initial stage where if I go along. This one here. I am looking at that boundary. Now that boundary line is a big boundary line on a large lump of land.

The Attorney-General: Well, I have not dealt with this, Mr. President, because in fact all this is dealt with in clause 59. So perhaps if I could deal with this first.

The President: The need for a general map we are dealing with at the moment. Clause 57. I call it the master plan. Are we all in favour of clause 57?

It was agreed.

The President: Clause 58.

The Attorney-General: Clause 58 is a very simple provision. It simply refers to the verbal description of registered land and that will contain a reference to the maps which are held under clause 57. So that is simply saying that the register shall be described in words as clearly as the Registrar may consider best to secure accuracy. So that is the verbal description. Clause 58. I move that clause 58 stands part of the Bill.

The President: Is that seconded?

A Member: I beg to second.

The President: Are we all agreed?

It was agreed.

The President: Clause 59.

The Attorney-General: Clause 59 deals with the matter which the hon. and gallant member, Wing Commander MacDonald, raised. This deals with boundaries of registered holdings. The system does not normally pretend to define a boundary conclusively and I think the example which has already been given, that on the sample map, that is a black line, and it just shows the general boundary not the precise boundary to the point in the

garden wall where the boundary ends. However, if neighbours wish to have their boundaries exactly specified procedures to enable this to be done are provided for by sub-clause (2) to (4). There is also provision for disputes arising on a transfer of part of a land on a holding, for example, on the sale of a plot on a building estate to be decided summarily by the Registrar who may also adopt the decision of an agreed surveyor. Now the mechanism, therefore, is there if the neighbours want a precise definition. If there is some argument as to whether a garden wall is partly in one or partly in another property then the procedure is here. Notice will have to be given and a decision will be made, but if that is not required and it usually is not required then notice would not be given to the neighbouring owners and it would simply be the general boundary which would be guaranteed by the register.

Mr. MacDonald: Yes, but the adjacent landowners may not know. How are they to know if somebody is registering a lump of land?

The President: They would all be registered in that area.

The Attorney-General: Yes, but with respect the first registration of, say, one house in a street will not guarantee the precise position of the boundary. So in other words it will not determine whether a boundary wall is partly in one part or partly in the other or is divided down the middle. It will identify the property clearly enough but it will not actually define the precise boundary. Now if in fact it is necessary, and it sometimes is, to define the precise boundary, if there is an argument about....

Mr. Radcliffe: New estates.

The Attorney-General: Exactly. If there is an argument about a wall as to whether a wall is situated in one property or another then there is the procedure there to notify the parties and the settling of the dispute. I mean theoretically, Mr. President, I agree that it would be a marvellous idea if on every registration the neighbours were notified and then the boundaries were positively identified down to the nearest inch, but I think quite obviously that would enormously complicate the procedure and would make it very much more expensive and I would then almost move to the camp of my gallant friend, Major Crellin. We are not attempting to do that but where it becomes necessary to define a boundary accurately the procedure is there to do it.

The President: This would not, however, prevent a neighbour if he was sufficiently interested from going to the Registrar and checking.

The Attorney-General: This is correct, yes.

The President: Well, the motion is that clause 59 stands part of the Bill. Those in favour please say aye; against, no. The ayes have it. Clause 60.

The Attorney-General: We now move to another part which is about cautions, inhibitions and restrictions. Clause 60 provides a procedure under which a person interested in land can require notice to be given to him of any attempt to have a title to the land registered. In these cases the person concerned may file a caution against first registrations supported by an affidavit requiring the Registrar to notify him of any application affecting the land and not to proceed with it without giving an opportunity to object to the application. Now to some extent, Mr. President, this follows on from

what we have just said. If, in fact, there is a dispute about the ownership of a bit of land this would enable one of the parties in dispute to give notice to the Registrar that if any attempt was made to register that bit of land by the other person or by anyone else then the person objecting would be given notice and then he would come along and give his evidence to the Registrar as to whatever rights he had of the land. It would also enable, for example, a person to register his interest in the land if there was a dispute as to the boundary to prevent land being registered to the prejudice of the person who wished to dispute the precise boundary of the plot of land. I think it is a useful provision and it would enable people to prevent registration over their heads if they felt that there was some argument about the ownership or the boundaries. I move that clause 60 stands part of the Bill.

A Member: I beg to second.

The President: It is proposed and seconded that clause 60 stands part of the Bill. Those in favour please say aye; against, no. The ayes have it. Clause 61.

The Attorney-General: Clause 61 and Schedule 9 provide a similar procedure for cautions against dealing where land is already registered. For example, to protect a contract option or a right of free entry. So once land has already been registered somebody may wish to give notice to the Registrar that before any dealing should occur on the registry that he would wish to be given notice and this provides the procedure for that to be done.

The President: Is that seconded?

A Member: I beg to second.

The Lord Bishop: I beg to move an amendment to Schedule 9 on page 58, Mr. President:—

Page 58, in paragraph 4, for the words from "the Registrar" to the end substitute "the Registrar shall refer the matter to the Land Commissioner under section 6(2), and shall delay registering any dealing until the matter has been determined.".

The President: Is there a seconder to the amendment?

Mr. Kerruish: I beg to second.

The Attorney-General: The purpose of that amendment is to enable the Land Commissioner to deal with any dispute which arises. Schedule 9 as it stands at the moment does not provide any mechanism for dealing with a dispute which arises in getting rid of a caution. So the matter can then be dealt with by the Land Commissioner by virtue of that amendment.

The President: The motion therefore is that clause 61 and Schedule 9, as amended, stand part of the Bill. Those in favour please say aye; against, no. The ayes have it. Clause 62.

The Attorney-General: Now clause 62 enables an entry to be made on the register by the Registrar or by order of the Land Commissioner. Now the previous clause you were looking at envisaged action being taken by a member of the public who felt they had an interest in the land or had some reason why they wished to be given notice. This

Isle of Man Government
Reiltys Ellan Vannin

Isle of Man Land Registry
Application for First Registration
by an Advocate on behalf of Applicant(s)
Rule 16

For Registry Use Only	
Application Number	Title Number

Note: Please complete in typescript or block capitals using black ink. Further information upon the completion of this form can be found in the guidelines. This document must be accompanied by a completed Form 100.

1. Location of the Land
Please enter in the spaces provided the Parish and Local Government District in which the land is located.

1.1 Parish:	1.2 Local Government District:

2. Tenure
Act Section 10

2.1 Tenure *Please place X in the appropriate box.* Freehold ☐ Leasehold ☐

2.2 Particulars of lease under which the leasehold estate is created
Rule 17(4)
Only complete this section when the application is to register a leasehold title

Parties to the lease:

Term of lease *(no of years)* *(months)* *(days)*

Start date End date

Please note: Details of the original lease must be set out in the epitome of title in Appendix A to this form

2.3 Leasehold
Rules 18(1)
Only complete this section when the application is to register a leasehold title.

Is the title out of which the lease is created:-
Please place X in the appropriate box and where appropriate provide the Title or Deed number.

(a) Registered as a Title ☐ Title Number
(b) Recorded as a Deed ☐ Deed Number
(c) Not recorded or known ☐

3. Description(s) of the Land for entry on the Title Register

3.1 Number of parcels of land shown on the survey map
Please enter in the box provided the number of individual parcels of land to be registered in this application.
Please refer to guidelines for futher information regarding the definition of a parcel of land.

3.2 Address
Please enter the full postal address. If none, give the descriptive address to be entered on the title register.
If there is more than one parcel of land give the address relating to the parcel numbered 1 on the survey map.

Postcode:

3.3 Parcel of Land Description

***If more than one,** number and describe each parcel and define the extent on the Survey Map Extract which must be submitted with this application. Further information regarding the delineation of parcels of land can be found in the guidelines.*

The land shown edged red on the Filed Plan being

Please Note: If there is more than 1 (one) parcel of land, each additional parcel of land must be described separately in Appendix B

3.4 Property Category

Please place X in the box which best describes the land. Please note that completion of this section is optional and for statistical purposes only

Detached House ☐	Detached Bungalow ☐	Terraced House ☐	Commercial Premises ☐
Semi-detached House ☐	Semi-detached Bungalow ☐	Apartment / Flat ☐	Land ☐
Other ☐ (Please specify)			

4. Acquisition

Both sections must be completed

4.1 Consideration and Date of Acquisition

In consideration of £

The applicant(s) acquired the title on:-

4.2 Market Value

Market value of the whole of the property	£
Market value of share transferred (if applicable)	£

5. Class of Title

Act Section 13

Please place X in the appropriate box

Absolute ☐	Good Leasehold ☐	Possessory ☐	Qualified ☐

5.1 Evidence in support of Class of Title

Only complete this section if a possessory or qualified title is applied for, please give a summary below.
Include references to any supporting documents, which must be set out in Appendix A.

6. Details of Applicant(s)

6.1 Number of Applicant(s) *Please enter the number of applicant(s) in the box provided.*
If there are more than two applicants, their details must be set out in Appendix C to this form.

6.2 Applicant(s) Name
Please provide the full name of each applicant, including title.
In the case of a company provide the company's full name, where applicable its company registration number and the country in which the company is incorporated.

	APPLICANT 1	APPLICANT 2
Title		
Forenames		
Surname or Company Name		
Company No.		
Country of Incorporation		

6.3 Service Address Rule 15
This must be an address in the Island or the UK to which all notices and communications from the Land Registry will be directed after registration is completed.
Please follow the format provided leaving any line that is not applicable blank.

	APPLICANT 1	APPLICANT 2
Flat or Unit No.		
Name of Building		
Number		
Street		
District		
Town or Parish		
Postcode		
Country		

6.4 Index of Names Number Rule 9
If the applicant is, or has been registered as an owner of a title, then please provide the applicant's Index of Names number, which can be found on an Office Copy of the relevant title or obtained from the Land Registry.

Index of Names Number		

6.5 Co-owners Act Section 50, Rule 83
In the case of two or more applicants, please indicate whether the transferees are "joint tenants" or "tenants in common" by placing X in the appropriate box.
If the transferees are tenants in common other than in equal shares, state the fractional share of each applicant in the space provided. Where the applicant's holding is in a combination of joint tenants and tenants in common, give details in box 6.6 below as to how it is to be recorded in the title register.
Please note: If this section is not completed the applicants will be deemed to be tenants in common in equal shares under Section 50(2) of the Act.

Applicant 1		Applicant 2	
Joint Tenant ☐		Joint Tenant ☐	
Tenant in Common ☐	Fractional Share	Tenant in Common ☐	Fractional Share

6.6 Details of Ownership
Complete only where the ownership is a combination of joint tenants and tenants in common. Set out how it is to be recorded on the title register.

6.7 Class of Ownership Act Section 12
Please state whether the applicant is a full or limited owner.

Full	☐	Limited	☐	Full ☐	Limited ☐

7. Details of Settlement

If ownership is limited under the Settled Land Act 1891 and 1983, complete this

Details of Settlement: *Please reference the instrument containing the settlement*		
Parties: *Please enter the names of all parties to the settlement*		
Current Trustees: *Please provide the full name and service address for not more than four*		

7.1 Other particulars relating to ownership

Use this section to set out any particulars relating to the capacity in which all the applicants are to be registered. For example, if the applicant is a personal representative, state this and the name of the deceased person.

8. Inhibitions

Act Section 62, Rule 69

Please indicate if there are any inhibitions to be registered to inhibit the powers of disposition of the applicant(s).

Are there any Inhibitions to be registered? *Please ensure that any Inhibitions to be registered are set out in Appendix D to this form*	Yes ☐	No ☐

9. Restrictions

Act Section 64, Rule 74

Please indicate if there are any statutory restrictions affecting the powers of disposition of the applicant(s).

Are there any Restrictions to be registered? *Please ensure that any Restrictions to be registered are set out in Appendix E to this form.*	Yes ☐	No ☐

10. Appurtenances

Act Section 46, Rule 40

Please indicate if there are any rights or interest over other land which are appurtenant to the land.

Are there any Appurtenances to be registered? *Please ensure that any Appurtenances to be registered are set out in Appendix F to this form.*	Yes ☐	No ☐

11. Burdens and Charge Burdens

Act Sections 35 to 44, Schedules 5 & 6, Rules 41 & 42

Are there any Burdens to be registered? *Please ensure that any Burdens to be registered are set out in Appendix G to this form*	Yes ☐	No ☐
Are there any Charge Burdens to be registered? *Please ensure that any Charge Burden to be registered is set out in Form 11.* *Please use a separate Form 11 for each charge burden*	Yes ☐	No ☐

12. Additional Provisions

Use this panel for: agreements and declarations; other agreed provisions; required or permitted statements, certificates or applications not referred to in the attached appendices

13. Appendices, Maps

Please indicate in the boxes provided the ***number of pages*** *attached for each Appendix to this form and survey maps and any additional plans.*

Appendix A: Epitome of Title		Appendix B: Additional Parcels of Land		Appendix C: Additional Applicants		Appendix D: Inhibitions		Appendix E: Restrictions	
Appendix F: Appurtenances:		Appendix G: Burdens		Form 11: Charge Burdens		Appendix I: Continuation Sheet		Survey Maps and Additional Plans	

14. Certificate of title - THIS MUST BE COMPLETED IN ALL CASES

Warning! No alteration to the prescribed format is permitted unless the form expressly states otherwise. Any unauthorised alteration could result in the application being rejected or, if registration is completed, it could affect the validity of the registration.

I hereby certify as follows:-

(a) I ***have/have not** acted for the **applicant(s)** in the transaction which is the subject of this application. ****Delete as applicable***

(b) I have made or caused to have been made all necessary searches and enquiries.

(c) I am not aware of any claim to possession of the land adverse to the interest of the applicant(s).

(d) I have made full title investigation and declare that the title is good and I am not aware of any defect which would give rise to a claim for compensation under Schedule 10 of the Land Registration Act 1982 other than disclosed in this application.

(e) As far as I am aware the **applicant(s) is/are*** not subject to any legal disability which would prevent or restrict their ability to hold or deal with the legal estate of the property to which this application relates. ****Delete as applicable***

(f) The extent of the land, as far as I am able to ascertain, is as shown on the maps submitted with this application.

(g) The epitome of title, set out in Appendix A of this application, gives particulars of all the instruments, acts and events relevant to the title of the **applicant(s)** to the land.

(h) I believe that the **applicant(s) is/are***, and have since the date of acquisition mentioned in this application, been in sole and undisputed possession of the land or in sole and undisputed receipt of the rent or profits thereof. ****Delete as applicable***

(i) I am satisfied that the land is not subject to any burden requiring entry in the title register except for the matters (if any) specified in this application.

(j) Where the applicant is a corporate body or unincorporated association it is legally constituted and it is legally entitled to hold and deal with land.

15. Signature of Advocate lodging application

This must be the legible signature of the advocate giving the certificate of title in section 14, followed by the name of the firm.

Signature **Date**

Name of Advocate
Please state the name of the signing advocate in block letters

Name of Firm
Please state the name of the firm in block letters

To: The Isle of Man Land Registry, Registries Building, Deemsters Walk, Bucks Road, Douglas, Isle of Man IM1 3AR

Appendix 7: Letter dated 19th February 2016 from Mr Edward Clague, Deputy Director Central Registry

Isle of Man Government
Reiltys Ellan Vannin

Department of Economic Development
Rheynn Lhiasaghey Tarmaynagh

Land Registry
Legal Officer (Land)
Garth Anderson B.Com., LL.B.

Mr Jonathan King
Clerk of Tynwald's Office
Legislative Buildings
Finch Road
Douglas
Isle of Man
IM1 3PW

Our ref: GA
Your ref: Jonathan King

Date: 19 February 2016

Dear Mr King

Re: Select Committee of Tynwald on the Registration of Property (Petition for Redress)

On behalf of myself and my colleagues I would like to thank the Select Committee for affording us the opportunity to appear and give evidence on the 29 January 2016, in relation to the Petition for Redress of John Ffynlo Craine and Annie Andrée Jeannine Hommet.

In giving evidence, we agreed to provide the Select Committee with further information, namely:
a) how many voluntary applications the Land Registry receives per month; and
b) how many boundary disputes the Land Registry has dealt with.

Officers also noted that the Committee was considering requiring notice to be given in respect of voluntary, as opposed to compulsory, applications for first registration of land. To assist the Committee we would like to clarify the process of an application for first registration of a legal estate in land, be it voluntary or compulsory.

a) Voluntary applications

The Land Registry receives approximately 4 voluntary applications per month.

Although small in number, the parcels of land concerned can be large. It is not uncommon for property developers, with land banks established before the introduction of Land Registration, to voluntarily register the land they own before they start developing the green field site. Registration of the land before plots are developed and subsequently sold off as part of the residential estate makes the conveyancing process much simpler and quicker, ultimately benefitting the purchaser(s). This also allows, in cases where a potential purchaser is reliant on selling his or her house first before completing on the property they wish to purchase, a completion date for all parties in the chain to be set with some confidence and certainty by the profession safe in the knowledge that the sales of plots from the registered site that has been developed will not be delayed through issues being identified or arising on an unregistered title.

Following on from the above, one of the benefits of land registration is that it can cure defects in the unregistered title which in the conveyancing process accounts for the vast majority of delays before completion can take place. It is for this very reason that a number of Advocates now

advise their client(s) to voluntarily register their land before selling it so that any subsequent sale can be dealt with quickly and simply, and on the flip side of this why many Advocates who are acting for purchasers now ask the vendor to voluntarily register the land as part of the negotiations, if it has not been registered already, so that they can advise their client with certainty as to the title they would be receiving.

b) how many boundary disputes the Land Registry has dealt with

The Land Registry has not collected statistical data in respect of how many boundary disputes it has dealt with.

We have only received one application to the Land Commissioner to amend a boundary following a voluntary application and this is the case that gave rise to the petition. It must be remembered that this involved the boundary of an adjoining owner outside of the property of the petitioners and primarily centred on an area of law that had previously not been tested (registering a common law presumption) in the Isle of Man.

As pointed out at the hearing, the Registry is aware of one other boundary dispute that has had to be referred to the Land Commissioner. This matter is on-going so it would not be appropriate for the Land Registry to comment any further on that particular matter.

The Land Registry has to rectify errors that occur in the title register. Where the error or omission is of a formal or trivial nature or the mistake is of a clerical nature, the error may be rectified by the Registrar in terms of section 65(2) or (2A) of the Land Registration Act 1982.

Since the start of 2010, the Registrar has received 217 applications to the Registrar to rectify trivial or formal errors on the register. No breakdown of the applications made to rectify the register is available, although in practice these are primarily to rectify minor errors such as simple spelling and typographical errors. It should be noted all 215 applications have been dealt with by the Registrar, in accordance with section 65(2), as being of formal or trivial nature.

The Committee is also asked to bear in mind that of the 215 applications for rectification dealt with by the Registrar, not one claim for compensation has been received.

Process of registering land

There appeared to be some confusion around the process of voluntarily registering land, how many advocates are involved and what checks and balances form part of the process.

To assist the Committee's understanding of the Land Registry system and its processes, we would be pleased to invite members, and indeed Dr Craine and Ms Hommet as part of the party, if they so wish, to come into the Land Registry and view our systems and processes.

The Committee should distinguish between:

- the conveyancing process which ends on completion of the sale and purchase of the property when the keys are handed over and the money is paid; and
- the land registration process which is the process whereby the details of the completed purchase are entered on our title register.

The land registration process may either be compulsory or voluntary which is dependent on the date the property was acquired.

Compulsory registration

No oversight of the application to the Land Registry is made by the vendor's advocate whatsoever.

When a person purchases a property on the Island in the vast majority of cases there are two advocates involved in the transaction; one acting for the vendor and one for the purchaser. Once all enquiries have been made and any issues identified have been addressed between the Advocates and their respective parties, and any funding is sourced and put in place, completion takes place.

Once the deal has been completed, the Advocate that acted for the vendor plays no further part in relation to registration.

It is the Advocate acting for the purchaser who is responsible for making an application to register the land in the Land Registry, certifying title as part of the application process. The application must be made, unless the Registrar grants an extension, within 3 months from the date of the transaction.

Voluntary registration

A voluntary application can be made to register an unregistered title at any time.

An application may therefore be lodged on the day the transaction is completed (in the case of a gift for example, a gift not being a trigger event which compels registration) to the other extreme where the land may be registered voluntarily many, many years after the transaction was completed.

In similar vein to compulsory registrations, the conveyancing process would have involved two advocates in the transaction; one acting for the vendor and one for the purchaser (albeit the event could have taken place many years ago). When it comes to registering the land, only the land owner's advocate (one advocate) makes the application.

The Committee made it clear on the day that it felt with two sets of advocates involved in the conveyancing process, as in the vast majority of compulsory first registration cases, there are, in its view, greater checks and balances to protect the Land Registry.

As can be seen from the above, the checks and balances carried out as part of the conveyancing process on a transaction that leads to a compulsory first registration are exactly the same as the checks and balances that lead to a voluntary application.

In summary – voluntary compared against compulsory registration

Whether registration is applied for compulsorily or voluntarily only one advocate, acting for the purchaser/land owner, makes the application for registration. In no cases is the application copied to the other parties' advocate to double-check.

The Committee's concerns about an unscrupulous lawyer are obvious and understandable, however, we would respectfully suggest that such concerns need to be considered on an informed risk basis after maybe consulting with the Isle of Man Law Society.

The Committee may also wish to consider the risk of malicious challenges, applications in order to delay a development or frustrate a property owner which may arise from a requirement to advertise voluntary.

Conclusion

Whenever a person who is involved in a dispute is unable or unwilling to compromise and settle, the resolution of that dispute will ultimately cost money, time and energy. Although sad, this is a fact of life that must be recognised.

Provision already exists in legislation for any person to protect their interests in land, the provision being to lodge a Caution against First Registration. Alternatively, a person can voluntarily register their land.

We believe any requirement to advertise applications before registration would act to raise suspicions amongst neighbours, and therefore encourages disputes. Such a move would also raise other issues, some of which are set out below as indicative but in no way exhaustive:

- may lead to malicious claims;
- will raise a large question over who will police it and how;
- introduces further costs;
- introduces another level of bureaucracy, and does not appear to align to Government's strategic aims
- retard the development of land in the Island.

If the Committee is minded to make changes to the existing legislation, or indeed recommend the requirement to advertise voluntary applications, we would respectfully ask the Committee to consult with the Acting Attorney General, the legal profession and other stakeholders before doing so. In our view, such a move would naturally discourage voluntary registration, one of the aims of the Land Registry since its inception being to promote voluntary applications in order to populate the register as quickly as possible.

During the meeting there appeared to be some misapprehension of the Land Commissioner's decision that related to this petition. In order to assist the Committee with its deliberation and for clarity the Registry will be forwarding you further written submissions.

In the meantime, we would be grateful if you would let us know if you feel a visit to the Land Registry would benefit the Committee in considering the petition. If so, please let us know if Dr Craine and Ms Hommet will be accompanying the Committee.

Yours sincerely

Edward Clague
Deputy Director Central Registry

Appendix 8: Email dated 22nd April 2016 from Mr Garth Anderson, Assistant Chief Registrar and Legal Officer (Land)

From: Anderson, Garth (Central Registry)
Sent: 22 April 2016 13:40:23
To: Jonathan King
Cc: Lewney, Nigel (Central Registry); Clague, Ed (Central Registry)
Subject: RE: Select Committee on the Registration of Property
Importance: Normal

Jonathan

It is not possible for the Land Registry to estimate the number of unregistered titles in the Island.
We have spoken to the Post Office and they have informed us that they have approximately 44,000 "delivery points". They explained that a block of apartments or flats may count as a single delivery point which in turn would cover the number of apartments within such a building. From our point of view each of those apartments may need to be registered as an individual leasehold title. Similarly, there will be those areas of land which do not have postal addresses but which will also need to be registered as titles in the Land Registry.
At the hearing it became apparent that there were a number of issues which need to be clarified for the benefit of the Committee. Those issues are the following:

1. Boundary v access dispute

   The petitioners maintain that this is a boundary dispute and, it would seem, that this is accepted by the Committee. My view remains that this is not so and therefore that the Petition itself is fundamentally flawed.
2. The dispute is ongoing

   The Land Commissioner gave her judgment on the 12th August 2014 and the boundaries of the property of the neighbour were rectified shortly thereafter. Despite the fact that the boundaries have been rectified to the position claimed by the petitioners and as admitted by them at the public hearing, the dispute between the petitioners and the neighbour continues unabated in 2016. If the incorrect boundaries were the problem complained of, why then did the dispute not settle and disappear altogether when the boundary was corrected? The reason for that is that this is a dispute about the rights of access to which the petitioners are entitled over the occupation road.

3. Ownership of the occupation road

   The fact remains that the neighbour – the owner of The Squeen – owns one half of the occupation road where it adjoins the boundary of The Squeen. He owns the share by virtue of the common law presumption referred to in Kenyon's case and the fact that the decision of the Land Commissioner to the effect that such ownership is not to appear on the land register, does not affect such ownership. The Committee appeared to doubt this.

4. General boundaries

   It is important for the Select Committee to understand that even if a boundary is rectified it remains a general boundary (ie. a boundary which is not guaranteed by the Government) unless the adjoining owners agree that the boundary is to be made conclusive as provided in Section 59 (2) of the Land Registration Act 1982. Little purpose would be served in further burdening the conveyancing process by requiring notice of a proposed first registration application to be given where the boundary is a general boundary.

5. Section 11 v Section 59

The provisions of sections 11 and 59 of the Act need to be clarified. Section 11 states that the register provides "conclusive evidence of the titles shown on that register and of any right, privilege, appurtenance or burden…" It does not state that it is conclusive as to boundaries. Section 59 specifically provides that the description of any land in the title register is not conclusive as to boundaries.

6. Caution against first registration

The petitioners had an opportunity to prevent the harm they allege they have suffered by registering a caution against first registration. A full explanation of the neighbour's case and of his intention to apply the legal presumption to ownership of the lane were set out in full by Long & Humphrey in their letter dated 19th July 2010 to the advocates acting for the petitioners. The petitioners then consulted with their advocates on the 27th July 2010. The petitioners had a golden opportunity at that early stage to make use of an existing procedure designed specifically for such a case and they failed to make use of it. Either the advocates advised the petitioners that it would not be in their interests to register a caution to protect their interests or the petitioners decided against this course of action.

7. Practice Notes

Practice Notes in respect of the topics of "Boundaries" and "Cautions" (including cautions against first registration) were issued by the Land Registry and distributed to the legal profession.

The Practice Note on Boundaries distinguishes between legal, general and defined boundaries.

The Practice Note on Cautions advises applicants and advocates when it is appropriate to use the procedure as in the current matter.

8. Voluntary first registrations

The distinction which the Select Committee appears to be minded to make between voluntary and compulsory applications for first registration is arbitrary.

9. Summary

A procedure to guard against the harm alleged to have been sustained by the petitioners already exists in the primary and secondary legislation which applies to land registration in the Isle of Man. The petitioners have since utilised the procedure and confirmed at the Select Committee Hearing that the procedure, and the protection afforded to them by it, worked. This provides evidence that the existing procedures, with built-in safeguards, are fit for purpose if properly utilised. We do however accept that more needs to be done to raise awareness of the Caution procedure.

The benefits of having a Land Register that is as complete as possible have been recognised in other jurisdictions and they have taken steps to make this happen (for example, additional trigger events such as compulsory registration when a person re-mortgages his or her property). The Isle of Man would also benefit from having a more complete land register and the Committee may wish to consider recommending that Government owned land be registered to assist in this regard. Section 24A of the Land Registration Act 1982 provides the Council of Ministers with the power to direct this to happen.

Kind regards
Garth

From: Jonathan King
Sent: 18 April 2016 14:29
To: Anderson, Garth (Central Registry)
Cc: Lewney, Nigel (Central Registry)
Subject: Select Committee on the Registration of Property

Dear Garth

In your written evidence to the above Select Committee you said there were 14,000 registered titles in the Isle of Man. The Committee would like to know, please, if you have made any estimate of the number of unregistered titles in the Island?

The Committee is aiming to finalise its report this week so an early reply would be much appreciated.

Many thanks.

Jonathan

Jonathan King
Deputy Clerk of Tynwald and Clerk of the Legislative Council
Legislative Buildings, Douglas, Isle of Man IM1 3PW
01624 686303
www.tynwald.org.im

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RAAUE: S'preevaadjagh yn çhaghteraght post-l shoh chammah's coadanyn erbee currit marish as ta shoh coadit ec y leigh. Cha nhegin diu coipal ny cur eh da peiagh erbee elley ny ymmydey yn chooid t'ayn er aght erbee dyn kied leayr veih'n choyrtagh. Mannagh nee shiu yn enmyssagh kiarit jeh'n phost-l shoh, doll-shiu magh eh, my sailliu, as cur-shiu fys da'n choyrtagh cha leah as oddys shiu.

Cha nel kied currit da failleydagh ny jantagh erbee conaant y yannoo rish peiagh ny possan erbee lesh post-l er son Rheynn ny Boayrd Slattyssagh erbee jeh Reiltys Ellan Vannin dyn co-niartaghey scruit leayr veih Reireyder y Rheynn ny Boayrd Slattyssagh t'eh bentyn rish.

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April 2016

Price: £29.70