

REF 2015 0541 and 0542

**PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

(1) RICHARD LEWIS ROBERTS

(2) SULWEN ROBERTS

Applicants

And

(1) PAMELA WALTON

(2) EINIR WYN WILLIAMS

Respondents

Property Address: Land lying to the east of Y Gillan, Llangoed, LL58 8SS

Title Number: CYM616100

Before Judge Michell

Sitting at: Caernarfon County Court

On: 7th July 2016

Applicant Representation: In person

First Respondent Representation: Mr Nicholas Jackson, counsel, instructed by Carter Vincent LLP

Second Respondent Representation: In person

DECISION

APPLICATION FOR FIRST REGISTRATION - WHETHER APPLICANTS SHOULD BE REGISTERED WITH ABSOLUTE TITLE – WHETHER GOOD ROOT OF TITLE- WHETHER GOOD HOLDING TITLE SHOWN-CONSIDERATION OF FINANCE ACT 1909 PLANS AND FIELD BOOK ENTRIES

Cases Referred to

Pyre v. Waddington (1852) 10 Hare 1

In re Spollon and Long's Contract [1936] Ch 713

Barclay's Bank Plc v. Weeks, Legg & Dean [1999] QB 309

Wigginton & Milner Ltd v. Winster Engineering Ltd. [1978] 1 WLR 1462

Alan Wibberley Building Ltd. v. Insley [1999] 1 WLR 894

Statutes Referred to

Law of Property Act 1925 s. 44

Law of Property Act 1969 s. 23

Finance (1909 – 1910) Act 1910

Land Registration Act 2002 s.9

1. The Applicants, Mr and Mrs Roberts have applied to HM Land Registry for first registration of an area of land (“the Disputed Land”) adjoining a private lane or road (“the lane”) near Llangoed, Anglesey. The Respondents, Mrs Walton and Mrs Williams objected to the application and HM Land Registry referred the matter to the Tribunal for determination.
2. Mrs Walton is the registered proprietor of and lives at a property called “Greenleaves”. To the north and west of Greenleaves is the property called “Y Gillan”, where Mr and Mrs Roberts live and of which they are the registered proprietors. Mrs Williams lives at and is the registered proprietor of Ty’n y Coed, a property lying to the north of Y Gillan. Ty’n y Coed is an old farmhouse. Y Gillan and Greenleaves are bungalows constructed in or after 1964. Access to all three properties is over a private lane (“the lane”) which runs from the highway to the south, past the three properties to other properties to the north. The lane is to the east of the three houses. The Disputed Land comprises an area of verge to the west of the lane over which area it is necessary to pass to get access to Y Gillan and Greenleaves and a further area lying on or at the western side of the lane and

the eastern side of Ty'n y Coed. The former area is hard surfaced and Mr and Mrs Roberts accept that Mrs Williams has a right of way over it to gain access to and from Greenleaves. The latter area is mainly grass but is paved towards the northern end. Towards the southern end, it adjoins on its west side the stone walls of derelict buildings. Further north, on its west side it adjoins a hedge. To the north of the hedge the western boundary of the area claimed by Mr and Mrs Roberts is not distinguished by any physical feature from the area of garden of Ty'n y Coed to the west or the hard-surfaced parking area of Ty'n y Coed further to the north. The northernmost end of this area, north of the area adjacent to the parking area of Ty'n y Coed, is a wedge-shaped area of grass verge lying to the east of the hedge bordering the northern end of the garden of Ty'n y Coed. It is not possible to access Ty'n y Coed from the highway except by passing over the Disputed Land to the lane.

3. Mrs Walton applied for first registration with possessory title of the latter part of the land in dispute in 2007. Mr and Mrs Roberts objected to that application on 26th November 2008. That application obviously did not result in Mrs Walton being registered as proprietor but I am not aware of precisely why this was.
4. The land sought to be registered by Mr and Mrs Roberts was the subject of a transfer to them in form TR1 by Sir Richard Thomas Williams-Bulkeley dated 29th June 2009. The consideration for the transfer was £20. Mr and Mrs Roberts did not apply to register the Disputed Land until April 2014 or if they did apply earlier, their application was not accepted by HM Land Registry until April 2014.
5. Mr and Mrs Roberts issued proceedings in the Llangefni County Court on 22nd December 2011 against Mrs Williams concerning the boundary between Y Gillan and Greenleaves. They claimed a declaration as to the location of the boundary. The proceedings were settled following a mediation and a consent order was made on 3rd July 2012. Mr and Mrs Roberts made no mention in those proceedings of the transfer of 29th June 2009, though the boundary they drew on the plan annexed to the statement of claim (though not the boundary shown on the plan attached to the consent order) ran over or adjoined the southern part of the Disputed Land.
6. Section 9 of the Land Registration Act 2002 provides as follows

“(2) A person may be registered with absolute title if the registrar is of the opinion that the person’s title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept.

(3) In applying subsection (2), the registrar may disregard the fact that a person’s title appears to him to be open to objection if he is of the opinion that the defect will not cause the holding under the title to be disturbed”.

7. A competent professional adviser would be expected to advise a willing buyer to require the production by the vendor of a good root of title commencing at least 15 years prior to the date of the conveyance – and see Law of Property Act 1925 s. 44 and Law of Property Act 1969 s. 23. An instrument to be a good root of title “must be an instrument of disposition dealing with or proving on the face of it (without the aid of extrinsic evidence) the ownership of the whole legal and equitable estate in the property sold, containing a description by which the property can be identified and showing nothing to cast doubt on the title of the disposing parties” (*Williams on Vendor and Purchaser*, 4th ed., vol 1, p.124).
8. A purchaser who is acquiring an unregistered estate may expect to be advised to accept a good marketable title. A good marketable title has been defined as a title which may be forced on an unwilling purchaser but must not expose him to litigation or hazard – *Pyre v. Waddington* (1852) 10 Hare 1; and also as a title which would enable a purchaser to sell without making special conditions restrictive of the purchaser’s rights – *In re Spollon and Long’s Contract* [1936] Ch 713.
9. The registrar has the discretion to accept only a good holding title, which has been described as a title which a willing purchaser might reasonably be advised to accept but which the court would not force on a reluctant purchaser – *Barclay’s Bank Plc v. Weeks, Legg & Dean* [1999] QB 309 at 324-326.
10. The issue for the Tribunal is whether Mr and Mrs Roberts have shown a sufficiently good title to the Disputed Land for the registrar to be directed to register them as registered proprietors of the Disputed Land with title absolute. The parties approached the matter at the hearing as being whether Sir Richard Williams-Bulkeley had title to the land on 29th June 2009. Mr and Mrs Roberts say he did. Mrs Walton and Mrs Williams submit that he did not.

11. Mr and Mrs Roberts rely on two statutory declarations made by Sir Richard Williams-Bulkeley, one dated 25th June 2009 and the other dated 18th December 2012. Sir Richard was not called to give evidence. Sir Richard declared that the Baron Hill estate was conveyed to him by trustees by deed dated 29th October 1974; that at that time the Estate comprised amongst other lands the Disputed Land; that Ty'n y Coed was purchased by his predecessor, Lord Viscount Bulkeley by a conveyance dated 6th September 1811; that Ty'n y Coed "historically" forms part of the Baron Hill estate; that a plan drawn under the Finance (1909-1910) Act 1910 showed that Ty'n y Coed was then owned by his predecessor, R Williams Bulkeley and that the lane in front of Ty'n y Coed was then owned by WG Massey and that the extent of the land then owned by his predecessor was shown by the 1910 plan; that the grass verges on either side of the lane were not included in the sale of Ty'n y Coed by auction on 26th October 1920 ; that from a perusal of the estate records and his own recollection he was unaware of any sales off of the verges; and that he had been unable to locate any title deeds specifically showing the verges. That the Disputed Land was conveyed by the 1811 conveyance and that it was not conveyed away on completion of the sale by auction that took place on 26th October 1920 are assertions. It is necessary to look at the documentary evidence to see if they are correct.

12. Sir Richard Williams-Bulkeley declared and Mr and Mrs Roberts argue, that the Disputed Land formed part of the land conveyed to Sir Richard's predecessor, Lord Viscount Bulkeley by a conveyance dated 6th September 1811. Only one page and the backsheet of the conveyance were in evidence. The copy is very poor and it is not possible to read everything on the one page produced. It is possible to make out the words

"All those the...message ... by the name of Tyn y Coed situate lying and being in the parish of Langoed aforesaid in the said" [Bundle p. 53]

There is no copy of a plan or other means to determine what the extent and exact location of the land referred to was or whether it included the land in dispute. This document as produced is not a good root of title to the Disputed Land.

13. The Applicant produced after the hearing a full copy of an Order of Exchange dated 25th May 1876 made by Inclosure Commissioners on the application of William Massey and Sir Richard Lewis Mostyn Williams-Bulkeley. The Second Schedule to that deed lists the land taken by William Massey from Sir Richard in exchange for lands given by him to Sir

Richard as listed in the First Schedule. The land taken by William Massey included land called “part of Tyn y Coed”, “Cae Cegyn” and “Llain bonc”. The part of Ty’n y Coed was 2 roods and 21 perches in area. The land called “Cae Cegyn” and the land called “Llain bonc” were each 21 perches in area. Those areas of land are shown on the plan annexed to the deed and comprise an area on which part of the track running beside Ty’n y Coed now stands. The Disputed Land appears to be land lying between the land passing to Mr Massey under the order of exchange and the Ty’n y Coed cottage. The exchanged land lying to the east of Ty’n y Coed appears as a strip cutting the corner of a field, with the field corner lying between it and the Ty’n y Coed cottage. Part of the area described as Llain bonc is a strip of land running diagonally across the small meadow to the south of what is now Greenleaves. The names “Cae Cegyn” and “Llain bonc” do not appear on the plan. The plan is slightly different from the 1900 Ordnance Survey map. Differences include the shape of the Ty’n y Coed cottage and the internal fences or hedges in the Ty’n y Coed site, there being a number of fences or hedges shown on the 1900 map which does not appear on the plan. The land taken by William Massey under the Order is shown on the plan as extending to adjoin the end of a building forming part of Ty’n y Coed, lying to the south of the cottage.

14. The Order of Exchange is not a good root of title. It does not deal with the Disputed Land. However, it is reasonable to conclude from this Order that the land lying between the land passing to Mr Massey and the old field boundary to the east of the Ty’n y Coed house then belonged to Sir Richard Williams-Bulkeley. It is unlikely that Sir RLM Williams-Bulkeley would have owned only the strip exchanged and not the remainder of the field out of which it was carved.
15. Mr and Mrs Roberts produced in evidence certain documents produced under the Finance (1909 – 1910) Act 1910 (“the 1910 Act”). In order to understand the evidential value of these documents, it is necessary for me to go into why and how they were produced. The 1910 Act provided for the levy and collection of a duty on the “increment value” of all land in the United Kingdom. The object was to tax that part of the capital appreciation of real property which was attributable to the site itself, i.e. excluding that arising from crops, buildings and improvements paid for by the owners. In this way, private owners were required to surrender to the state part of the increase in the site value of their land which resulted from the expenditure of public money on communal developments such as roads or public services.

16. Increment value duty, as this duty was called, was based on the difference between the amounts of two valuations. The site value as at 30 April 1909 constituted the datum line for the purpose of increment value duty. A second site value was to be taken on the occasion of any subsequent sale or the grant of a lease, or transfer or interest in a piece of land or the subsequent death of the land owner, to determine any potential payment of increment value duty.

17. By section 26(1) of the 1910 Act the Commissioners of Inland Revenue were to

“cause a valuation to be made of all land in the United Kingdom, showing separately the total value and the site value respectively of the land, and in the case of agricultural land the value of the land for agricultural purposes where that value is different from the site value. Each piece of land which is under separate occupation, and, if the owner so requires, any part of any land which is under separate occupation, shall be separately valued, and the value shall be estimated as on the thirtieth day of April nineteen hundred and nine”.

Though the valuation was to include agricultural land, agricultural land having no higher value than its then current market value for agricultural purposes only was exempted from increment value duty – section 7. Owner-occupiers of less than 50 acres were exempt from the tax unless their land had an average total value exceeding £75 an acre and as long as the land was not occupied by a house worth more than £30 per annum.

18. An account of how Inland Revenue set about conducting the valuation is given by Brian Short, Reader in Human Geography at the University of Sussex in his book “Land and Society in Edwardian Britain” (Cambridge University Press 1997). Land Valuation Officers were appointed for each Income Tax Parish. The Land Valuation Officer’s first step was to copy or to arrange for local assessors of tax to copy into a Valuation Book from the Rate Book the description of each rateable hereditament, the names of the owners and occupiers and the figures given in the Rate Book for the extent of the property and its rateable value. An unique number was then given to each hereditament. The Land Valuation Officer then delivered to each owner of each hereditament “Forms of Return”. Form 1 gave notice of the requirement to make the return, Form 2 gave instructions for making the return. The form required to be completed by most landowners was Form 4. One Form 4 had to be completed for each hereditament. The information required to be given in Form 4 included (2) the name of the occupier, (3) the name and address of the

person making the return, (5) the name and precise situation of the land, (6) the description of the land and particulars of any buildings and structures thereon and the purposes for which the property was used, and (7) the extent of the land if known. Information from the Valuation Book and from the Form 4 return was then transcribed into the valuer's Field Book, all of the information entered on the Form 4 being transcribed onto the first page of the Field Book entry for the relevant hereditament. Temporary Valuation Assistants used the Field Books in making the valuations. They inspected each hereditament and entered a description of the hereditament and any notes made on inspection on the second page of the Field Book entry for that hereditament. Following the inspection, the Temporary Valuation Assistant valued the hereditament and entered the valuations in the Field Book.

19. Once the valuation figure was finalised, staff of the District Office of the Valuation Office marked out on an Ordnance Survey plan the boundaries of the hereditament and entered the hereditament numbers. The completed plans were called Record Sheet Plans.
20. The Applicants produced in evidence the Record Sheet Plan on which Ty'n y Coed and the surrounding land appears and also the Field Book entries for hereditaments 424 and 443.
21. The relevant Record Sheet Plan is drawn on a copy of the Ordnance Survey map Anglesey sheet XV6. It is a map produced by the Ordnance Survey in 1900 based on a survey in 1887 and revised in 1899. The map is at a scale of 1:2500. Ty'n y Coed is shown on the map. The area occupied by the farmhouse, some farm buildings, a pond, some small garden areas and also the lane and the Disputed Land is identified as parcel number 197 and the area measurement given on the plan for this parcel is 0.964 acres. To the south and west of parcel number 197 is parcel number 202 with an area of 1.142 acres. On the Record Sheet Plan the boundaries of a number of hereditaments are shown by coloured edging and each hereditament is numbered. Ty'n y Coed, comprising the farmhouse, buildings, yard and fields on both sides of the lane is shown as hereditament 424. The Disputed Land is included in hereditament 424. The lane itself is coloured green and is identified as part of hereditament 443. Hereditament 443 is divided into two parts by hereditament 566. The larger part of hereditament 443 lies to the north of hereditament 566.

22. The Field Book entry for hereditament 424 describes the hereditament as buildings and land situate at Ty'n y Coed and gives the extent as 29.741 acres or 29 acres, 2 roods and 38 perches. The name of the occupier is given as Major WG Massey and the owner as Sir RW Bulkeley. A list of 9 area measurements is given and a total for those nine measurements is given as 29.551 acres. From the plan it is possible to list the 9 measurements and the parcels to which they relate as follows:

Os Parcel No.	Area
205	6.357
85	5.329
203	3.088
196	4.910
197	0.964
202	1.142
194	2.673
195	2.155
187	2.933

As OS parcel number 197 included the lane, the total area of 29.551 acres is greater than the area of land included in hereditament 424. After the total of 29.551 acres, there is written the following

“+acres of road which belongs to Mr Massey”.

There is then the number “.39”. A total is then given of 29.741. It seems clear there there is here an error on the part of the person who wrote the area calculations in the Field Book. As the area of the track is not part of hereditament 424 but of hereditament 443. and is included in OS parcel 197, a deduction should have been made from the area of 29.551 acres to allow for the lane not being included in the hereditament. It was not suggested in argument that the “acres of road which belong to Mr Massey” could be anything other than the lane.

23. Also in evidence is the Field Book entry for hereditament 443. This is described as part of Plasnewydd and described simply as “Land”. The total area is given as 14.013 acres or 14 acres, 0 roods and 4 perches. The areas for 6 parcels are given, corresponding to the Ordnance Survey parcel numbers and areas as follows:

OS Parcel No.	Area
164	7.358
165	0.449
166	0.574
167	4.270
188	1.364
185	0.388

The total is 14.403 acres. There then appear the words “-acres of road ...which is .39 acres” and the new total of 14.013 acres. This suggests that an area of road amounting to 0.39 acres in area is included in one or more of the parcel numbers and is deducted from the sum of the areas of the parcel numbers to arrive at a total. This would appear to be a continuation of the error in the calculation of the area of hereditament 424. The area of the lane is not included in the parcel numbers for hereditament 443 and therefore the total of the areas of those parcel numbers does not equate to the total area of the hereditament. The area of the lane should have been added to the area of hereditament 443 and not deducted.

24. The 1910 Act material has a measurement of 0.39 acres for the area of the lane. There is no evidence as to how that figure was arrived at. It may either have been measured by the a Temporary Valuation Assistant or provided by Sir RW Bulkeley and or Major Massey. Sir RW Bulkeley and Major Massey would have provided Forms 4 returns, giving the precise situation and the extent of the land in their respective hereditaments. They would also have been advised of the valuations produced. It is reasonable to conclude that they were in agreement that lane was owned by Major Massey and as to the situation and extent of the lane. The Record Sheet Plan shows the area of the lane as not including the Disputed Land. If the area of the lane as shown on that plan is 0.39 acres, then the area of the lane plus the Disputed Land would be more than 0.39 acres.

25. Mr and Mrs Roberts say that when Ty'n y Coed was conveyed by Sir Richard's predecessor, Sir Richard Henry Williams-Bulkeley to William Glynne Massey by a conveyance dated 16th April 1921, the Disputed Land was retained by the vendor. Their reason for so saying is that the red edging round the land conveyed on the conveyance plan does not include the Disputed Land.

26. The land conveyed by the 1921 conveyance is described in the parcels clause as

“All those several pieces or parcels of land or fields containing by admeasurement 29.201 acres or thereabouts situate in the parishes of Llangoed and Permon in the county of Anglesey Together with the messuage or cottage and outbuildings erected thereon known as and being Tynycoed Farm all which hereditaments [are] in the occupation of the Purchaser and are more particularly described in the First Part of the First Schedule”

The parcel clause then continues

“and with the boundaries and abuttals thereof by way of further identification but not by way of enlargement or restriction delineated on the map or plan drawn on these presents and thereon distinguished by being edged pink”.

27. The First Part of the First Schedule contains a list of parcel numbers from the plan, a description of the land in each parcel and an area measurement in acres to three decimal places for each parcel. The parcel numbers included “Pt. 197”, which is described as “dwellinghouse, buildings, etc” and given an area measurement of 0.518 acres. Parcel number 202 is included and is given an area measurement of 1.238 acres. The total area for the part 197 and for 202 is therefore 1.756 acres. That compares with a total for those parcels taken from the 1900 OS map and appearing in the Field Book for hereditament 424 of 2.106 acres. The difference is 0.35 acres which compares with the area of 0.39 acres given for the lane in the Field Book. The evidence of the Field Book entries is that the area of the lane belonged to Mr Massey in 1910. There is no evidence to suggest that the lane was conveyed by Mr Massey to Sir RW Williams-Bulkeley or his successor between 1910 and 1921. The 1921 conveyance could not therefore have included the lane. If the land was not conveyed, then the areas of OS parcels Pt 197 and 202 should have been 0.39 acres less than the total of the areas of OS parcels 197 and 202. That the area expressed to be conveyed was only 0.35 acres less than that total shows that the

Disputed Land was not retained but was included in the conveyance. Sir Richard Henry Williams-Bulkeley conveyed all that part of OS parcel 197 that he owned.

28. It is the 1921 conveyance plan that is principally relied upon by the Applicants in their argument that the Disputed Land was not included in the 1921 conveyance. The area edged red on this plan does not appear to include the Disputed Land. The red line intended to show the eastern boundary of the land conveyed is drawn on the plan from the north end to follow the line of an old field boundary to the north-eastern corner of the farmhouse, then along the eastern flank wall of the farmhouse and then in a line to the eastern flank wall of the barn. It should be noted that the plan is small and is drawn on a small scale.

29. The 1929 conveyance plan is expressed to be for the purposes of identification only. In *Wigginton & Milner Ltd v. Winster Engineering Ltd*. [1978] 1 WLR 1462, the Court of Appeal held that a plan described in a conveyance as being “for the purpose of identification only” may be looked to for elucidation but not contradiction of the verbal description. Such a plan can be looked at to indicate precise boundaries where the parcels clause itself uses words of general description insufficiently precise to be open to detailed contradiction – per Bridge LJ at p. 1475. If the verbal description is sufficient, the plan must be treated as subordinate and be disregarded in the event of any inconsistency - per Buckley LJ at p. 1470 and pp. 1475-1476. In *Alan Wibberley Building Ltd. v. Insley* [1999] 1 WLR 894, 896 (HL) Lord Hoffmann said:

“The parcels may refer to a plan attached to the conveyance, but this is usually said to be for the purposes of identification only. It cannot therefore be relied upon as delineating the precise boundaries and in any case the scale is often so small and the lines marking the boundaries so thick as to be useless for any purpose except general identification.”

30. The position is that if there is a conflict between the verbal description of the land and the plan, then the verbal description prevails. In this case, there is a conflict between the verbal description in the 1921 conveyance and the plan to that conveyance. The Record Sheet Plan shows the area of the lane as not including the Disputed Land. The Field Book entry for hereditament 424 indicates the Disputed Land belonged to Sir Richard Williams-Bulkeley and provides some evidence that the area of the lane as included in

parcel number 197 but not owned by Sir Richard was 0.39 acres. The area conveyed by the 1921 conveyance includes part of parcel number 197. The total area given for the part of parcel number 197 and for parcel number 202 is only 0.35 acres less than the total area for these parcels (including the lane) as shown on the Ordnance Survey map. It follows that what was conveyed by the 1921 conveyance was everything except for the lane. If the conveyance plan is correct then the areas given as part of the description of the land conveyed would have been less. As the measurements forming part of the verbal description include the Disputed Land and the plan appears not to, there is a conflict between the plan and the verbal description and the latter must prevail.

31. There are some other factors which point to the construction of the 1921 conveyance as being that it included the Disputed Land. First is the absence from the conveyance of an express grant of a right of way over the Disputed Land for the benefit of Ty'n y Coed. The 1900 Ordnance Survey map shows the lane as the means of access and egress to and from Ty'n y Coed and its buildings. Accessing the lane from the farmhouse and vice versa would have required passing over the Disputed Land. No right of way over the Disputed Land is expressly granted in the 1921 conveyance. Though there is an argument that a right of way would be implied, it is to be expected that a draftsman would have included an express grant of such an important right of way if the Disputed Land was excluded from the land conveyed. Secondly, there is the lack of any explanation as to why the Disputed Land should have been reserved on the conveyance in 1921. The statutory declarations made by the transferor, Sir Richard Williams-Bulkeley contain no information to indicate any reason why the vendor in 1921 should have wanted to retain the Disputed Land. Thirdly, there is the lack of any evidence in those statutory declarations or elsewhere that Sir Richard Williams-Bulkeley or his predecessors after the 1921 conveyance ever used the Disputed Land in any way at all or that any of Sir Richard Williams-Bulkeley's predecessors from the time of the 1921 conveyance onwards ever believed the Disputed Land to belong to them.

32. Mr and Mrs Roberts seek to place some reliance on the auction catalogue and accompanying plan prepared when land including Ty'n y Coed was offered for sale by auction on 26th October 1920. If Sir Richard Henry Williams-Bulkeley owned the Disputed Land at the time of the 1921 conveyance then the resolution of the question whether he did or did not convey it by that conveyance depends on construction of the 1921 conveyance. The auction catalogue is not admissible evidence on the construction

of the 1921 conveyance. However, if it were to be admissible evidence, it would not assist. Lot 3 as described in the auction catalogue and therein called “Ty’n y Coed” comprised 7 of the 9 parcels making up hereditament 424 on the Finance Act plan. The two parcels not included in the lot were 2 fields lying to the south of the land bordering the lane. They were included in the auction as a separate lot, being Lot 6, though the auction catalogue stated that lots 3 and 6 were held together as tenant by Major W. Glynne Massey. The areas given in the auction catalogue for each of the parcels in lot 3 is the same as the areas given in the 1921 conveyance.

33. Apart from the questions of whether Sir Richard Williams-Bulkeley owned and retained the Disputed Land at the time of the 1921 conveyance, there is a separate question as to whether what was owned by Sir Richard Williams-Bulkeley following the October 1921 conveyance passed to the transferor, Sir Richard Thomas Williams-Bulkeley. No chain of documents of title showing property vested in Sir Richard Williams-Bulkeley passing ultimately to Sir Richard Thomas Williams-Bulkeley has been produced.

34. Conclusions

I am not satisfied that the Applicants have demonstrated that they have a good marketable title to the Disputed Land (i.e. a title that a willing buyer could properly be advised by a competent professional adviser to accept). No good root of title has been produced. I am also not satisfied that the Applicants have shown a good holding title to the Disputed Land (i.e. a title that willing purchaser might reasonably be advised to accept). In my judgment on the true construction of the 1921 conveyance, if Sir Richard Henry Williams-Bulkeley then had title to the Disputed Lane, he conveyed it to Major Massey by the 1921 conveyance.

35. I shall direct the Chief Land Registrar to cancel the application of the Applicants to be registered as proprietors with absolute title to the Disputed Land.

36. Costs

The Applicants have not succeeded in their application. The Respondents have succeeded. The usual order made as to costs in the Land Registration division is that the unsuccessful party is to pay the costs of the successful party. My preliminary view is that it would be just to make the usual order. Any party who wishes to submit that I should

make some different order, should serve written submissions on the Tribunal and on the other party by 5pm on 4th November 2016.

BY ORDER OF THE TRIBUNAL

DATED THIS 19th October 2016