



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
LAND REGISTRATION DIVISION

REF/2015/0670

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

B E T W E E N:

ALAN BRIAN HUNTLEY

Applicant

and

(1) STEPHEN SCOT WILSON  
(2) DAWN WILSON

Respondents

Property Address: Land adjoining West Mill Cottages, Bish Mill, South Molton,  
Devon EX36 3QF  
Title Number: DN652486

Before: Mr Max Thorowgood sitting as Judge of the First-Tier Tribunal

Sitting at: Exeter Magistrates Court  
On: 22<sup>nd</sup> June 2016

Applicant's representation: In person  
Respondents' representation: In person

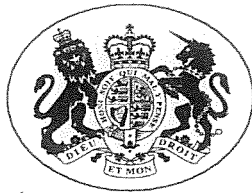
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## DECISION

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### 1. Introduction

- 1.1. By his application for first registration dated 10<sup>th</sup> December 2014 the Applicant sought to register his claimed title to the two small parcels of land shown coloured blue and yellow on the plan annexed to the statutory declaration of



Eileen Brockman dated 24<sup>th</sup> October 2014 and hereto (“the Plan”, “the Blue Land” and “the Yellow Land”)).

- 1.2. The Applicant claimed title to both the Blue and the Yellow Land on the grounds of his and his predecessors’ adverse possession of it. The Respondents did not choose to maintain their objection to the application in respect of the Blue Land but they did continue to object to the Applicant’s claim to have title to the Yellow Land.
- 1.3. The Respondents’ objection is founded simply upon the allegation that the Applicant has not been in possession of that land for the requisite period and indeed that he is not now in possession of it. Underlying that objection is the Respondents’ belief that they are, or at least Mrs Wilson is, the owner of the paper title to both West Mill Lane, which gives access to the Respondents’ farm, (“the Lane”) and the Yellow Land. Unfortunately for them, it seems they are not presently able to prove their title.
- 1.4. The Yellow Land is a narrow triangular sliver of land approximately 15 metres in length and 3 metres in depth at its widest point. It forms part (approximately half) of what might loosely be called the ‘verge’ on the opposite side of the Lane from the cottages numbered 1 & 2 West Mill Lane.
- 1.5. I viewed the site in the afternoon of 22<sup>nd</sup> June 2016 in company with the parties and the conclusions which I set out below are informed by my observations on that occasion.

## **2. The Applicant’s title**

- 2.1. It is helpful to a proper understanding of the Applicant’s claim to consider first the devolution of the title to No’s 1 and 2 West Mill Lane.
- 2.2. In 1976 Mr and Mrs Brockman bought No. 1 West Mill Lane from Mr and Mrs Anscombe. On 20<sup>th</sup> January 1984 Mrs Eileen Brockman, as executrix of the will of Walter Percival Anscombe “late of No. 2 West Mill Lane”, assented to the vesting of 2 West Mill Lane in herself.
- 2.3. The title to both properties at that time was unregistered.
- 2.4. For reasons which are unclear, on 7<sup>th</sup> October 2002 the Applicant purchased the titles to both 1 & 2 West Mill Lane from Mr Ronald Brockman (as opposed to either him and his wife or (in view of the terms of the assent) just Mrs Brockman).
- 2.5. Rather than registering the whole of the land which he acquired as a single title, the Applicant chose, in order he told me to facilitate his intention to re-develop and sell on part of the land, to register several separate titles. The first for this purpose, DN503277, comprises No. 2 West Mill Lane and a broadly triangular shaped parcel to the rear. The second, DN471475, comprises the balance of the field to the rear of the cottages and importantly for this purpose the rectangular portion of the verge opposite No. 1 West Mill Lane which abuts the Yellow Land.



- 2.6. It is apparent from the above description: a) that the Yellow Land was not included within the land conveyed to the Applicant; b) that the adjoining part of the verge opposite No. 1 was; c) that the title to the land conveyed to the Applicant was registered upon his purchase; and d) that the title to the Yellow Land has remained unregistered.
- 2.7. It would appear to follow from this analysis either that Mr Brockman did not believe he had any title to the Yellow Land; or, if he did believe that he had some right or interest in the Yellow Land, that he did not intend to convey it to the Applicant. Although, given the nature of the Yellow Land, the latter hypothesis is difficult to credit since there is no apparent reason why he would have wished to retain it in the absence of the balance of the land, there is nothing in the conveyance to suggest that the Yellow Land was intended to be included within the land conveyed.
- 2.8. At the outset of the hearing the Applicant presented to me a copy of the transfer of the title to the land which was subsequently to be registered under title number DN471475 the plan to which appeared to have a red line around the Yellow Land. When I asked him whether that plan was the plan to the conveyance to him from Mr Brockman he told me that it was. This appeared to me to be strange since it would have suggested, contrary to the position which I have set out above, that the Yellow Land was conveyed to the Applicant by Mr Brockman; in which case there would have been no need for the Applicant to found his case on adverse possession as he had consistently done. It also seemed strange that the plan should not have been drawn with a red line around the whole of the verge if it had been the intention of Mr Brockman to convey the whole of the verge rather than just the rectangular portion of it (as registered) around which a red line plainly had been drawn. The explanation for these peculiarities was plain from the alternative copy of the relevant conveyance and plan which the Respondents had obtained from the Land Registry on which there was no red edging around the Yellow Land.
- 2.9. On this basis the Applicant agreed that his application should proceed solely on the basis that he was entitled to be registered as the proprietor of the Yellow Land, if at all, on the basis of his adverse possession of it.

### **3. The test to be applied**

- 3.1. The title to the Yellow Land is unregistered, so it is for the Applicant to show that either he or he and his predecessors in title have been in adverse possession of it for a continuous period of 12 years prior to making his application, see ss. 15 & 17 Limitation Act 1980.
- 3.2. The test which I have to apply in determining whether the Applicant has been in adverse possession of the land is set out in the decision of the House of Lords in *J.A. Pye (Oxford) Limited v Graham* [2003] 1 AC 419 approving the decision of Slade J in *Powell v MacFarlane* (1977) 38 P & CR 452.



- 3.3. In order for the owner of the paper title to land to be dispossessed by an adverse possessor the adverse possessor must be in factual possession with the intention of excluding all others, including the true owner, so long as the processes of the law allow.
- 3.4. As to 'factual possession', Lord Browne-Wilkinson approved this statement of Slade J:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.”

The necessary intention to possess, he said, again approving the formulation of Slade J, was:

“... an “intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.”

- 3.5. In *Pye* Lord Hutton commented upon the nature of the proof of intention required in the following terms:

“77 The conclusion to be drawn from such acts by an occupier is recognised by Slade J in *Powell v McFarlane*, at p 472:

"If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite *animus possidendi* and consequently has not having dispossessed the owner."

And, at p 476:



"In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite *animus possidendi* in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner."

In another passage of his judgment at pp 471-472 Slade J explains what is meant by "an intention on his part to ... exclude the true owner":

"What is really meant, in my judgment, is that the *animus possidendi* involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

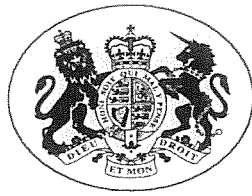
78 It is clear that the fact that the Grahams would have given up occupation to the plaintiffs or would have made payment for their occupation to the plaintiffs, if requested to do so, does not prevent the existence of the intention to possess: see the judgment of the Privy Council delivered by Lord Diplock in *Ocean Estates Ltd v Pinder* [1969] 2 AC 19, 24.

79 Therefore I consider that Clarke LJ was right to state in *Lambeth London Borough Council v Blackburn* (2001) 82 P & CR 494, 504:

"I would not for my part think it appropriate to strain to hold that a trespasser who had established factual possession of the property for the necessary 12 years did not have the *animus possidendi* identified in the cases. I express that view for two reasons. The first is that the requirement that there be a sufficient manifestation of the intention provides protection for landowners and the second is that once it is held that the trespasser has factual possession it will very often be the case that he can establish the manifested intention. Indeed it is difficult to find a case in which there has been a clear finding of factual possession in which the claim to adverse possession has failed for lack of intention."

3.6. Nevertheless, as Peter Gibson LJ said in *Taylor v Lawrence* [2001] EWCA Civ 119 @ para 12:

"The question whether the person claiming adverse possession has the requisite intention to possess depends on whether that person intends to possess the land to the exclusion of the world at large, including the owner with the paper title: see *Buckinghamshire County Council v Moran* [1990] Ch



623, [1989] 2 All ER 225 at page 643 of the former report per Slade LJ. The proof of that intention will rarely, if ever, be established by direct evidence. The court would regard direct evidence of a subjective intention with suspicion as being self-serving. *Rather the intention has to be ascertained from the overt actions of the person claiming adverse possession. ... The requisite intention is ordinarily established as a matter of inference.*" (My emphasis)

Thus, it is possible that the inferences to be drawn from apparently unequivocal acts of possession may be contradicted by other overt acts of the alleged adverse possessor.

- 3.7. Whether the use of land for the purposes of storage is capable of constituting the degree of physical control of land necessary to demonstrate factual possession of it is a question of fact and degree. Whether it is possible to infer from such use alone the necessary intention to possess is more doubtful because, it is said, such use is equally consistent with an easement of storage akin to a right to park and that it therefore falls short of the continuous exclusive possession necessary for the purposes of a claim to adverse possession. So, for instance in *Treloar v Nute* [1976] 1 WLR 1295 @ 1300 it was said that the use of the disputed land for the purposes of storage was a matter of very little weight. Frequently, of course, the use of the land for the purposes of storage is coupled with other acts from which it is possible to infer the necessary intention to possess but the use of disputed land for the purposes of storage alone is unlikely to be sufficient to justify the inference of an intention possess, particularly if that use is intermittent, insubstantial or infrequent.

#### 4. The facts of this case

- 4.1. It was the evidence of Mrs Brockman, as set out in her statutory declaration dated 24<sup>th</sup> October 2014, that it was her husband who created a large retaining wall around the edge of the Yellow Land and that, together with her husband, she occupied it exclusively, without dispute and without any payment being made to any third party.
- 4.2. She also said that it was her husband's intention to convey the Yellow Land to the Applicant.
- 4.3. Mrs Brockman is still alive and lives in South Molton but she was not called to give evidence. I was told that that was because she is very elderly. Save and insofar as she claimed that she and her husband were in adverse possession of the Yellow Land her evidence was not substantially disputed. If nothing else, it is quite clear from the photographs produced by the Applicant that there was a substantial concrete retaining wall surrounding the Yellow Land until the Applicant removed it in 2013. It was not suggested by the Respondents that they or any person other than Mr Brockman put it there. However, aside from the construction of the retaining wall, Mrs Brockman's evidence contained no details at all of the acts which she claimed constituted or evidenced hers and her



husband's adverse possession of the Yellow Land. Nor was it clear when the concrete retaining wall was laid.

- 4.4. I have set out the devolution of the Applicant's title above and the deficiencies in the evidence about Mr Brockman's title to the land which he sold to the Applicant. I think I am bound to assume, in the absence of clear evidence to the contrary, in view of the fact that the Applicant was registered as the proprietor of both the titles here in question, that Mr Brockman's title was good to the extent of the land shown on the title plans; but no further.
- 4.5. It may be that Mrs Brockman's evidence that it was her husband's subjective intention to convey the Yellow Land to the Applicant is correct but that intention is in no way manifest from the terms of the conveyance, quite the contrary in fact. It seems very clear that, for whatever reason, the Yellow Land was deliberately not included within the land conveyed. It was the Applicant's evidence that he noticed the deficiency in the terms of the conveyance but was advised by his solicitor to deal with it on another occasion because he was under pressure to complete the transaction. It would therefore seem to be difficult, if not impossible, for the Applicant to argue that the conveyance should be rectified on the grounds of mutual mistake so as to include any title to the Yellow Land which Mr Brockman may have had. And, in any event, that is not a case which he advanced.
- 4.6. The question, therefore, is whether the Applicant did any acts sufficient to dispossess the owner of the paper title to the Yellow Land, whoever he or she may be, and, if so, during what period he was in possession of the land.
- 4.7. The Applicant's evidence in this regard was that since 2002 he had been storing logs on the land, cutting the grass, painting the concrete wall and repairing it and keeping the drains free. The Respondents dispute these claims. They say that they passed the land on a daily basis in the course of going to and fro from their property and that whilst there were often items stored on the land admittedly within the Applicant's title opposite No. 1 West Mill Lane only very occasionally was anything stored on the Yellow Land and then only for short periods. They also say, and were supported unequivocally in this by Mr Keith Wenborn (the owner of No. 1 West Mill Lane Cottages from 2008 until recently) that the Applicant never cut the grass cleared the drains or otherwise cared for the land at least until 2013.
- 4.8. Mr Wenborn was a careful, confident witness to whom I am indebted for his clear account of events during the period of which he was able to speak. He told me that he had regularly cut the grass on the Yellow Land and cleared the drain which runs along the side of the Lane opposite the cottages whilst he lived in No. 1 West Mill Lane. He said that he did so with the permission of Mr Huntley but that the Applicant told him that although he owned the land opposite No. 1 he did not own the Yellow Land and that it was in this sense that the Applicant permitted him to do these things on the Yellow Land. That is to say, in the sense that the Applicant had no right to stop him. It was his evidence that Mr Huntley never did any of these things himself.



- 4.9. Although the Applicant was able to point to some photographs taken in 2010 of a pile of logs on the Yellow Land, his evidence in relation to his alleged acts of possession prior to that point was extremely sketchy. In view of the evident hostility created between the parties in relation to Mr Huntley's application to put an electricity cable under the Lane in 2006 and the Respondents' evident sense of grievance that they are unable to prove their title to the Lane, I consider it unlikely that they would have allowed any significant activity by the Applicant of a character which might suggested a claim by him to own the Yellow Land to go either unnoticed or unchallenged.
- 4.10. This impression is confirmed by what happened when, in 2013, the Applicant paid to have the concrete retaining wall removed and laid stone on the area which he excavated into the bank. This was an unequivocal act consistent only with the Applicant intending to dispossess the owner of the paper title to the Yellow Land. As the Applicant was in the course of doing this work the First Respondent challenged him and said that the he shouldn't be doing what he was doing. The Applicant responded that the First Respondent didn't own the land but he did not assert then that he did own it.
- 4.11. The First Respondent then took legal advice which was that he should fence the land off which he duly did in 2014. Since then it is accepted by the Applicant that he has not been in possession of the Yellow Land. He says that he was warned by the Police not to remove the fence because he might be committing a criminal offence.

## 5. Conclusions

- 5.1. My conclusions are therefore as follows:
- 5.1.1. It is possible that Mr and Mrs Brockman, by virtue of their construction of the retaining wall and doing whatever other acts of possession they may have done on the land, were in factual possession of the Yellow Land for the requisite period but in the absence of any evidence to show when the retaining wall was constructed it is not possible to conclude that that was the case on the balance of probabilities. Whether they had the necessary intention to possess the land is also doubtful in view of their failure to include it or any reference to it the conveyances of the other land within their titles to the Applicant.
- 5.1.2. For whatever reason, the rights of Mr Brockman in the Yellow Land, if any, did not therefore pass to the Applicant from Mr Brockman.
- 5.1.3. The Applicant must therefore show that he, alone, has been in adverse possession of the Yellow Land for the requisite period. That is to say, 12 years prior to the date of his application for first registration on 10<sup>th</sup> December 2014. In practice that means that the Applicant must show that



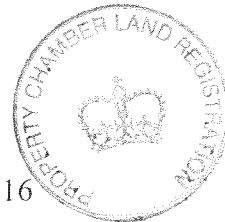


he went in to possession of the Yellow Land moreorless immediately following the completion of his purchase on 2<sup>nd</sup> October 2002.

- 5.1.4. I find that although the Applicant may occasionally have stored items on the Yellow Land prior to 2010, he did not do so with any regularity or in such a way as to manifest to the world an unequivocal intention to possess the land. I also find that he did not do or authorise (in the sense necessary) to be do any of the other alleged acts of possession upon which he relies in relation to the period prior to 2013. I further find that even if he had, they would not have been acts which exhibited the requisite exclusive physical control of the land or acts from which the necessary intention to possess the land could be inferred.
- 5.1.5. I finally find that from 2013 onwards the Applicant did seek to possess the Yellow Land but that his possession of it was interrupted when the Respondents fenced it off in 2014.
- 5.2. For all these reasons, I am bound to conclude that the Applicant cannot establish that he has acquired title to the Yellow Land by adverse possession and I shall accordingly direct the Chief Land Registrar to cancel his application dated 10<sup>th</sup> December 2014 insofar as it relates to that land.
- 5.3. So far as the question of costs is concerned, I am minded to order the Applicant to pay the Respondents' costs of this application from the point at which it was referred to the First-Tier Tribunal. The Respondents have succeeded in maintaining their objection but the Tribunal has no jurisdiction to make an order in respect of costs incurred in prosecuting the application whilst it was being dealt with by the Land Registry. Nevertheless, since I have heard no representations in this regard and because it is possible that the Applicant may have made offers to the Respondents which could affect my exercise of my discretion, I shall direct that the Applicant may make such representations as he sees fit in respect of costs and that, if he does so, the Respondents should have the opportunity to respond to those submissions in due course before I make a final decision.

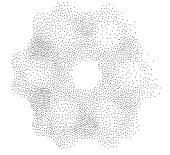
*Max Thorowgood*

Dated this Monday 5 September 2016

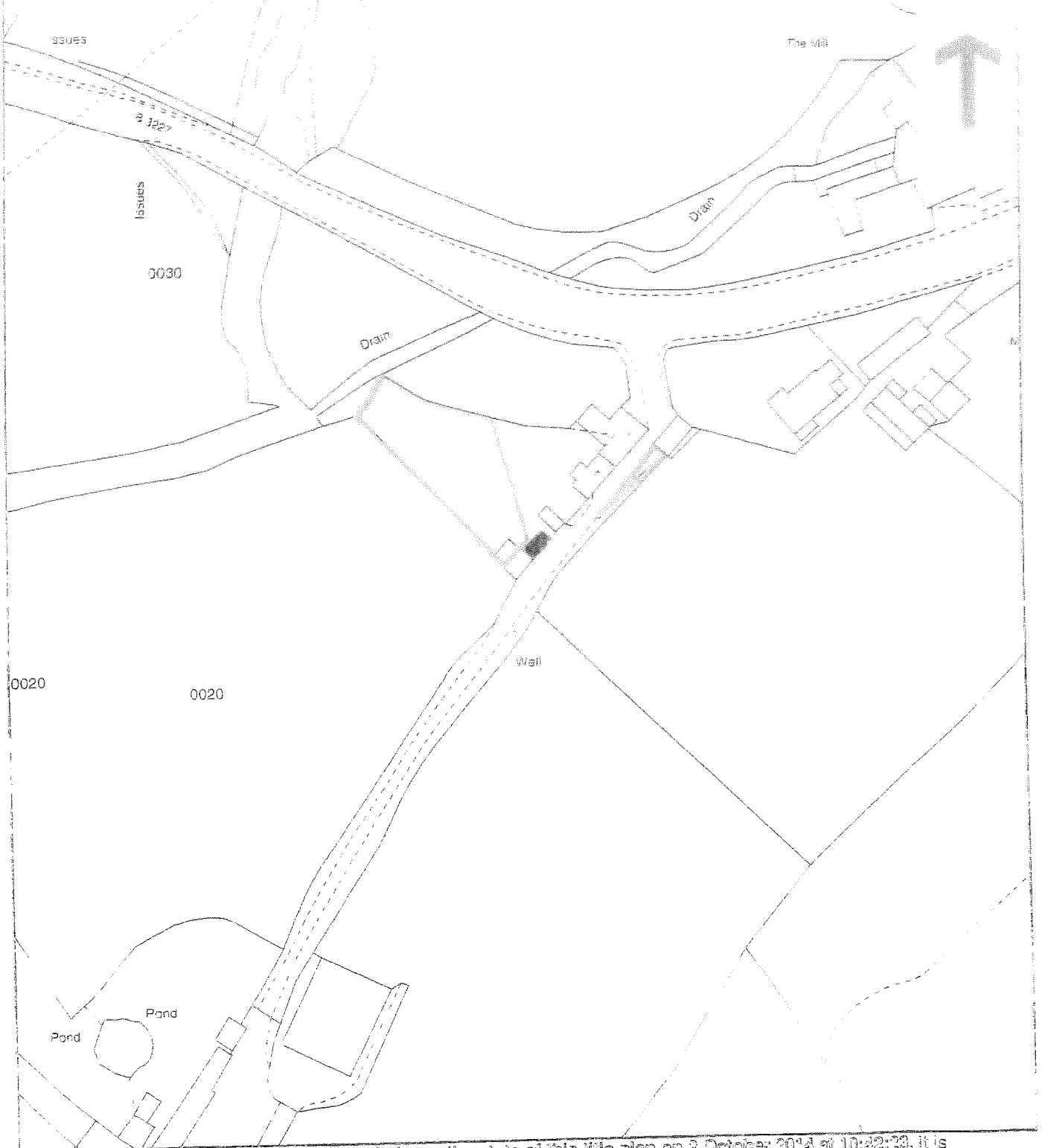


# Land Registry

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Administrative area Devon North Devon

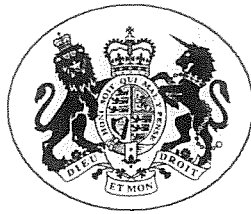


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REF/2015/0670



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

**Case Number:** REF/2015/0670  
**Title Number:** DN652486  
**Property:** Land At West Mill Cottages, Bish Mill, South Molton, EX36  
3QF  
**Applicant:** Alan Brian Huntley  
**Respondent:** Stephen Scot Wilson and Dawn Wilson

**ORDER**

**UPON** hearing the Applicant and the Respondents both in person

**IT IS ORDERED THAT:**

1. The Chief Land Registrar cancel the Applicant's application dated 10<sup>th</sup> December 2014 insofar as it relates to the Yellow Land.
2. The Applicant shall file and serve any submissions which he wishes to make in respect of the order which the Tribunal should make concerning the costs of this reference by 5 pm on 3 October 2016.
3. The Respondents may file and serve such submissions as they wish in answer to any submissions made by the Applicant in respect of the costs of this reference by 5 pm on 24 October 2016.
4. The parties' time for applying for permission to appeal against this decision is extended to 28 days after the date of the Tribunal's decision concerning their liability to pay (as opposed to the amount of) the costs of this reference.

Dated this Monday 5 September 2016

*Max Thorowgood*

BY ORDER OF THE TRIBUNAL

