

**IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION**

Royal Courts of Justice
Strand
London WC2A 2LL
6 March 2008

B e f o r e :

MR JUSTICE LEWISON

MR STEPHEN WELLS

**Claimant/
Respondent**

- and -

PILLING PARISH COUNCIL

**Defendant/
Appellant**

**Mr M Hutchings (instructed by Richard Buxton Solicitors) appeared on behalf of the Claimant
Mr W Goldstein (instructed by Thurnhills Solicitors) appeared on behalf of the Defendant**

MR JUSTICE LEWISON

1. On 9 December 2004, Her Majesty's Land Registrar registered Mr Stephen Wells as the first registered proprietor of land at Pilling and Presill Sands in Morecambe Bay. Although the land was described as part of the foreshore, it might be above the high water mark. The registration was given a title number, LAN1541, and Mr Wells was registered with possessory title. The land is designated as a site of special scientific interest and Mr Wells manages it under the supervision of English Nature.
2. On 19 April 2005, Pilling Parish Council wrote to the Land Registrar stating they wished to seek rectification or closure of part of the title on the basis that Mr Wells had not established the title by adverse possession which he claimed. The dispute was referred to the adjudicator, who ordered a preliminary issue to be determined. The preliminary issue was in the following terms:

“Whether the referred application should be cancelled because the applicant:

(a) does not assert that it has an estate, right or interest adverse to, or in derogation of, the respondent's title subsisting at the time of registration of the respondent's title or then capable of arising; nor

(b) can it show that the original application dated 27th April 2005 was made in exercise of a statutory power or function.”

3. The adjudicator reached his decision on 14 March 2007. The way the case was argued before him turned on the proposition that since there was no express textual restriction in the Act limiting the category of person who could apply for the alteration of the register, no such restriction was to be implied. Consequently, it was not necessary for the Pilling Parish Council to establish that it was asserting a right in land adverse to Mr Wells. The adjudicator accepted that argument and refused to cancel the application for alteration of the register.
4. On 24 April 2007, the adjudicator refused permission to appeal but permission to appeal was subsequently granted by Evans-Lombe J. The way that the appeal has been argued before me has taken a very different shape from the way it was argued before the adjudicator. Essentially, the issue before me is whether the application made by the Parish Council to alter the register is a matter of private law or a matter of public law. It is common ground that if the application to alter the register is properly categorised as private law proceedings, then (a) the common law requires the applicant to have standing; (b) the adjudicator has power under Rule 24 of The Adjudicator to Her Majesty's Land Registry Practice and Procedure Rules 2003 to strike out an application made by someone who does not have standing; (c) that the adjudicator should exercise that power against someone who has no standing; and (d) that on the facts of this case the Council has no standing at common law. It is also accepted that the statutory powers conferred on the Council to bring proceedings under Section 222 of the Local Government Act 1972 do not confer standing on the Council in the relevant sense.
5. It is also common ground that the adjudicator's decision to allow the Council to proceed with its application does not preclude Mr Wells from arguing by way of defence that although the Council has the theoretical power to make an application for the alteration of the register, the actual decision in the present case is invalid on public law grounds.
6. It is also common ground that if the application is a matter of public law, then the Council has a sufficient interest to make the application but without prejudice to Mr Wells' argument that the actual decision in the present case is invalid on public law grounds.
7. At common law, questions about title are determined according to the principle of relativity of title, which is the bedrock of English land law. If A and B are in dispute about ownership of a piece of land, the only question for the court is which of the two of them has the better title to the land. It is not a defence, for example, to an action for possession by A against B that, in fact, C is the true owner of the land.
8. However, the system differs in the case of registered land. The changes made by the Land Registration Act 2002 have seen a move away from what was called registration of title to what is now sometimes called title by registration. Section 3 of the Act deals with the circumstances in which a person may apply to be registered as the proprietor of what had hitherto been an unregistered legal estate. Section 3(2) provides as follows:

“Subject to the following provisions, a person may apply to the registrar to be registered as the proprietor of an unregistered legal estate to which this section applies if:

 - (a) the estate is vested in him, or,
 - (b) he is entitled to require the estate to be vested in him.”
9. Section 11 deals with the effect of registration of a person as the proprietor of a freehold estate, which was what happened in the present case. Section 11(3) provides:

“The estate is vested in the proprietor together with all interests subsisting for the benefit of the estate.”

10. Section 11(7) deals with the special case of possessory title, which was the category of title with which Mr Wells was registered. It provides as follows:

“Registration with possessory title has the same effect as registration with absolute title, except that it does not affect the enforcement of any estate, right or interest adverse to, or in derogation of, the proprietor’s titles subsisting at the time of registration or then capable of arising.”

11. That was the procedure which Mr Wells followed in order to obtain his registration of the land in question as proprietor with possessory title. The Council then applied to alter the register. They claim Mr Wells did not satisfy the factual requirements which were necessary to enable him to be registered as proprietor with possessory title.
12. The question of alteration of the register is dealt with by Schedule 4 to the 2002 Act. The relevant paragraph is paragraph 5 of the Schedule, which is headed “Alteration otherwise than pursuant to a court order”. It provides as follows:

“The registrar may alter the register for the purpose of:

- (a) correcting a mistake,
- (b) bringing the register up to date,
- (c) giving effect to any estate, right or interest excepted from the effect of registration, or
- (d) removing a superfluous entry.”

There are then further restrictions on exercising that power in the case of an alteration adverse to a proprietor in possession of the land.

13. When the Council made that application, Mr Wells lodged an objection to the application under Section 73 of the Act. Section 73(1) provides that:

“Subject to subsections (2) and (3), anyone may object to an application to the registrar.”

Mr Goldstein, who appears on behalf of the Parish Council, submits that this provision would have been applicable had the Council known of Mr Wells’ original application for registration of himself as a proprietor of the land in question. There would have been no need for the Council to have shown any form of standing in order to make that objection under Section 73. Therefore, it would be anomalous if standing had to be shown in order to apply for the alteration of the register in order to correct a mistake.

14. There is linguistic force in that point. But in my judgment it does not go to what is now the real issue in the case, namely whether the application is public or private. Mr Wells’ original application to have himself registered as proprietor of a parcel of land raises questions of private law only. The registration of a person as proprietor of land is concerned with conferring upon him private law rights. The fact that those private law rights are recorded in a register which is open to the public does not appear to me to alter the fundamental nature of those rights.
15. I was shown a decision of the Inner House of the Court of Session, which is equivalent to our own Court of Appeal. The case is that of *Wilson & Ors v Keeper of the Registers of Scotland* [1999] SCLR 872. The Inner House, in an opinion delivered by Lord McCluskey, held that in order to apply for the alteration of the register kept under the Land Registration (Scotland) Act 1979, a person had to show a private interest and that the application for alteration of the register was not a vindication of a public right even though, on the facts of that case, it was right to use the foreshore that was in issue. Lord McCluskey said at page 884:

“In our opinion, there is no answer to this fundamental preliminary point. The scheme of the Act is clear from the full discussion in *Short’s Trustee*, not only in the House of Lords but also in the Court of Session ... and it need not be discussed here. There is nothing in the present case to suggest that we are here concerned with a vindication of public right of the kind considered by Lord Clyde in *Scottish Old People’s Welfare Council*, Petitioners [[1987] SLT 179]. This is not a true *actio popularis* in the sense discussed by Lord Clyde at the passage referred to. The fact, if it be a fact, that the appellants have been interdicted from encroaching upon the subjects or part of the subjects included in the two land certificates in question does not appear to us to give them any title to seek a rectification under the provisions of the 1979 Act. We consider that it is clear that those in unchallenged possession of the subjects (even if not proprietors) have a right to exclude others from encroaching upon them. A proprietor in possession never needed to produce a complete feudal title in order to obtain interdict against encroachments upon his property ... The appellants have never claimed that they had any title whatsoever to the subjects; they claim no competing title. As the appellants themselves acknowledge, persons who were total strangers to Greenock could not have a title to seek rectification under section 9.”

16. This case, which can only be persuasive authority, was shown to the adjudicator. However, the adjudicator said, though without going into details, that the law of land registration in Scotland was different to that of England and Wales. Having regard to the effect of registration under Section 3 of the Land Registration (Scotland) Act 1979 and the twin provisions for rectification of the register under Section 9 of that Act and the question of indemnity under Section 12 of that Act, it appears to me, in respectful disagreement with the adjudicator, that the scheme of the Scottish Act is at least sufficiently similar for the decision in *Wilson & Ors v Keeper of the Registers of Scotland* to be good, persuasive authority.
17. Mr Hutchings, who appears on behalf of Mr Wells, submits that the ownership of land confers private law rights and that the effect of registration under the Land Registration Act 2002 is to record, confer and delimit those rights. He also submits if one looks at the categories of circumstance in which the register may be altered, it is plain, as indeed Mr Goldstein concedes, that category (c) relates to private law rights. Mr Hutchings also submits that if one tries to think of examples that fall within the other subparagraphs of paragraph 5, they will all, on examination, be found to relate to private rights.
18. In my judgment, the effect of the closure of the title would be to remove from Mr Wells a freehold estate which is currently vested in him by virtue of the Land Registration Act 2002. That is undoubtedly a question of private rights. In my judgment, the application in the present case raises a question of private right only. I do not consider the fact that those private rights are recorded in a public register changes the fundamental nature of those rights. Therefore, it follows in accordance with the common ground I outlined towards the beginning of this judgment that the appeal must be allowed and the adjudicator ought to exercise his power under Rule 24 to remove the Pilling Parish Council as a party from the objection. I will allow the appeal and cancel the application.