



THE COURT OF APPEAL

Neutral Citation Number: [2019] IECA 89

Record No. 2017 350

**Peart J.
McGovern J.
Costello J.**

BETWEEN/

LAGAN BITUMEN LIMITED

PLAINTIFF/RESPONDENT

- AND -

TULLAGOWER QUARRIES LIMITED

DEFENDANT/APPELLANT

JUDGMENT of Ms. Justice Costello delivered on the 28th day of March, 2019

1. This is an appeal against the judgment of O'Connor J. in the High Court on the 2nd May 2017 in relation to the extent and the boundaries of two folios of land in County Clare, Folio 19816F and Folio 52291F. O'Connor J. ordered that the plaintiff (herein after the respondent) had a right of way appurtenant to the lands comprised in Folio 52291F of the Register of County Clare in certain terms and ordered, pursuant to s.69 of the Registration of Title Act 1964, that the right of way be marked as a burden on the lands comprised in Folio 19816F. He dismissed the defendant's counterclaim to rectify the plan attached to Folio 19816F so as to reduce the extent of the land comprised in the folio and to vary the boundaries as they existed on the plan. He ordered that the *lis pendens* registered by the defendant on foot of its counterclaim be vacated, with a stay on that aspect of his order in the event of an appeal.

2. The defendant appealed against the entire judgment. At the hearing, the defendant confined its appeal to the question whether the plan attached to Folio 19816F ought to be rectified pursuant to s.32 of the Registration of Title Act 1964 on the basis that an error in registration had occurred in the Property Registration Authority ("PRA").

Background

The Sale

3. Jackie and Paddy Whelan are brothers. Jackie Whelan is a director and the principal shareholder of Tullagower Quarries Ltd. ("Tullagower"), the appellant. Paddy Whelan was at all material times a director and principal shareholder of Whelan's Limestone Quarries Ltd. ("WLQL"). As is not unusual, effectively, the brothers controlled the affairs of their respective companies. Tullagower was the registered owner of the lands comprised in Folio 19816F. It operated a waste cycling and quarry business on the lands. Part of the lands comprised in Folio 19816F consisted of a stone quarry. WLQL was engaged in the business of quarrying and was anxious to acquire part or all of the quarry on Tullagower's lands.

4. Jackie and Paddy negotiated an agreement on behalf of Tullagower and WLQL. Tullagower agreed to sell part of the lands comprised in Folio 19816F to WLQL, consisting of two separate land-locked parcels of land. There was to be a right of way giving access to the eastern parcel and a second right of way linking the eastern parcel with the western parcel.

5. WLQL borrowed the money to purchase part of the land of Folio 19816F from Anglo Irish Bank Corporation plc. ("Anglo Irish Bank") and agreed to give Anglo Irish Bank a first charge over the purchased land as security for the loan.

6. Tullagower and WLQL entered into a contract for the sale of the two parcels of land on the 23rd September 2003. The particulars were described as

"ALL THAT AND THOSE that part of the lands of the townland of Tullagower Barony of Moyarta containing 11.185 acres and being part of the lands comprised in Folio 19816F of the Freehold Register of County... [Sic] as more particularly identified by a blue line on the map attached hereto TOGETHER with a right of way for the Purchaser its successors in title and assigns, its workmen, agents and invitees with or without vehicles plant and equipment at all time and for all purposes in connection with the Purchaser's use and enjoyment of the lands hereby sold for access to and egress from the lands hereby sold over that part of the access way as shown hatched black on the said map and marked with the letters 'A' 'B' and 'C' 'D'."

No copy of the contract with the map attached was produced.

7. Mr Dan Liddy of WLQL prepared a map of the lands to be sold and purchased dated the 21st November 2003. This showed the two parcels to be transferred outlined in a thick blue line and two rights of way providing access to the eastern parcel between points "A" and "B" and linking the eastern parcel to the western parcel between points "C" and "D", outlined in a thick orange line. The map was a rural place map on a scale of 1:2500. The area to be transferred was 11.185 acres.

8. The lands in sale were transferred by a deed of transfer dated the 24th February 2004. The lands transferred were set out in the schedule as follows:-

"ALL THAT AND THOSE that part of the lands in the Townland of Tullagower, Barony of Moyarta in the County of Clare being that part of the property comprised in Folio 19816F of the Register of Freeholders County of Clare outlined in blue on the map attached hereto and containing an area of 11.185 acres or thereabouts statute measure TOGETHER with a right of way for the Transferee its successors in title administrators and assigns, its workmen agents and invitees with or without vehicles plant and equipment at all times and for all purposes in connection with the Transferee's use and enjoyment of the lands hereby transferred for access to and egress from the lands hereby transferred over that part of the access way as shown outlined in orange on the said map attached hereto and marked with the letters 'A', 'B', 'C' and 'D'."

Incorrectly, the deed provided that the transferee assented to the registration of the right of way as a burden on its Folio and the transferor applied to the Registrar of Titles for the registration of the right as an appurtenant right on Folio 19816F, though nothing turns upon this.

9. Despite the fact that the trial judge directed that the PRA's file be produced in court and the fact that the defendant was represented by the solicitor who acted in the sale, no copy of the deed of transfer with the map attached was ever adduced in evidence.

10. WLQL duly granted Anglo Irish Bank a first legal charge over the lands it had purchased from Tullagower ("the purchased lands").

Registration of the purchased lands

11. In April 2004 the solicitors for Anglo Irish Bank ("the chargeholder"), on behalf of WLQL ("the purchaser"), applied for first registration of a new folio of the purchased land to be carved out of the parent Folio 19816F. Ultimately, the new folio created became Folio 52291F. The application for first registration included a map outlining the purchased lands and the right of way burdening Folio 19816F, the parent folio. On the 3rd June 2004, the Land Registry returned the map and rejected the registration on the basis that the outlining of the property transferred and the right of way was too thick and so did not comply with the Land Registry Rules.

12. On the 8th June 2004, solicitors for Anglo Irish Bank wrote to the solicitors for WLQL requesting them to furnish an amended map which complied with the Land Registry Rules. Thereafter the matter was left in abeyance for a number of years. Tullagower and WLQL carried on their respective separate businesses on the lands without any disputes concerning their respective rights and obligations despite the fact that, though the lands were in separate ownership, WLQL's title had not been registered in the Land Registry. Specifically, neither company took care to ensure that its business was conducted solely on its lands and that the business of the other company did not encroach on its lands.

13. On the 1st April 2008 the Land Registry raised a query in relation to the application for first registration of the purchased lands. On the 5th November 2008 the solicitors for Anglo Irish Bank wrote again to the solicitors for WLQL, taking up the matter and enclosing a copy of the deed of transfer with a copy of the sub-division map which had been attached to the deed of transfer. As the original sub-division map had been returned to the offices of the solicitors for WLQL on the 8th June 2004, the solicitors for Anglo Irish Bank, who were processing the application for first registration, did not have the original map. The solicitors for WLQL did not reply to this letter and on the 2nd March 2009 the PRA wrote to the solicitors for Anglo Irish Bank stating that it would deem that the dealing had been abandoned if its query of the 1st April 2008 was not dealt with within 21 days. The solicitors for Anglo Irish Bank followed up their query with the solicitors for WLQL on the 21st April 2009 and the 6th May 2009 and the PRA extended the time to deal with the outstanding query.

14. On the 26th May 2009 solicitors for WLQL sent the solicitors for Anglo Irish Bank a map described as an amended original map dated the 25th May 2009. This map was prepared by Mr TJ O'Connell of WLQL, apparently without reference to the solicitors for Tullagower. It was also prepared on a rural PLACE map and stated the area transferred to be 11.185 acres. In fact, the area plotted on the map was slightly different in outline and area to the outline and area plotted on the map prepared by Mr Liddy in 2003.

15. It would appear that this map was submitted by the solicitors for Anglo Irish Bank to the PRA, though this was not definitively established in evidence. There were some unidentified queries outstanding in the PRA and on the 21st October 2010 the Land Registry wrote to the solicitors for Anglo Irish Bank, again threatening to treat the application as abandoned if the queries were not dealt with.

16. On the 25th March 2011 the solicitors for IBRC, in succession to Anglo Irish Bank, wrote to the PRA apologising for the delay in reverting, enclosing a sub-division map and requesting that the PRA proceed with registration. It was not established what map was enclosed with that letter.

17. On the 27th July 2011 the PRA replied, stating that the documents presented with the application could not be registered until two identified defects or omissions had been remedied. The author referred to the map lodged with the above application and asked

"should the transfer proceed as per this map, then;

(i) The portion shaded yellow would remain on the parent folio

(ii) The portion shaded green would be outside stated folio lands

Should the North and Western boundary (shown blue) align with the extents of the folio boundary, shown red?"

18. This letter was discovered on the PRA file which was produced in court at the direction of the trial judge, but there was no map attached to the letter on the file. However, elsewhere in the file, there was a map with the dealing number applicable to this dealing, D2004CR003902Y, dated the 27th July 2011 and which was shaded yellow with a portion marked in green outside the folio lands. It was argued by counsel for Tullagower on the appeal that this map was the map enclosed by the PRA in its letter of the 27th July 2011.

19. There was no reply received to that letter so the PRA followed up with a letter on the 6th October 2011 stating that, if a reply was not received within 21 days, the dealing would be treated as abandoned.

20. On the 12th October 2011 the solicitors for IBRC wrote to the PRA asking

"can you please proceed with the registration based on the map submitted with this Dealing".

This obviously did not deal with the outstanding queries so PRA wrote on the 7th November 2011 pointing out that the documents presented in connection with the application could not be registered. The letter continued:-

"further to previous correspondence; please confirm, if such be the case, that the subject of the transfer is the portions outlined in blue on the map enclosed. Please return the map so that your client's application can be completed. Feel free to retain a copy of the map for your records."

There is a map headed "Map Query" dated the 7th November 2011 which outlines the two parcels to be registered in the new folio and marks a right of way in yellow giving access to the first parcel and joining the eastern and western parcels. Counsel for Tullagower argued that this map was enclosed by the PRA in its letter of the same date to the solicitors for IBRC and that the map originated in the PRA. There was no evidence before the High Court as to the origin of this map and the trial judge made no finding of fact as to the origin of the map or who was responsible for the creation of the map.

21. On the 8th November 2011 solicitors for IBRC replied to the PRA thanking them for the letter of the 7th November 2011 and confirming:-

"it is in order for you to proceed with the registration of the Transfer and confirm that the portion to be transferred is that outlined in blue on the attached map".

The map attached is the map dated the 7th November 2011.

22. It was not until approximately February 2012 that a new folio was finally opened in the PRA in respect of the purchased lands, Folio 52291F. The primary issue in this appeal is the origin of the boundaries of that folio and whether they are erroneous and ought to be amended. The second issue is whether there is a right of way appurtenant to Folio 52291F over the parent folio, Folio 19816F and, if so, the line of that right of way.

Developments

23. On the 28th January 2011, prior to the registration of the purchased lands in Folio 52291F, IBRC, as successor to Anglo Irish Bank, appointed a statutory receiver over certain assets of WLQL, including the purchased lands. A dispute developed between the receiver and Tullagower over the extent of the purchased lands and the right of way over the lands retained by Tullagower. In February 2012, Tullagower obtained a new copy of its Folio 19816F which showed the extent of the retained lands after the purchased lands had been transferred to Folio 52291F. This was the first time that Tullagower saw the detail of the map used to register the new folio. Tullagower said that the easterly parcel carved out of Folio 19816F was greater in area than Tullagower had agreed to sell and, critically, that it alienated lands essential to its business and which it had occupied since 2004 continuously and without interference. It also said that the northern boundary of the westerly parcel was incorrect and gave too much land to WLQL.

24. WLQL went into liquidation and Tullagower's solicitors wrote to Arthur Cox, now solicitors for WLQL (in liquidation), stating that the maps which were lodged in the Land Registry did not properly reflect the area transferred to WLQL from Tullagower's folio. They enclosed a marked up copy of the Dan Liddy map of November 2003 which had been submitted to the Land Registry with the transfer of 2004. The letter stated:-

"we have hatched in green two areas which should have been excluded from the Transfer as it was not the intention of the parties that these areas of land be transferred. The situation is properly reflected on the ground by physical boundaries."

This was not accepted by the solicitors for the liquidator.

25. The receiver and Tullagower remained in dispute as to the extent of the purchased lands and the right of way facilitating the purchased lands over Tullagower's lands in Folio 19816F and ultimately the proceedings were commenced by WLQL (in receivership) on 5th June 2015 against Tullagower.

26. Notwithstanding the unresolved dispute, on 14th December 2012 the receiver of WLQL leased certain lands, including the purchased lands, to Lagan Macadam Ltd. On the 1st April 2016 the receiver transferred to the respondent the lands comprised in Folio 52291F and 51391F of the Register of Freeholders of the County of Clare and on the 11th May 2016 the respondent was registered as full owner of Folio 52291F subject to the *lis pendens* registered by Tullagower on the 22nd September 2015.

The proceedings

27. Tullagower contested the extent of the purchased land and the existence of the right of way burdening its folio and servicing the purchased land. It refused to allow the receiver access to the lands on the basis that the right of way contracted to be sold and transferred by the deed of 2004 had not been registered as a burden on Folio 19816F. The receiver commenced these proceedings against Tullagower seeking a declaration that WLQL (in receivership) was entitled to the right of way referred to in the contract and the deed of transfer and an injunction restraining Tullagower from obstructing and interfering with the receiver's access to and enjoyment of the purchased lands.

28. Tullagower counterclaimed for a declaration that part of the lands hatched in green on a map prepared by Messrs McMahon Hardiman dated the 6th October 2015, which were included in the map attached to Folio 52291F, were the property of Tullagower. The counterclaim sought rectification of the contract of 23rd December 2003 and the deed of transfer of 24th February 2004. Tullagower sought orders pursuant to s.31 or, in the alternative, s.32 of the Registration of Title Act 1964 (as amended) or in equity, directing the PRA to rectify the Land Registry maps attached to Folios 19816F and 52291F in accordance with Tullagower's ownership of the lands hatched green on the McMahon Hardiman map. Tullagower registered a *lis pendens* as I have previously described.

29. Following the sale of the lands comprised in Folio 52291F by the receiver to the respondent, the respondent was named as plaintiff in substitution for WLQL (in receivership) in the proceedings.

30. In replies to particulars, Tullagower denied that the map dated 21st November 2003 prepared by Mr Dan Liddy was attached to the deed of transfer of 2004. If the court found that the Dan Liddy was attached to the deed of transfer, it sought rectification of the map along the lines marked on the McMahon Hardiman map on the basis that the Dan Liddy map did not reflect the intention of the parties.

Decision of the High Court

31. By agreement of the parties, the trial in the High Court was limited to determining the correct position of the boundaries between Folios 52291F and 19816F and was not concerned with the right of way dispute. In his written judgment the trial judge highlighted the absence of maps attached to either the contract or the deed of transfer. No firm of solicitors involved in the transaction in 2003 and 2004 was able to produce a copy of the map of the lands transferred. There was no map on the file of the PRA for the 2004 transfer. The trial judge said that the PRA registered and plotted the lands transferred with the benefit of a map which cannot now be located.

32. The contract and the 2004 transfer stated that the area to be transferred was 11.185 acres. The area of the folio ultimately opened as Folio 52291F contains 12.726 acres. Tullagower submitted that, in fact, Jackie and Paddy Whelan on behalf of Tullagower and WLQL agreed to transfer an area of land which comprised 8.45 acres. The trial judge outlined the evidence led on behalf of Tullagower of Mr Jackie Whelan, Mr Paddy Whelan and Ms Mary Burke of Clare County Council, who gave evidence of Tullagower's dealings with the County Council. At para. 25 the trial judge held that Tullagower had failed to establish that WLQL either in December 2003 or at the time of the execution of the 2004 deed had agreed to take an area of land which was less than that described and particularised in the 2004 deed (11.185 acres). He found as a fact that the parties had not agreed before the 2004 transfer any variation to the contract lands which could displace the terms of the 2004 transfer.

33. He then went on to consider whether or not Tullagower was entitled to relief under s.31 or 32 of the Act of 1964. Section 31(1) provides as follows:-

"The register shall be conclusive evidence of the title of the owner to the land as appearing on the register and of any right, privilege, appurtenance or burden as appearing thereon; and such title shall not, in the absence of actual fraud, be in any way affected in consequence of such owner having notice of any deed, document, or matter relating to the land; but nothing in this Act shall interfere with the jurisdiction of any court of competent jurisdiction based on the ground of actual fraud or mistake, and the court may upon such ground make an order directing the register to be rectified in such manner and on such terms as it thinks just."

34. There was no allegation of fraud and the trial judge did not accept that there was a mistake. Tullagower's claim for rectification failed due to the absence of a common intention concerning the different boundaries on or before the execution of the 2003 contract through to the execution of the 2004 transfer and beyond. He said that Tullagower was not entitled to rectification pursuant to s.31

35. Tullagower had also sought relief pursuant to s.32 of the 1964 Act, as substituted by the Registration of Deeds and Title Act 2006, s.55. This provides as follows:

"1. Where any error originating in the Land Registry (whether of misstatement, misdescription, omission or otherwise, and whether in a register or registry map) occurs in registration —

(a) the Authority may, with the consent of the registered owner of the land and of such other persons as may appear to be interested, rectify the error upon such terms as may be agreed to in writing by the parties,

(b) the Authority may, if of opinion that the error can be rectified without loss to any person, rectify the error after giving such notices as may be prescribed,

(c) the court, if of opinion that the error can be rectified without injustice to any person, may order the error to be rectified upon such terms as to costs or otherwise as it thinks just."

36. At para 30(5), the trial judge dealt with the application for relief under this section in the following passage:

"The inability to explain when and how the PRA made the alleged mistake when plotting the boundaries following receipt of replies from solicitors having ostensible authority to answer queries concerning the boundaries, does not encourage the Court to upset the conclusiveness of the title to Folio CE52291F, or the more limited conclusiveness of the boundaries, as appear on the PRA mapping."

The Appeal

37. Tullagower appealed the entire decision of the High Court. While it accepted that the respondent was entitled to a right of way, it pointed out that the start and end points of the right of way would necessarily change if Tullagower succeeded in its appeal. Twenty-nine grounds of appeal were set out in the notice of appeal, many of which were abandoned. The first relevant ground of appeal was an allegation that the Liddy map of the 21st November 2003 was wrong and did not accord with the intentions or agreement of Jackie and Paddy Whelan. The second was that the trial judge had overlooked or ignored the evidence that the solicitors for Anglo Irish Bank replied to the PRA query of the 7th November 2011 on 8th November 2011 confirming that the map dated the 7th November 2011 sent to them by the PRA was correct, when the evidence established that it was incorrect insofar as it delineated lands greater in extent and with different boundaries to the lands delineated on the Liddy map. This was the map relied upon by the respondent as representing the lands transferred by the deed of transfer of the 24th February 2004. The third relevant ground of appeal was that the trial judge erred in failing to direct rectification of the map attached to Folio 52291F to (at least) accord with the Liddy map of the 21st November 2003. The final relevant ground of appeal was that the trial judge failed to consider s.32 of the Registration of Title Act, 1964.

38. The balance of the grounds of appeal were largely critical of the trial judge's assessment or failure to assess the evidence and failure to properly apply the provisions of s.31 of the Act of 1964.

39. At the hearing before this Court, Tullagower confined its appeal to a claim pursuant to s.32 of the Act of 1964 to rectify the map attached to Folio 52291F in order to accord with the boundaries on the Liddy map. In support of this argument, counsel for Tullagower made the following points:-

(1) Mr Kestell, on behalf of the respondent, gave evidence that the Liddy map was, on the balance of probabilities, the map sent to the Land Registry with the transfer of the 24th February 2004. The parties agreed that the map currently attached to 52291F differs from the Liddy map both in extent and the precise boundaries of the two parcels of land.

(2) It is clear from the PRA file that the mistake arose between the solicitors for the lender and the Land Registry/PRA. The solicitors for Anglo Irish Bank confirmed in their letter of the 8th November 2011 that the outline of the lands transferred was as set out in the map of the 7th November 2011.

(3) The map of the 7th November 2011 was clearly erroneous in that it differed from the Liddy map and therefore the error must have arisen within the Land Registry/PRA.

The Law

40. Section 32(1) of the Act of 1964, as substituted by the 2006 Act, allows errors in the register and registry map originating in the Land Registry to be corrected either by consent of the parties, by the PRA or by the Court. The jurisdiction is confined to errors occurring in the registration process and does not extend to errors in the instrument presented for registration. The error must originate in the Land Registry. If such an error is established, the court has a discretion whether or not to rectify the error. It must be of the opinion that the error can be rectified without injustice to any person and it may do so upon such terms as to costs or otherwise as it thinks just.

41. John Deeney in *Registration of Deeds in Title in Ireland* (2014), para 42.05, says that the purpose of the section is to enable the correction of errors arising from oversight or negligence on the part of the Land Registry:-

"... the Authority does not register documents, it registers the effects of documents. Its duty is to interpret documents presented for registration correctly and to enter the effect accurately on the register."

Section 32 therefore does not apply where rectification of the instrument is what is required, rather than correction of an error occurring during the registration process.

42. Tullagower sought to rely upon the decision of Laffoy J in *Boyle v. Connaughton* [2000] IEHC 28. In my opinion, this decision does not assist its case. It was not based upon s.32 of the Act of 1964. Furthermore, there was evidence from an examiner of mapping in the Land Registry testifying to the basis upon which the new folio at issue in that case was opened and the map relied upon. Laffoy J was satisfied, on the basis of the evidence, that the Land Registry mapped the property the subject of the transfer at issue from the Ordnance Survey map which was initially lodged with the application for first registration. As discussed below, there was no evidence from the Land Registry as to how the map attached to Folio 52291F was plotted and there was no finding of fact in that regard by the High Court.

Discussion

43. The essence of the case now advanced by Tullagower on appeal is that the Land Registry/PRA produced its own maps in this case. The first was that of the 27th July 2011 and the second was that of the 7th November 2011. The map of 7th November 2011 was the basis upon which the new folio was opened, therefore the error in that map arose in the Land Registry.

44. This argument is inconsistent with the principal case advanced in the High Court. Tullagower pleaded in its counterclaim at para. 41:-

"In reliance on the map or maps lodged and submitted as aforesaid by [the solicitors for Anglo Irish Bank] and their instructions [to proceed with the registration of the transfer in accordance with the map of the 7th November 2011] a new Folio CE 52291F was opened in the Land Registry and WLQL was registered as full owner of the lands described therein by reference to the map..."

45. It sought an order pursuant to s.32 of the Act of 1964 (as amended) directing the PRA to rectify the Land Registry map attached to Folio 19816F and the map attached to Folio 52291F in accordance with Tullagower's ownership of the lands hatched in green on the map prepared by McMahon Hardiman dated the 6th October 2015, specifically not the Liddy map.

46. It was only at the end of the trial, when the PRA file had been produced in court, that counsel for Tullagower argued, in the alternative, for an order pursuant to s.32 to accord with the Liddy map, if the court rejected all of the evidence and arguments of Tullagower in relation to the extent of the land agreed to be sold in 2003 and refused rectification in accordance with the McMahon Hardiman map of either the deed of transfer or the two folios. It was never a relief sought prior to that and indeed was inconsistent with the case advanced up to that point.

47. On appeal, Tullagower abandoned the principal case made to the High Court and relied solely on its alternative case which was diametrically opposed to the principal case. Tullagower asks this Court to hold that a mistake occurred within the PRA and to hold that the boundaries as outlined on the Liddy map represent the correct boundaries between the two folios notwithstanding the fact that it repudiated this map up until the day the appeal opened when it withdrew most of its grounds of appeal.

48. There was no evidence from the Land Registry to establish who produced the map dated 7th November 2011 or the origin of the outlines of the two parcels of land traced on the map. The trial judge made no finding in relation to this fact. The trial judge cannot be criticised in any way for this failing, as it was for Tullagower to prove its case. There was no evidence led on which the trial judge could make any finding of fact on this point. The absence of such a finding of fact is fatal to the appeal, as the jurisdiction to make an order pursuant to s.32 is based upon and confined to errors originating in the Land Registry.

49. Despite this, counsel for Tullagower asked this Court to infer that the error originated in the Land Registry on the basis of the documents appearing on the file from the Land Registry. However, not only is there no finding of fact by the court of first instance which grounds the jurisdiction invoked in this appeal, in my judgment, the evidence leads to the opposite conclusion. In this case, I am quite satisfied that there was ample, uncontroverted evidence that the Land Registry raised queries in relation to the application for first registration from 2004 onwards. Ultimately, the queries were answered by the solicitors having carriage of the application for first registration. On the 8th November 2011 the Land Registry was requested by those solicitors to proceed with registration in accordance with the map of the 7th November 2011. It acted on foot of the answers to queries it raised from the applicant for first registration. In the circumstances of this case it does not matter when or by whom the map was produced. The critical fact is that the Land Registry was informed by the party applying for first registration that the boundaries on the map represented the correct boundaries. It was entitled to proceed with the registration on the basis of that instruction and in so doing it did not err within the meaning of section 32.

50. Tullagower submitted that the trial judge erred in that he failed to address its claim for relief pursuant to s.32 adequately or at all in his judgment. Secondly it submitted that it was unfair to Tullagower that the respondent received a greater area of land than was ever intended to be sold by Tullagower to WLQL.

51. The trial judge addressed these points in para 30 of his judgment. At sub-para 3 he referred to the fact that counsel for

Tullagower sought rectification of the register based on the Liddy map as an alternative relief. The Court stated:-

"the difficulty for the court in pursuing that line is that it must determine whether the boundaries in the 2004 transfer more accurately reflected the boundaries now between the two relevant folios, than those delineated by the PRA following receipt of replies to its enquiries."

The judge noted the fact that the land registered as Folio 52291F comprised 12.72593 acres whereas the deed of 2004 stated the area to be 11.185 acres. In sub-para 5 he considered the claim advanced pursuant to s.31 of the Act of 1964 and then dealt with the claim under s.32. He referred to *"the inability to explain when and how the PRA made the alleged mistake when plotting the boundaries following receipt of replies from solicitors having ostensible authority to answer queries concerning the boundaries"*. On the basis of the absence of the evidence, the court was not prepared to upset the conclusiveness of the title or the limited conclusiveness of boundaries as appearing on the PRA mapping.

52. In my judgment, the trial judge was perfectly correct to refer to the absence of any evidence that the error occurred in the Land Registry. He was correct, in my opinion, in holding that the Land Registry acted on foot of the replies to queries raised by it. While Tullagower may feel that its case on this point was not dealt with as extensively as it would have wished in the written judgment, it is nonetheless clear that the trial judge understood the case it made, considered it and rejected it on the basis of the evidence adduced or not adduced in this case. Therefore, this argument must be dismissed.

53. With regard to the second submission, the issue of whether the respondent has been unjustly enriched does not arise for determination on this appeal as it is confined to an application for relief pursuant to s.32. It is only if the court has jurisdiction pursuant to s.32 that it may then go on to consider whether to order rectification if it may do so without causing injustice to another person. As s.32 is not engaged on the facts of this case, this second argument of Tullagower does not arise.

54. I should also point out that the jurisdiction of the High Court to make an order pursuant to s.32 is a discretionary one, and I see no error by the trial judge in the exercise of his discretion in the circumstances of this case. Certainly, I see no error in principle which would entitle an appellate court to interfere with the exercise by the High Court of its discretion in the circumstances.

55. For all of these reasons I would dismiss the appeal.

56. Finally, I leave over to another case the issue whether the PRA ought to be either a party to or on notice of an application for an order pursuant to s.32 of the Act of 1964, as amended, as it is not necessary to consider for the purpose of determining this appeal .