Hilary Term

[2014] UKSC 7

On appeal from: [2012] EWCA Civ 262; [2012] EWCA Civ 250

JUDGMENT

Adamson and others (Respondents) v Paddico (267) Limited (Appellant)

Mrs Gill Taylor (on behalf of the Society for the Protection of Markham and Little Francis) (Appellant) v Betterment Properties (Weymouth) Limited (Respondent)

before

Lord Neuberger, President

Lady Hale, Deputy President

Lord Sumption

Lord Toulson

Lord Hodge

JUDGMENT GIVEN ON

5 February 2014

Heard on 15 January 2014

Appellant (Paddico)
George Laurence QC

Ross Crail

(Instructed by DLA Piper UK LLP)

Respondents
Charles George QC
Philip Petchey

Ned Westaway

(Instructed by Public Law Solicitors)

Appellant (Taylor)
Charles George QC
Philip Petchey

Ned Westaway

(Instructed by Public Law Solicitors)

Respondent
George Laurence QC

William Webster

(Instructed by Pengillys Solicitors)

Intervener (Geo H Haigh & Co Limited)

Martin Carter

(Instructed by Baxter Caulfield)

LADY HALE, (with whom Lord Neuberger, Lord Sumption, Lord Toulson and Lord Hodge agree)

1.
What happens if land is registered as a town or village green when it should not have been? There is power to rectify the register, but what is the effect of the lapse of time (a less pejorative term than "delay") between the registration and the application to rectify? There are many private and public interests in play – those of the landowners who have wrongly been severely restricted in the use to which they can put their land, those of the local inhabitants who have rightly been enjoying the amenity of the green since its registration, and those of the wider public which are many and varied – such as protecting the accuracy of public registers, preserving public open spaces, or securing that land earmarked or suitable for development can be used for that purpose.

The statutory background

2.
The principal purpose of the Commons Registration Act 1965 was, as its long title says, to provide for the registration of common land and of town and village greens. Section 1(1)(a) requires that "land … which is … a town or village green" be registered in accordance with the Act. Section 1(2)(a) provides that "no land capable of being registered under this Act shall be deemed to be . . . a town or village green unless it is so registered" by the deadline prescribed by the Minister, which was 31 July 1970. This meant that the rights of local inhabitants over such ancient but unregistered greens were extinguished. However, the Act contemplated the possibility of land becoming a town or village green in the future. Regulations under section 13(b) could and did provide for registers to be amended where "any land becomes . . . a town or village green" (emphasis supplied) (see the Commons Registration (New Land) Regulations, SI 1969 No 1843).

3.
Three separate categories of "town or village green" are defined in section 22 of the Act (since amended by section 98 of the Countryside and Rights of Way Act 2000, but not so as to affect these cases):

"'Town or village green' means land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years."

The first and the third might arise after the statutory deadline, whereas the second could not. In reality, however, provided that the local inhabitants continued to exercise their customary rights "as of right" for 20 years, they would be able to register the land as a "new" or "modern" green. But it was also possible for many other pieces of land on which the inhabitants of any locality had indulged in lawful sports and pastimes as of right for at least twenty years to be registered. This gave rise to several important cases deciding upon the requirements for registration as a new or modern green and on the consequences of such registration, many of them relevant to the issues in the two cases with which we are concerned: see, for example, R v Oxfordshire County Council, Ex p Sunningwell Parish Council [2000] 1 AC 335, R (Beresford) v Sunderland City Council [2003] UKHL 60, [2004] 1

AC 889, Oxfordshire County Council v Oxford City Council [2006] UKHL 25, [2006] 2 AC 674, and R (Lewis) v Redcar and Cleveland Borough Council (No 2) [2010] UKSC 11, [2010] 2 AC 70.

4.
No procedure was laid down, either in the Act or in the Regulations, for the registration authority, normally a County Council, to decide such matters. Practice varies, with some holding elaborate public inquiries and others deciding matters more informally, as illustrated in the two cases before us. By section 10 of the Act, registration of any land as a town or village green is conclusive evidence of the matters registered, as at the date of registration.

5.
Section 14 of the Act gives the High Court power to order the amendment of the register in two circumstances, only one of which is relevant here:

". . . if ... (b) the register has been amended in pursuance of section 13 of this Act and it appears to the court that no amendment or a different amendment ought to have been made and that the error cannot be corrected in pursuance of Regulations made under this Act; and . . . the court deems it just to rectify the register."

Anyone may apply for rectification, although the owners of the land registered as a green are most likely to want to do so. There is no statutory deadline for making such an application. The question, therefore, once it has been decided that the entry on the register ought not to have been made, is the relevance of the lapse of time since the registration in deciding whether it is "just" to order rectification.

Betterment: the facts

6.
In 1994, a Mrs Horne applied to Dorset County Council, on behalf of the Society for the Protection of Markham and Little Francis, for the registration of some 46 acres of open land in Weymouth. These were part of a larger area of land owned by the Curtis family which had been let for grazing but had ceased to be so used in around 1980. Two public footpaths crossed the land but local residents and their dogs had wandered more freely over the area. Mrs Horne relied upon 20 years' use by local inhabitants for lawful sports and pastimes after 31 July 1970. The Curtis family objected. Her first application was declined but she made a second one in 1997 which the County Council's Rights of Way Sub-committee decided should be referred to a non-statutory public inquiry before a panel of three county councillors. They held an oral hearing in December 2000 and received a great deal of written material, oral evidence and both oral and written submissions. In June 2001, the Council notified the parties, in a detailed reasoned decision letter, that it had decided to register the land as a new town or village green. In December 2001, a Mr and Mrs Thompson bought a house at the south west corner of the registered land, having been told of the registration by the vendors and having researched the matter on the website of the Open Spaces Society (which is supporting this appeal). They also discovered that none of the Curtis family's land was designated for development in the draft local plan although the Curtis family were objecting to aspects of this.

7.
In August 2001, Mr Barry Curtis applied on behalf of the landowners for judicial review of the Council's decision. The Council objected that this was inappropriate as Parliament had provided the remedy of rectification in section 14 of the 1965 Act. Acting on legal advice, therefore, Mr Curtis discontinued the judicial review proceedings in December 2001, without prejudice to his right to

apply under section 14. The Curtis family subsequently sold the land to Betterment Properties (Weymouth) Ltd for a price which was much less than the land would have been worth had it not been registered as a green but rather more than it was worth as a registered green. Agreement was reached with the various members of the Curtis family in stages over 2003 and 2004 and Betterment finally acquired title to the whole of the Curtis family's land in May 2005.

8.
In December 2005, Betterment began the present proceedings under section 14 for rectification of the register. Two preliminary issues were raised, one being the scope of the jurisdiction: was it a full rehearing or a review to be conducted on either appellate or judicial review principles? Lightman J determined that it was a full rehearing and this was confirmed by the Court of Appeal: [2008] EWCA Civ 22. The case therefore returned to the Chancery Division for a hearing, which was conducted by Morgan J over nine days in June 2010, partly in Weymouth and partly in London. By that time, Betterment accepted that most of the land had been used for lawful sports and pastimes for twenty years before the application made in 1997. The principal issues were whether the whole of the land had been used for that purpose for that period and whether the use had been "as of right".

9.
Morgan J gave judgment allowing the application to rectify in November 2010: [2010] EWHC 3045 (Ch). The greater part of his judgment is devoted to the two substantive issues bearing on the first requirement of section 14(b): whether the entry on the register ought to have been made. He decided that it ought not: he found that the use of the land had been contentious and thus not as of right until some time in the 1980s, which he put at 1984. He went on to consider whether it would be "just" to rectify the register. In relation to Mr and Mrs Thompson he found that they bought the house on the basis that development to the north was unlikely, but without distinguishing between the registered green and the rest of the open land. If they had investigated the position further, they would have discovered that the landowners had reserved the right to apply to rectify the register. In any event, the landowners were not responsible for their state of mind. Among the other objections raised was the delay of 9 and a half years during which the land had been registered and the inhabitants had been enjoying its use. He did "not see the mere passage of time as material, one way or the other, to the issue of the justice of rectifying the register" (para 189). Balancing all proper points which could be made on behalf of the landowners and the inhabitants, he concluded that "If rectification is ordered the result will be that the landowners will be free from burdens which should not have been placed upon them and the inhabitants of Wyke Regis will be denied, in the future, rights which they have enjoyed in the past, but which they should never have had" (para 191).

10.
Mrs Taylor, who had replaced Mrs Horne as the representative of the Society for the Protection of Markham and Little Francis, appealed to the Court of Appeal, which dismissed her appeal: [2012] EWCA Civ 250. Once again the major part of the judgment is devoted to the "as of right" issue. However, Patten LJ, who gave the leading judgment, did comment that the "justice" issue had become the most significant aspect of both this and the Paddico appeals. In his view, although delay was a relevant factor, it will not "be a barrier to rectification unless there is material before the court to show that other public or private decisions are likely to have been taken on the basis of the existing register which have operated to the significant prejudice of the respondents or other relevant interests" (para 87). Sullivan LJ, with whom Carnwath LJ agreed (para 103), would have gone further. In his view, there is "a strong public interest in upholding the register in the absence of a prompt challenge to its contents", so that there would be "exceptional cases where the delay is so long that

prejudice to good administration can properly be inferred" in the absence of evidence of prejudice. He suggested that a decade would be capable of raising such an inference (para 95).

Paddico: the facts

11.
In December 1996, application was made, on behalf of the Clayton Fields Action Group, for the registration of an area of some six and a half acres of grassland lying between Edgerton and Birkby in north west Huddersfield which had long been known as Clayton Fields. Most of the land was owned by Geo. H. Haigh and Co Ltd ("the company"). There were two extant planning permissions, dating back to the 1960s, for housing development on the land. The land had also been designated for housing in the Huddersfield Town map in 1972, again in the Huddersfield local plan in 1986, and in the draft Kirklees Unitary Development Plan in 1993. In 1997 an inspector reported that the land should remain allocated for housing, noting that "a development brief including requirements for access, footpaths, open space and the protection of trees is to be prepared". This plan was eventually adopted by the Council in 1999. Meanwhile, the company had objected to the application to register the land as a green and on 14 April 1997 the Policy (General Purposes) (Executive) Sub-Committee of Kirklees Metropolitan Council held an oral hearing. After a short adjournment the Chairman announced, without more, that the application was granted.

12.
The company began proceedings to rectify the register in May 1997 but these were delayed pending the decision of the House of Lords in the Sunningwell case. Following that decision, the company were advised that they were very likely to lose their action and so took no further steps. The action was automatically stayed under CPR Part 51, PD 19(1) in April 2000.

13.
In 2005, the company sold their land to Paddico (267) Ltd. As in the Betterment case, the price was much less than it would have been worth without it. Unlike the Betterment case, the contract included overage provisions, entitling the company to 30% of the uplift in market value in the event of planning permission being obtained for development of all or part of the land within 10 years of the transfer. In 2008 Paddico applied to lift the stay on the company's section 14 application and to be substituted as claimant. This was refused by the Deputy Master in 2009, permission to appeal was refused on paper in January 2010, and on renewal in March 2010. Meanwhile, Paddico had begun its own section 14 claim in January 2010. This was heard before Vos J over five days in May and June 2011.

14.
Vos J gave judgment allowing the application to rectify in June 2011: [2011] EWHC 1606, [2011] LGR 727. As with the Betterment case, the major part of the judgment is devoted to the substantive issue of whether the land ought to have been registered. This turned on the meaning of "any locality" in the definition in section 22(1). Vos J held that the inhabitants using the land for lawful sports and pastimes had to be predominantly from a single locality and that neither Edgerton nor Birkby qualified as a locality recognised by law, nor were the users predominantly from either of the suggested alternatives. As to the justice of rectifying the register after 14 years, he considered that the delay did weigh against rectification but was unlikely to be conclusive (para 118). The fact that registration was not justified in 1997 and if refused then would be very unlikely ever to be granted was a very strong, though not conclusive, factor. The delay was a significant factor, but little other prejudice had been demonstrated by the residents. The planning permission obtained required part of the land to be made available for recreation (para 119). Hence the balance came down "fairly clearly" in favour of

rectification (para 120). Interestingly, he concluded with the hope that local residents would be allowed a reasonable area for recreation and “in that way, perhaps, justice will ultimately be done” (para 122).

15.
The appeal on behalf of the Action Group was heard by the same constitution of the Court of Appeal that heard the Betterment appeal and at the same time. But in this case, by a majority, the appeal was allowed: [2012] EWCA Civ 262, [2012] LGR 617. Once again, the greater part of the leading judgment, this time given by Sullivan LJ, was devoted to the “locality” issue. On this, the court was unanimous in upholding the judge’s decision that the amendment to the register ought not to have been made. But they differed on the “justice” issue.

16.
Sullivan LJ held that there was an analogy with judicial review of inaccurate entries in other registers, in particular the planning register, where section 31(6) of the Senior Courts Act 1981 gives the court power to refuse relief if delay is prejudicial to good administration. There was a “strong public interest” in resolving alleged errors in the register “at the earliest opportunity”. Although Parliament had not prescribed a time limit for making applications under section 14, “it must have envisaged that persons adversely affected by an erroneous amendment of the register would take reasonably prompt action to secure rectification, and would not sleep on their rights. All other things being equal, the longer the delay in seeking rectification the less likely it is that it will be just to order rectification” (para 37). In this case, he considered that all other things were equal, because neither side could claim prejudice: Paddico had taken a calculated risk (para 38). Over 12 years’ delay was so excessive as to make it not just to rectify (para 39).

17.
Carnwath LJ agreed. The owner’s rights were an important consideration. The rectification procedure fills the gap in a process of controlling the owner’s rights which would otherwise not comply with article 6 of the European Convention on Human Rights. Thus a precise analogy with judicial review was not appropriate (para 67). However, the balance had to include considerations of public administration. “Justice in this context need not turn on proof of individual prejudice, but is wide enough to cover general prejudice to the public (including planning authorities) who are entitled to rely on the register to order their affairs, public and private.” While it would not be appropriate for the court to lay down a specific time limit, he would regard “a delay beyond the normal limitation period of six years as requiring very clear justification” (para 68).

18.
Patten LJ disagreed. In his view, it was “necessary to identify some significant or material prejudice attributable to the delay which makes it just to refuse to restore to Paddico its full legal rights as owner of this land” (para 43). There would be an injustice to Paddico if rectification were refused (para 46), while there was no demonstrable prejudice in depriving the appellant of rights to which he was never entitled (para 44). Furthermore, the public interest in planning policies in relation to the land no longer being frustrated militated strongly in favour of rectification (para 45).

The scope of this appeal

19.
The local inhabitants, in the person of Mrs Taylor on behalf of the Society for the Protection of Markham and Little Francis, appeal against the decision to allow rectification in the Betterment case. Paddico, supported by the company, which has been given permission to intervene in this Court,

appeals against the refusal of rectification in their case. These appeals are not concerned with whether the courts below were correct in their judgments on the “as of right” and “locality” issues. They are solely concerned with the relevance of the lapse of time (as I prefer to call it) to whether or not it is “just” to rectify the register.

The proper approach?

20.
What then is the proper approach in principle to the lapse of time? There are at least three possible analogies, none of which is precise: (1) with the principles applicable to public law claims; (2) with the principles applicable to private law claims where Parliament has provided a limitation period; and (3) with the principles applicable to private property law claims where Parliament has not provided a limitation period, as embodied in the equitable doctrine of laches.

(1)
Public law

21.
There is a public law aspect to such claims. This is a register kept by a public authority which is open to public inspection and upon which both public authorities and private persons may rely in making their decisions. The decision to make an entry may be challenged by way of judicial review as well as by an application to rectify. While no-one is suggesting that the short time limit applicable to applications for judicial review should apply, all members of the Court of Appeal appear to have thought it appropriate to take into account the interests of “good public administration”. Section 31(6) of the Senior Courts Act 1981 provides that where the High Court considers that there has been undue delay in making an application for judicial review, it may refuse either to grant permission to make the application or the relief sought in it, “if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration”. This means that there is an interest in good administration which is independent of the interests of individuals. But it does, of course, beg the question of what is meant by a detriment to good administration.

22.
This criterion was recommended by the Law Commission in their Report on Remedies in Administrative Law (Law Com No 73, 1976) (Cmnd 6407). They pointed out that when an individual applies for judicial review, “what will be in issue will be not only the vindication of his personal right but also the assertion of the rule of law in the public sphere”. Hence they thought that the formula should recognise “not only the interests of individuals but also the public interest in good administration” (para 50). They did not, however, explain what they meant by this. On the one hand, there is the view taken by Lord Goff of Chieveley in Caswell v Dairy Produce Quota Tribunal for England and Wales [1990] 2 AC 738. He did not consider it wise to attempt to formulate a precise definition, because the contexts were so various, but in the context of the allocation of a finite quantity of milk quota between dairy farmers, the interest in good administration “lies essentially in a regular flow of consistent decisions, made and published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision”. Allowing a late claim for judicial review of an erroneous decision could lead to attempts to reopen many other decisions, to the obvious prejudice to good administration (pp 749-750). A similar approach was taken, in the rather more analogous context of the grant of outline planning permission, in R v Newbury District Council, Ex p Chieveley Parish Council [1999] PLCR 51. Pill LJ observed that “a

planning permission is contained in a public document which potentially confers benefit on the land to which it relates. Important decisions may be taken by public bodies and private bodies and individuals upon the strength of it, both in relation to the land itself and in the neighbourhood. A chain of events may be set in motion. It is important to good administration that, once granted, a permission should not readily be invalidated". Hence, relief against an invalid grant of permission was refused on account of a three year delay in bringing the proceedings, "notwithstanding the absence of convincing evidence that the applicants for planning permission have been prejudiced by the delay" (pp 66- 67).

23.
On the other hand, in R v Bassetlaw District Council, Ex p Oxby [1998] PCLR 283, 302, Hobhouse LJ stated that "if it has been clearly established . . . that a planning consent was improperly and invalidly granted, then it should, in principle, be declared to be void". This was cited by Schiemann LJ in Corbett v Restormel Borough Council [2001] EWCA Civ 330, at para 24, who had earlier said this:

"However, as is well known, there clashes with this principle of legal certainty another principle which is also of great value – the principle of legality which requires that administrators act in accordance with the law and within their powers. When they do things they are not empowered to do this principle points towards the striking down of their illegal actions." (para 16)

24.
Sedley LJ added this:

"Schiemann LJ's reasoning shows once again how distracting and unhelpful [section 31(6) of the Senior Courts Act 1981] is. It selects one element – time - of the many which may affect the grant of relief and builds upon it some of the many other possible factors which can – as the present case shows – be relevant. It also includes, delphically, detriment to good administration. How, one wonders, is good administration ever assisted by upholding an unlawful decision? If there are reasons for not interfering with an unlawful decision, as there are here, they operate not in the interests of good administration but in defiance of it." (para 32)

25.
Nevertheless, Mr Charles George QC, on behalf of the inhabitants, has drawn our attention to other examples where the principle of certainty in upholding the contents of public registers of various sorts has prevailed over the principle of legality in ensuring the correctness of the decisions upon which the entries are based and hence the accuracy of those entries. Thus in Bahamas Hotel Maintenance & Allied Workers Union v Bahamas Hotel Catering & Allied Workers Union [2011] UKPC 4, the Privy Council upheld the trial judge's refusal to grant judicial review of the unlawful registration of a trade union in part because of the delay by the rival union in challenging it. Lord Walker of Gestingthorpe observed that conclusive evidence provisions (there was one akin to section 10 of the 1965 Act here) "are often included in legislation relating to official registers, because such registers cannot serve their purpose unless members of the public can safely rely on them" (para 33). In Smith Kline & French Laboratories Ltd v Evans Medical Ltd [1989] 1 FSR 561, Aldous J refused an application to amend a patent (made in order to save the validity of the patent for the purpose of infringement proceedings) because of a delay of eight years in making the application. He held that where a patentee delays for an unreasonable period before seeking an amendment it will not be allowed unless he shows reasonable grounds for the delay (p 569). It was not enough to show that no-one had been hurt by the delay (p 577). He had earlier cited the opinions in the House of Lords in Raleigh Cycle Co Ltd v Miller (H) & Co Ltd (1950) 67 RPC 226, where Lord Morton had placed particular emphasis on the fact that the wide claims had remained on the register of patents for a considerable period, so

although bicycles were not being manufactured for a large part of it because of the second world war, “it is impossible to say how many inventors and workers in this art may have been deterred from research and experiment by reason of the fact that the plaintiffs had marked out so wide a territory as their own” (p 236).

26.
However, although the element of public confidence and possible reliance will be there irrespective of whether or not the applicant for relief knew of the illegality, Mr George accepts that it is only delay after the applicant knew or ought to have known of the illegality which should be taken into account. The above cases tend to support that proposition. Ironically, however, Mr George derives that proposition from the opinion of the Judicial Committee of the Privy Council in Lindsay Petroleum Co v Hurd (1874) LR 5 PC 221, which was a laches case.

(2)
Statutory limitation periods

27.
Although applications to rectify may be brought by anyone, the people most likely to apply are the owners of the registered land, whose own right to use that land is severely curtailed by the rights of the local inhabitants to use it for lawful sports and pastimes and by the Victorian legislation which prevents it being used for other purposes (see the Oxford City Council case). The view that this is principally a matter of vindicating private rights, rather than controlling the legality of the acts of public authorities, is reinforced by the European Convention on Human Rights. The rights conferred by registration, while they may not deprive the landowner of his property for the purposes of article 1 of the First Protocol to the Convention, undoubtedly control his use of it. This amounts to the determination of his civil rights and obligations within the meaning of article 6. The administrative process of registration does not fulfil the requirement in article 6 for a “fair … hearing by … an impartial tribunal established by law”. The section 14 process of rectification fills that gap. That is one reason why it has to be a full rehearing rather than a review of the registration authority’s decision.

28.
Most actions to vindicate private rights are subject to statutory limitation periods, typically, but not invariably, three, six or twelve years. Where an equitable claim “is not expressly covered by any statutory [limitation] period but is closely analogous to a claim which is expressly covered, equity will act by analogy and apply the same period” (Snell’s Equity, 32nd Edn (2010), para 5-018). Both Sullivan LJ and Carnwath LJ thought it appropriate to apply a similar approach, being prepared to infer prejudice to other interests after the lapse of time. Sullivan LJ talked of a delay of a decade or more, whereas Carnwath LJ talked of six years or more. There are, of course, many other periods which could have been chosen if this analogy were the appropriate one. Some might think that the most appropriate would be 12 years, the time limit for actions to recover land, after which title is extinguished (Limitation Act 1980, ss 15 and 17).

29.
There are many arbitrary features of the statutory limitation regime apart from the variety of periods prescribed. Except in cases of fraud or concealment, for example, the starting point is that knowledge of the facts giving rise to the cause of action is irrelevant; but that principle has been replaced in personal injury and some other cases with a date of knowledge principle (1980 Act, ss 11, 11A (as inserted by Schedule 1 to the Consumer Protection Act 1987), 12, and 14A (as inserted by section 1 of the Latent Damage Act 1986)). Another starting point is that there is no general discretion to disapply

or extend these limitation periods; but again that principle has been departed from in defamation and personal injury cases (1980 Act, ss 32A (as substituted by section 5 of the Defamation Act 1996) and 33). Ms Crail, for Paddico, argues that Mr George's concession that the duty to act promptly, for which he contends, does not arise unless the claimant has or ought to have knowledge is inconsistent with the approach of the majority in the Court of Appeal; they would be prepared to assume prejudice after a certain period of time; but if one allows for knowledge, such assumed prejudice loses the paramount importance which the majority attributed to it.

(3)
Laches

30.
Finally, therefore, there is the analogy of actions to vindicate private property rights, for which no limitation period has been prescribed by Parliament. Here the equitable doctrine of laches may provide the answer: inaccurately summed up in the Latin tag, vigilantibus, non dormientibus, jura subvenient (the law supports the watchful not the sleeping). Sullivan LJ's reference to sleeping on his rights comes from the words of Lord Camden LC in Smith v Clay (1767) 3 Bro CC 639n, at 640n:

"A Court of Equity has always refused its aid to stale demands, where a party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this Court into activity, but conscience, good faith, and reasonable diligence; where these are wanting, the Court is passive, and does nothing."

31.
According to Snell's Equity (32nd Edn, para 5.016) mere delay, however lengthy, is not sufficient to bar a remedy (referencing Burroughs v Abbott [1922] 1 Ch 86 and Weld v Petrie [1929] 1 Ch 33). Mr George disputes this (but referencing Wright v Vanderplank (1856) 2 K & J 1, 8 De GM & G 133, where there was an express finding of acquiescence, and RB Policies at Lloyd's v Butler [1950] 1 KB 76, which was a limitation case turning on the date when the cause of action accrued, so scarcely giving strong support for his position). This is not the place definitively to resolve that debate, as we are concerned with analogies rather than the direct application of the doctrine. Nevertheless, the general principle is that there must be something which makes it inequitable to enforce the claim. This might be reasonable and detrimental reliance by others on, or some sort of prejudice arising from, the fact that no remedy has been sought for a period of time; or it might be evidence of acquiescence by the landowner in the current state of affairs. In Lindsay Petroleum Co v Hurd (1874) LR 5 PC 221, the judgment of the Board, given by Lord Selbourne LC (but wrongly attributed to Sir Barnes Peacock in the actual report), contains the following oft-quoted passage:

"Now the doctrine of laches in Courts of Equity is not an arbitrary or technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable." (pp 239-240)

32.

Lord Neuberger cited this passage in Fisher v Brooker [2009] UKHL 41, [2009] 1 WLR 1764, in support of his observation that “Although I would not suggest that it is an immutable requirement, some sort of detrimental reliance is usually an essential ingredient of laches, in my opinion” (para 64). Later in Lindsay Petroleum (p 241) Lord Selbourne said this:

“In order that the remedy should be lost by laches or delay, it is, if not universally at all events ordinarily . . . necessary that there should be sufficient knowledge of the facts constituting the title to relief.” (p 241)

It is for this reason that Mr George accepts that there must be knowledge of the facts before delay can constitute a bar to relief.

Discussion

33.
Obviously, there is no precise analogy here, because there are elements of both public and private law involved. But it is necessary to have a starting point and it is always useful to start with the statute itself. First, it lays down no limitation period for section 14 applications. Second, in the rectification power contained in section 14, which is the one relevant to these proceedings, there is no bias either for or against rectification. The section merely requires that it be “just”. Third, it makes no reference to “good administration”, not surprisingly, as that concept was articulated later, in the Law Commission’s Report. Furthermore, the principles of good administration seem to me to cut both ways. While there is a public interest in respecting the register, which is conclusive until rectified, there is also a public interest in the register being accurate and lawfully compiled. I share the view of Sedley LJ in Restormel that “If there are reasons for not interfering with an unlawful decision, . . . they operate not in the interests of good administration but in defiance of it.” Nor do I find the analogy with the other registers referred to compelling. Each register is compiled for different reasons and in a different context. To my mind, therefore, although the interests of the wider public are not irrelevant, the section is principally focussing on justice as between the applicant for rectification of a registration and the local inhabitants who are the beneficiaries of that registration.

34.
Where the applicant is the owner of the land, the starting point, as it seems to me, is that the landowner’s rights have been severely curtailed when they should not have been, and the inhabitants have acquired rights which they should not have had. It does not follow that the lapse of time is immaterial. None of the appellate judges thought that it was. Parliament has seen fit to deprive people of their right to bring proceedings to vindicate their rights after a certain period of time no matter how unjust this might seem to be (an illustration might be found in the facts of A v Hoare [2008] UKHL 6, [2008] AC 844, where the law as laid down in Stubbings v Webb [1993] AC 498 denied a remedy to the victim of a convicted rapist who had later won the lottery, until the House of Lords in Hoare departed from its previous decision in Stubbings). But Parliament has not seen fit to set a deadline for these applications, nor is there an obvious close analogy within the Limitation Acts. The better analogy would therefore appear to be with the equitable doctrine of laches, which generally requires (a) knowledge of the facts, and (b) acquiescence, or (c) detriment or prejudice.

35.
As to (a), this is unlikely to be a problem in most of these cases: the original landowner will have been notified of and had an opportunity of objecting to the proposed registration and a subsequent purchaser such as Betterment or Paddico will have had the opportunity of consulting the register before deciding to buy. But the point might arise in relation to other successors in title, such as

donees or legatees, who have acquired the land in ignorance of the registration. However, if the landowner does know about the registration, it does not appear to me that the fact that a purchaser bought with knowledge of the registration and at a discounted price is likely to make much difference. His rights as landowner have still been severely curtailed and he sustains harm as a result. So too does the original landowner in the position of the company in the Paddico case. As Mr Carter pointed out on their behalf, the overage provisions in the contract of sale to Paddico meant that the company retained an interest in rectifying the register and from their point of view things were very definitely not equal, as Sullivan LJ suggested.

36.
As to (b), acquiescence may be especially relevant where an application for rectification is made by someone other than the landowner. Then the applicant probably has no private interest to vindicate and the fact that the landowner has chosen to take no action may be highly relevant to the justice of the case. Even here, however, the considerations might be different if the applicant were a public authority – perhaps another local authority – seeking to vindicate some public interest. It is a curiosity of the Paddico case that the land was registered as a green even though it had long been allocated for housing by the local planning authorities. The fact that the landowner was content for local inhabitants to enjoy rights of recreation which they should never have had might not be decisive if there were other such public interests in play. Whoever is the applicant, it would not in my view be appropriate to treat the landowner's failure to object to the inhabitants' use of the land after it had been registered as a green – by putting up fences, notices, etc - as acquiescence on his part. Once the land is registered, it is conclusive evidence of the inhabitants' rights unless and until the register is rectified and he would not be entitled to prevent them.

37.
As to (c), detriment or prejudice, this, it seems to me, will usually be the crux of the matter. Because this is a public register and there are public as well as private interests involved I would not limit the potential prejudice caused by rectification to the prejudice to the local inhabitants who will no longer be entitled to use the land for lawful sports and pastimes. There are at least four categories of prejudice which might be relevant and no doubt more might be imagined:

(i) Prejudice to the local inhabitants

38.
Given that this is a right which they should never have had, this element of prejudice may not be very weighty. Nevertheless, practices may have developed over the years which it would be detrimental to the inhabitants to lose, such as holding an annual fair or feast or celebrating the foiling of the gunpowder plot. Decisions may have been taken on the basis that the green would stay a green: for example, if the local cricket club had declined the opportunity of securing a cricket ground elsewhere in the village because they were entitled to play on the village green.

(ii) Prejudice to other individuals

39.
There may be people who have made decisions which they would not otherwise have made on the basis that the land is a registered town or village green. People may have bought houses because of it or they may have refrained from selling houses because of it. It is worth bearing in mind, as Lord Sumption pointed out in the course of the hearing, that the right which is protected by registration is not the right to a view, but the right to use the land for lawful sports and pastimes. But many people are attracted to properties near a village green because of the recreational opportunities it offers and

the community spirit which these engender – anyone who grew up with a traditional village green can understand the focus it brings to village life which would not be there if the green were not there.

(iii) Prejudice to public authorities and the public they serve

40.
The authorities too may have made decisions in reliance on the registration which they would not have made without it. For example, the local planning authority may have granted planning permission for residential development on other land because the green is not available for development. On the other hand, maintaining the registration of a village green which ought not to have been registered may be damaging to such interests, as where the land is allocated for much needed local housing.

(iv) Prejudice to the fair hearing of the case

41.
The longer the lapse of time since the original registration, the more difficult it may be to have a fair trial of the issues relating to registration, perhaps in particular as to the length and nature of the use to which the land was put in the twenty years previously and to whether it was contentious or as of right. As this is a full hearing, evidence of those matters will be necessary, but the people who could give such evidence may have died or moved away or otherwise be unavailable. This is perhaps a species of prejudice to the local inhabitants, who may find it much more difficult many years later to adduce evidence of their use of the land than they would have done had the challenge been made earlier.

42.
There is a further point about prejudice. Mr Laurence on behalf of Betterment and Paddico objected in particular to the view of the majority in the Court of Appeal that after a certain lapse of time prejudice could be inferred without evidence. The correct view, as it seems to me, is that there must be some solid material from which such inferences can be drawn. Speculation or assumptions are not enough. But the longer the delay, the easier it will be to draw such inferences. In general I would agree with the approach of Patten LJ in the Betterment case, that there should be “material before the court to show that other public or private decisions are likely to have been taken on the basis of the existing register which have operated to the significant prejudice of the respondents or other relevant interests”.

Application in the Betterment case

43.
I would not agree with the trial judge that the lapse of time is immaterial to the justice of the case. The Court of Appeal were correct to consider it a material factor. But the general approach of Patten LJ is closer to the principles discussed above than that of Sullivan and Carnwath LJJ. Even adopting their rather different approach, the majority did not consider that the lapse of time was such as to cause them to allow the appeal. Applying the principles set out above, I would agree with the Court of Appeal in the result. Specifically, the lapse of time between the registration and the Betterment application was from June 2001 to December 2005. During all of that time, the possibility of an application under section 14 was known to the registration authority and could presumably have been discovered by others had they asked. There is no evidence of prejudice and no material from which the likelihood of prejudice can be inferred, other than the position of Mr and Mrs Thompson. They contracted to buy their house in December 2001, only six months after the registration and long

before there could be any suggestion that delay in applying for rectification would make it unjust to grant it.

Application in the Paddico case

44.
The trial judge took the lapse of time into account in his consideration of the justice of the case but decided to order rectification nonetheless. The majority of the Court of Appeal disagreed. The approach of the trial judge and of Patten LJ is closer than theirs to the principles discussed above. The lapse of time between the registration and the Paddico application to rectify was from April 1997 to January 2010, much longer than in the Betterment case. But there had been an early application to rectify which was not pursued because of legal advice. During much of this time, the law was in a considerable state of flux, as the series of cases mentioned earlier made their way through the courts, sometimes reaching as far as the House of Lords. The same small group of lawyers were involved in most of these cases and were thoroughly aware of what was going on and how the arguments were shifting. There is no evidence at all of any specific prejudice to the local inhabitants, other than the loss of the right to use the land for recreation. On the other side of the coin, Sullivan LJ was in my view wrong to suggest that “all other things were equal”. Paddico would suffer injustice as a result of being wrongly deprived of the right to seek to develop the land. The company would suffer injustice in being deprived of the likelihood that they would benefit from the overage provisions in the sale contract. The public would suffer prejudice in the land not being available for the use to which the democratic planning procedures had decided that it should eventually be put. In my view the judge was entitled to reach the conclusion that he did and his decision should be restored.

Conclusion

45.
I would therefore dismiss Mrs Taylor’s appeal on behalf of the Society in the Betterment case and allow the landowner’s appeal in the Paddico case.