FIRST DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 1
XA8/25

Lord President
Lord Doherty
Lord Tyre

OPINION OF THE COURT

delivered by LORD TYRE

in Appeal against a decision of the Lands Tribunal for Scotland

by

ELIZABETH PIRNIE

Appellant

against

DOUGLAS RARITY

Respondent

Appellant: K Young; Murnin McCluskey, Glasgow
Respondent: Giles Reid; Harper Macleod LLP

13 January 2026

Introduction

[1] This is an appeal against a decision of the Lands Tribunal for Scotland that there is a manifest inaccuracy in the Land Register in respect of part of a residential property at 2 Kirk Lodge, Pitlochry. The alleged inaccuracy concerns a room referred to in the tribunal's

decision as "the Disputed Room": a first floor room currently forming part of the appellant's registered title to 2 Kirk Lodge but occupied for more than 60 years by the various occupiers and owners, including the respondent, of 1 Kirk Lodge which adjoins 2 Kirk Lodge to the west.

[2] Numbers 1 and 2 Kirk Lodge form two of the three dwelling houses within a larger building which was originally a church and then a large dwelling house that was later subdivided vertically. The building now comprises a terrace of three separate dwellings, with addresses 1, 2 and 3 Kirk Lodge. Titles to each of numbers 1 and 2 are registered. The respondent's registered title excludes the Disputed Room. In an application to the Lands Tribunal brought against the Keeper of the Registers of Scotland, he sought rectification of the Land Register by removing the Disputed Room from Title Number PTH3637 (the appellant's title) and by incorporating it as part of Title Number PTH59517 (his own title). The application was opposed by the appellant (referred to in the tribunal proceedings as the "interested party"), who contended that the Disputed Room formed part of the title to 2 Kirk Lodge as first conveyed in 1960 and did not form part of the title to 1 Kirk Lodge as first conveyed in 1966.

[3] The tribunal conducted a diet of proof before answer at which evidence was led from the respondent; from Mrs Julia Seiffert, the respondent's immediate predecessor in title; and from the appellant. Much of the evidence related to possession of the Disputed Room during a period dating back to the late 1950s. It is unnecessary for the purposes of this appeal to examine that evidence in detail. The tribunal found that from 1989 Mrs Seiffert had had exclusive, unqualified and unchallenged occupation of the Disputed Room for a period longer than the requisite 10-year prescriptive period. That finding is not challenged.

The sole issue to be determined in this appeal is whether the 1966 Disposition of 1 Kirk Lodge was habile to include the Disputed Room.

[4] The Keeper of the Registers of Scotland has not entered the proceedings but instead provided a letter to the tribunal explaining that no manifest inaccuracies had been demonstrated to her in relation to the properties in question, and that these were accordingly matters for the tribunal to determine.

The appellant's title to 2 Kirk Lodge

[5] Prior to 1960, the whole building along with an adjoining area of ground was owned *pro indiviso* by Miss Christina Dow and the trustees acting under a trust deed by the late James McGregor Dow ("the trustees"). The building had already been subdivided and numbers 1, 2 and 3 were occupied by tenants. The first part of the building to be sold off to its tenants was the eastern part containing numbers 2 and 3. A Disposition by Miss Christina Dow and the trustees, recorded in the Register of Sasines on 12 April 1960, narrated that they had sold and did thereby dispone to Alexander Pirnie the following subjects (some spacing has been added for ease of reading):

> "(FIRST) ALL and WHOLE those two dwelling houses at present occupied by the said Alexander Pirnie and the representatives of the late John Cunningham forming part of the tenement known as Kirk Lodge, by Pitlochry in the County of Perth lying to the north-east of the public road from Pitlochry to Kirkmichael the solum of which dwellinghouses and the front gardens attached thereto extend to seventy-six decimal or one-thousandth parts of an acre or thereby and are bounded as follows; on the south-west by the said public road from Pitlochry to Kirkmichael along which it extends a distance of sixty four feet ten inches or thereby; on the north-west by other property at Kirk Lodge belonging to us along which it extends a distance of forty-six feet two inches or thereby; generally on the north by the mutual yard and access aftermentioned along which it extends first on the north-east a distance of fourteen feet or thereby then on the north-west a distance of ten feet or thereby again on the north-east a distance of ten feet or thereby again on the north-west a distance of sixteen feet or thereby and then again on the north-east a distance of twenty one feet

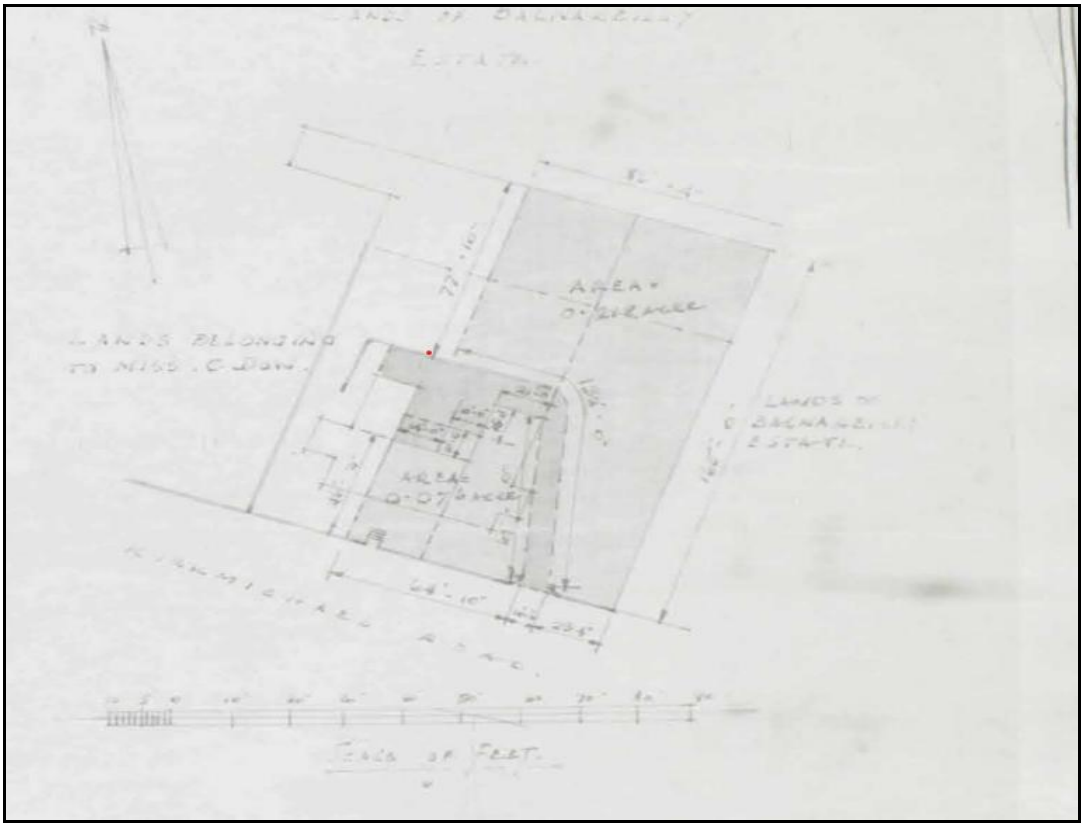
or thereby; and on the east by the said mutual access along which it extends a distance of sixty-nine feet or thereby; and

(SECOND) ALL and WHOLE that piece of ground lying to the north-east of the said subjects (FIRST) hereinbefore disponed in the County of Perth extending to two hundred and eighteen decimal or one-thousandth parts of an acre or thereby Imperial Measure and bounded as follows; [here follows a description by reference to compass directions and distances along the public road and the boundaries of neighbouring land];

which subjects (FIRST) and (SECOND) hereinbefore disponed are delineated and coloured green on the plan or sketch annexed and signed as relative hereto;

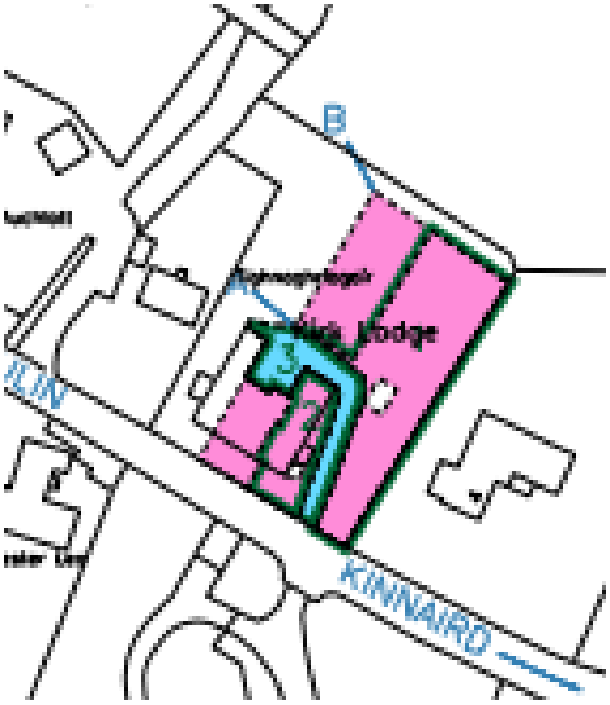
Together with (one) the whole erections on the said pieces of ground (FIRST) and (SECOND) hereinbefore disponed…"

There is no dispute that this title was habile to include the Disputed Room which, as already mentioned, is located on the first floor to the east of the line of the subdivision at ground level between numbers 1 and 2. Registers of Scotland hold the following monochrome plan referred to in the above description:



The plan does not include any depiction of the Disputed Room or any reference to there being subjects on different levels.

[6] The appellant acquired title to a one-half share of numbers 2 and 3 by a Disposition by the executor of the late Alexander Pirnie and another in favour of her and her late husband, also Alexander Pirnie, registered in the Land Register on 21 January 2000 under reference PTH3637. The 2000 Disposition referred to the 1960 Disposition and plan, and also contained its own plan which was declared to be "demonstrative only and not taxative". According to the appellant's evidence, number 3 Kirk Lodge was sold off in 2010. After her husband's death in 2003 she acquired registered title to the remaining one-half share of number 2. The title sheet for number 2 includes the following plan:



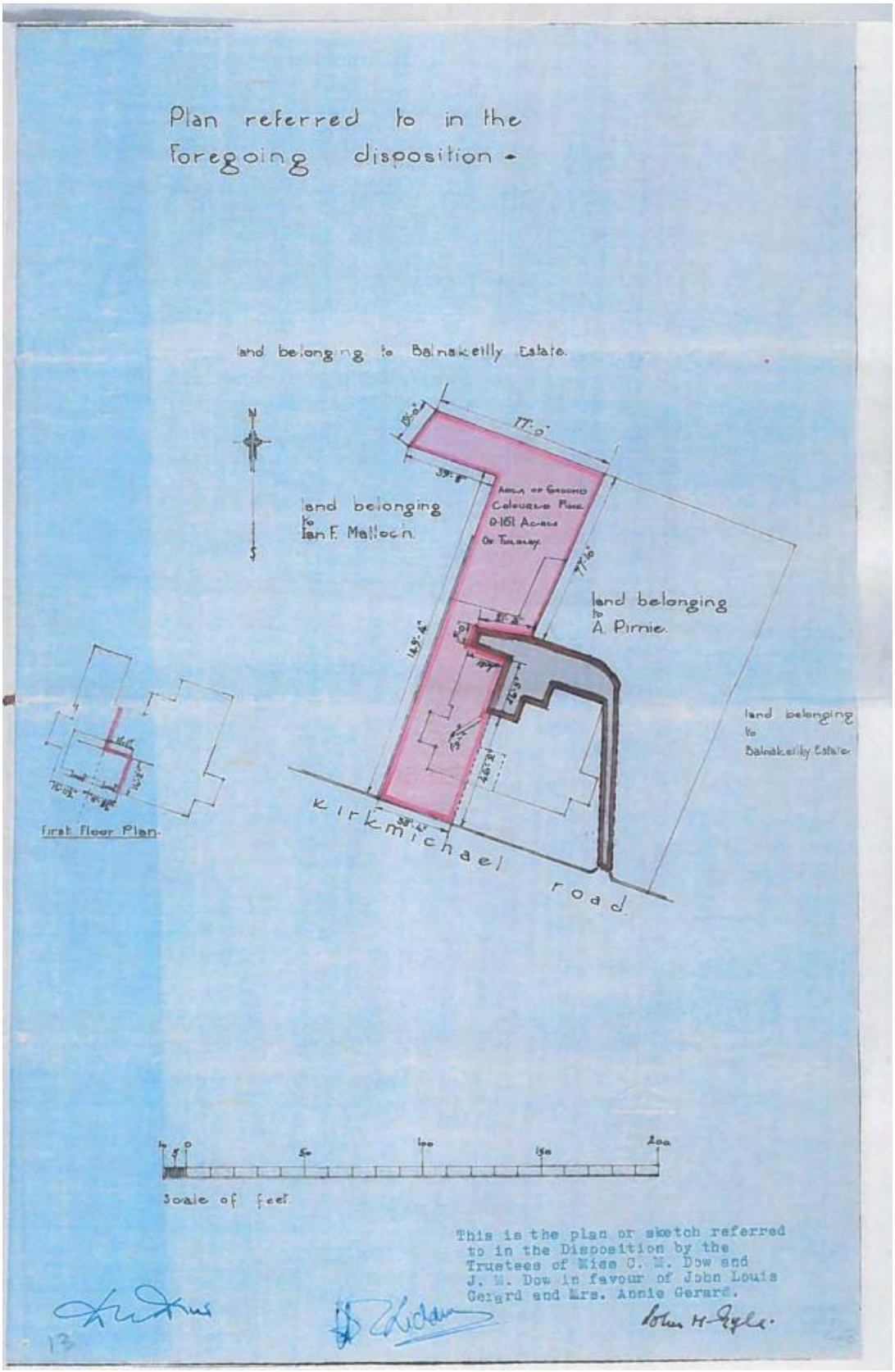
The respondent's title to 1 Kirk Lodge

[7] The respondent's title derives from a disposition ("the 1966 Disposition") of the remainder of the subjects which had been owned by Christina Dow and the trustees. This is

the document at the heart of the dispute. The disposition was recorded in the Register of Sasines on 10 March 1966. It bears to dispone to John Louis Gerard and Annie Gerard the following subjects (again spacing has been added for ease of reading):

> "(FIRST) ALL and WHOLE that dwellinghouse on the First and Second floors at Kirk Lodge, By Pitlochry in the Parish of Moulin and County of Perth all as presently occupied by our said disponees and erected on the area of ground (SECOND) hereinafter disponed;
>
> (SECOND) ALL and WHOLE that area or piece of ground in the said Parish and County lying to the North-east of the public road leading from Pitlochry to Kirkmichael extending to One Hundred and Fifty-one decimal or one-thousandth parts of an acre or thereby Imperial Measure and bounded as follows: - [here again follows a description by reference to compass directions and distances along the public road and the boundaries of neighbouring land, including references to subjects on the east and south east belonging to Alexander Pirnie];
>
> All as the said area or piece of ground is delineated and coloured pink on the plan annexed and signed as relative hereto;
>
> Together with (One) The whole buildings and erections on the said subjects (SECOND) hereinbefore disponed; (Two) The fittings and fixtures pertaining to the whole subjects hereby disponed so far as belonging to us (Three) A right in common along with the said Alexander Pirnie as proprietor of the subjects adjoining on the South-east and his successors and assignees to the mutual access from the said public road and to the yard lying to the north-east of the subjects (FIRST) hereinbefore disponed all as the said access and yard is delineated and coloured brown on the said plan or sketch; (Four) A right in common along with the said Alexander Pirnie and his foresaids as proprietors foresaid so far as we can grant the same to (a) The solum upon which the said subjects (FIRST) hereinbefore disponed are erected so far as not erected on the said subjects (SECOND) hereinbefore disponed…"

[8] The following scaled plan, which appears to have been professionally prepared, was annexed to the 1966 Disposition:



[9] As can be seen, the "plan" (referred to in the singular in both the heading and the docket) consists of two parts: a main plan depicting the subjects at ground floor level, and an

inset plan depicting the subjects at first floor level. At ground floor level the area of land disponed, including the building, is delineated and coloured pink. Within the building the pink line follows the mutual gable separating the subjects disponed from the subjects belonging to Alexander Pirnie. There is also however an area delineated with a black hatched line which appears to indicate the location of the Disputed Room at first floor level.

[10] In the first floor plan, drawn to the same scale, there is a pink delineation but no area coloured pink. The Disputed Room is depicted lying to the west of the pink line.

[11] In 1989, 1 Kirk Lodge was conveyed to Mrs Julia Seiffert by Disposition by Mrs Annie Gerard and the Executrix of the late John Louis Gerard. In the 1989 Disposition, recorded in the Register of Sasines on 11 October 1989, the subjects were described by reference to the 1966 Disposition:

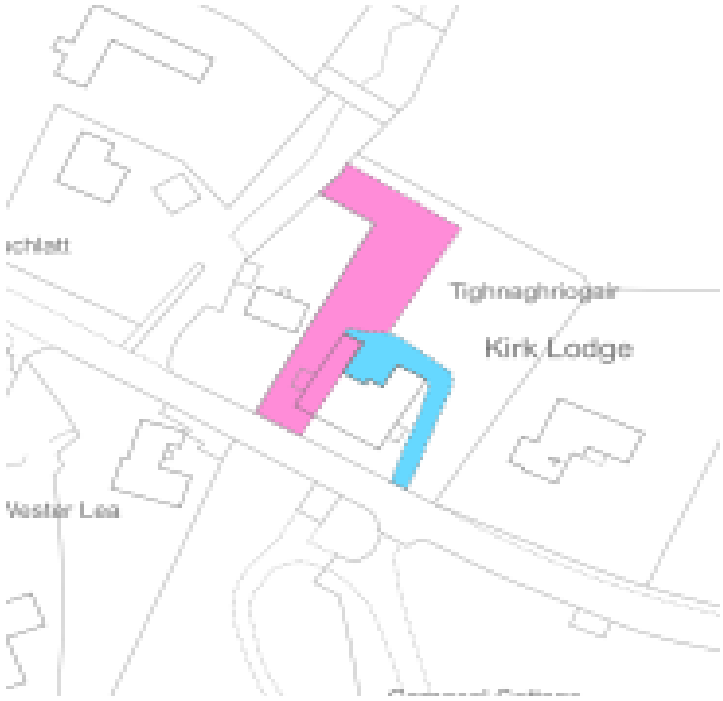
> "ALL and WHOLE that area or piece of ground in the Parish of Moulin and County of Perth together with the dwellinghouse on the first and second floors at Kirk Lodge and the whole other buildings erected thereon being the subjects more particularly described in disponed by and shown delineated and coloured pink on the plan annexed and signed as relative to [the 1966 Disposition]"

[12] Number 1 was subsequently conveyed to the respondent by Disposition by Julia Seiffert registered in the Land Register on 3 March 2021, under reference PTH59517. According to the tribunal's findings, the subjects conveyed were described as follows:

> "ALL and WHOLE that area or piece of ground in the Parish of Moulin and County of Perth together with the dwellinghouse on the first and second floors at Kirk Lodge, Known as 1 Kirk Lodge, Kinnaird, Pitlochry, PH16 5JL and the whole other buildings erected thereon being the subjects more particularly described in disponed by and shown delineated and coloured pink on the plan annexed and signed as relative to [the 1966 Disposition], which subjects are more particularly shown coloured pink on the plan annexed and executed as relative hereto; TOGETHER WITH (one) the fixtures and fittings therein and thereon (two) the whole rights joint common and sole together with the privileges and pertinents effeiring thereto and (three) my whole right title and interest present and future therein and thereto, declaring that the right in common to the mutual access from the public road and the

yard lying to the North-east of the subjects hereby disponed is shown more particularly on the said attached plan in blue …"

The title sheet for number 1 includes the following plan:



The area coloured pink, so far as lying within the building, does not include the Disputed Room.

The relevant legislation

[13] There was no dispute between the parties as to the relevant legislation. The material provisions of the Land Registration etc. (Scotland) Act 2012 entered into force on 8 December 2014 ("the designated day"). Section 65 of the 2012 Act (meaning of "inaccuracy") states *inter alia* as follows:

> "(1) A title sheet is inaccurate in so far as it—
>
> (a) misstates what the position is in law or in fact,
> (b) omits anything required, by or under an enactment, to be included in it, or
> (c) includes anything the inclusion of which is not expressly or impliedly permitted by or under an enactment."

In terms of section 80(1) and (2), where the Keeper becomes aware of a "manifest inaccuracy" in a title sheet, the Keeper must rectify the inaccuracy if what is needed to do so is manifest. Section 82(1) provides that a person with an interest may refer a question to the Lands Tribunal for Scotland relating to (a) the accuracy of the register, or (b) what is needed to rectify an inaccuracy in the register.

[14] Because the alleged inaccuracy in the present case existed prior to the designated day, certain transitional provisions apply. The version of section 1 of the Prescription and Limitation (Scotland) Act 1973 in force immediately before the designated day applies to this case, although nothing turns on this. Section 1(1) (validity of right) provided as follows:

> "If land has been possessed by any person, or by any person and his successors, for a continuous period of ten years openly, peaceably and without any judicial interruption and the possession was founded on, and followed–
>
> > (a) the recording of a deed which is sufficient in respect of its terms to constitute in favour of that person a real right in–
> > > (i) that land; or
> > > (ii) land of a description habile to include that land; or
> >
> > (b) registration of a real right in that land, in favour of that person, in the Land Register of Scotland, subject to an exclusion of indemnity under section 12(2) of the Land Registration (Scotland) Act 1979 (c.33),
>
> then, as from the expiry of that period, the real right so far as relating to that land shall be exempt from challenge."

The tribunal's decision

[15] The tribunal addressed firstly a contention by the appellant that because the description in the 1960 Disposition included the Disputed Room, it could not properly be disponed in 1966, so that subsequent occupation was irrelevant (*nemo dat quod non habet*). The tribunal held that this was a mistaken approach, stating (paragraph 141):

> "Even if it was the case that the Disputed Room was disponed by the 1960 Disposition that would not preclude the Disputed Room then being included in the 1966 Disposition, albeit on an *a non domino* basis. Prescriptive possession of the Disputed Room – on the back of a title habile to include it - would then operate to, ultimately, 'cure' the defect."

We agree, and we did not understand this part of the tribunal's decision to be challenged.

[16] The tribunal also rejected an argument by the appellant that because the inset plan was not referred to in the written description within the 1966 Disposition, it was irrelevant for the purposes of the bounding description of the subjects (SECOND) disponed. The area in the inset plan was delineated, albeit not coloured, in pink. In showing both the ground floor extent and the first floor extent, it differed from the 1960 Disposition plan. There must have been a specific purpose for including both the inset plan and a representation of the Disputed Room on the main plan. As regards the written description in the 1966 Disposition, the tribunal acknowledged that it was "not without its issues". The description makes reference to the first and second floors of the building, which parties are agreed must be read as an inaccurate reference to the ground and first floors. The description of the dwellinghouse (FIRST) disponed did not make any reference to the plan attached to the disposition or to the inset plan; it did, however, refer to the dwellinghouse "as presently occupied by our said disponees". That dwellinghouse was located on what was shown "delineated and coloured pink on the plan". Following the reasoning above regarding the purpose of the plan, the tribunal held (at paragraph 150) that both parts of the plan, taken together, showed the extent of the subjects (SECOND) disponed. These included the Disputed Room.

[17] The tribunal further found that the terms of the "together with" clause in the 1966 Disposition suggested that there might be ownership at first floor level beyond the *solum* of

number 1 as shown on the main plan. It was reasonable to deduce that the parties' intention was to convey a right in the *solum* below the Disputed Room in case there was ever an argument that the northwest boundary line on the main plan excluded this. There was no reason why a right to the *solum* could not have been conveyed *a non domino* with prescription operative thereafter. If that was wrong – perhaps in light of the qualifying wording "in so far as we have right thereto" – that left a situation in which vertical ownership had come into play, creating a "tenement" in which the proprietor of number 1 had no right to the *solum* on which the Disputed Room sat.

[18] The tribunal considered that the likely explanation for the differences between the 1960 and 1966 Dispositions and their respective plans was that it was recognised in 1966 that the extent of number 1, in practical terms, included the Disputed Room, which had been possessed by the proprietors of number 1 for a considerable time, but that the Disputed Room and the *solum* thereof had already been conveyed in 1960. There could have been no ambiguity about what was meant by "as presently occupied". It was reasonable to suppose that the terms of the written description and plan amounted to a deliberate attempt to include the Disputed Room and a right in common to its *solum*. The description was capable of being interpreted as referring to the inset plan supplementing the written description, and there was accordingly no conflict between them. In all of these circumstances, the tribunal held that the 1966 Disposition was habile to include the Disputed Room. Any issue of the Disputed Room being conveyed *a non domino* in 1966 was capable of being cured by the unqualified prescriptive possession that followed thereon.

[19] It followed that there was an inaccuracy in the title sheets. Because the appellant was not a proprietor in possession of the Disputed Room, the inaccuracy was one which the

Keeper had power to rectify under section 9 of the 1979 Act. What was required to rectify the inaccuracy was the removal of the Disputed Room from the appellant's title PTH3637.

Questions for the opinion of the court

[20] The questions of law for the opinion of the court are:

1. Was the tribunal correct in holding that the applicant's title was habile to include the Disputed Room?

2. Was the tribunal correct in holding that the appellant's title recorded in the Registers required to be corrected?

Argument for the appellant

[21] On behalf of the appellant it was submitted that the tribunal erred in law in its consideration of the description of the boundaries of the properties in the respective dispositions. The description within the 1966 Disposition was not sufficiently precise and unambiguous to form a bounding description. It did not (in clear words) include the Disputed Room. The written description did not appear to include it. In order for it to be included, the reader required to make reference to a plan and/or interpret the words "as presently occupied". The words of the disposition ought to take precedence over any attached plan.

[22] The main plan attached to the 1966 Disposition did not include the Disputed Room. Although the inset plan appeared to show a boundary line that would include the Disputed Room, no reference was made to that plan in the written description. The boundary at

ground level was described as lying along the mutual gable, and no different boundary line was described for the first floor.

[23] The 1966 Disposition on which the appellant's title was founded disponed two subjects: firstly a building, and secondly an area of ground. The building was described as being erected on the ground second disponed. The vital question was: what was disponed by the second part of the disposition? The building was not said to be situated to any extent above a different area of ground or *solum*. The area of ground (SECOND) disponed was defined by precise measurements and by reference to the area coloured pink on the ground level plan. There were no obvious discrepancies between the written description and the plan; the area of ground delineated *and* coloured pink exactly matched the description. The boundaries of the area disponed were therefore specified and could be identified with such precision that the title itself (ie the disposition) and not possession was the measure of the right (cf *Reid* v *McColl* (1879) 7R 84, Lord Justice Clerk Moncrieff at pp 90-1). Where one might have expected to find a deviation to include the Disputed Room there was silence. The word "generally" in the second part of the clause did not allow for latitude such as to include it.

[24] The "first floor plan" appeared to be irrelevant for the purposes of the bounding description of the subjects second disponed. If it had any relevance, this could only be to the property first disponed, but the description of the dwellinghouse first disponed made no reference to any plan. The plan could not therefore be relevant to identification of the property (FIRST) disponed, and could have no legal significance in relation to the property (SECOND) disponed.

[25] The reference in the 1966 Disposition to "all as presently occupied by our said disponees" was devoid of any clear meaning; it could not be determined by study of the title deeds. It added nothing to the express and precise terms of the written description, amounting to nothing more than information of passing interest.

[26] The *solum* of the Disputed Room had been conveyed in 1960 to the appellant's predecessor. The answer to the question raised by the words "so far as we can grant the same" in the 1966 Disposition was simply that the granter had had no power to grant any right in common to the *solum* under the room.

[27] It was accepted that a reasonable construction of the deed required all elements to be taken into account. There might however be good reasons for rejecting part of a description. In the present case, the precise, measured and plotted description of the property disponed by the 1966 Disposition served to define its extent, and the Tribunal erred in considering that it was habile to include the Disputed Room. Occupation was irrelevant.

[28] In his oral submissions, counsel for the appellant accepted that the test of habile title was a low one. However it was not met where, as here, inclusion of the Disputed Room had been ruled out by the reference in the written description to the mutual gable. There was no ambiguity in that regard. Even if the inset plan was relevant, the Disputed Room was not "coloured" (as well as delineated) pink in accordance with what the written description envisaged. The purpose of including the inset plan could not be ascertained now; most likely there was a conveyancing error in failing to match the written description to the plan. There was no room for extrinsic evidence of occupation.

Argument for the respondent

[29] On behalf of the respondent it was submitted that the questions for the court should be answered in the affirmative.

[30] Where a disposition included a plan, especially one which bore to have been professionally prepared, it should be presumed that reference to the plan must have a purpose. It was an integral part of the description of the subjects (*Rivendale* v *Clark* [2015] CSIH 27, 2015 SC 558, Lord Drummond Young at paragraph [22]). Here the tribunal had correctly held that the inset plan must have been included for a purpose. The tribunal had correctly held that the words "delineated and coloured pink" could and should be construed disjunctively. Read as a whole, the 1966 Disposition was clearly intended to include the Disputed Room.

[31] This construction was not contradicted by the written description, which referred to the subjects "presently occupied" by the respondent's predecessors. Those subjects included the Disputed Room. Each of the descriptions of boundaries in the 1966 Disposition proceeded on the basis of the extent of the occupation of the respondent's predecessors in title and that of the neighbouring proprietors. "No better or more specific boundary could be imagined": *Reid* v *McColl* (above). In so far as there was any ambiguity in the description, extrinsic evidence of possession was available to resolve it. The tribunal had been entitled to attach weight to the evidence of possession of the Disputed Room. Its occupation must have been obvious in 1966.

[32] The appellant's contention that the description in the 1966 Disposition was not sufficiently precise and unambiguous to form a bounding description required the court to construe one part of the description but to ignore the inset plan and the reference to

occupation. Absence of precision could be remedied by construing the deed as a whole. In any event the question, which the tribunal went on to consider, was whether the description was *habile* to include the Disputed Room. A habile title could be ambiguous, indefinite or general, provided that it was susceptible of a construction which would embrace the conveyance. Even if the 1966 Disposition did not unambiguously include the room, it was sufficient that it was habile to include it, albeit there was conflict between parts of the description. To exclude the inset plan from the construction process would be inconsistent with the "habile" test. Having regard to the whole of the 1966 Disposition, including the plan and the reference to occupation, the description was at the very least habile to include the Disputed Room and therefore sufficient to found prescriptive possession by the respondent's predecessor in title.

[33] The reference in the 1966 Disposition to the subjects first disponed being erected on the area of ground second disponed did not render the matter as clear as the appellant contended. Reference was made to the conveyance of a right in common to the *solum* upon which the subjects first disponed were erected, so far as the granters had power to grant the same, which latter phrase referred to subjects disponed "so far as not erected on the said subjects (SECOND) hereinbefore disponed". This afforded further support for the proposition that the description was habile to include the Disputed Room, which as a matter of fact was not erected on the area of ground second disponed.

Decision

[34] As stated at the beginning of this opinion, the issue for determination is whether the description of the subjects conveyed by the 1966 Disposition was habile to include the

Disputed Room. In *Auld* v *Hay* (1880) 7R 663, a decision of a court of seven judges, Lord Justice Clerk Moncrieff provided at p 668 (in the context of the then prescriptive period of 40 years) the following authoritative explanation of a habile title:

> "Whether the title founded on be one on which possession for forty years can establish a right of property depends solely on the terms of the written charter or disposition itself, and neither on extrinsic evidence nor on possession. A habile title does not mean a charter followed by sasine, which bears to convey the property in dispute, but one which is conceived in terms capable of being so construed. The terms of the grant may be ambiguous, or indefinite, or general, so that it may remain doubtful whether the particular subject is or is not conveyed, or, if conveyed, what is the extent of it. But if the instrument be conceived in terms consistent with and susceptible of a construction which would embrace such a conveyance, that is enough, and forty years' possession following on it will constitute the right to the extent possessed."

In a concurring judgment, Lord President Inglis stated at pp 681-2:

> "I hold it to be now settled law that a charter and sasine containing a description which can be so construed as to embrace an entire subject, though it may also be so construed as to embrace part of it only, if followed by forty years' uninterrupted and exclusive possession of the whole, will, under the statute 1617, c. 12, exclude all inquiry, and protect the person holding it against all challenge from any person holding even an express title prior in date to the whole or any part of the subject."

Applying Lord President Inglis' dictum to the circumstances of the present case, it is clear that it is of no assistance to the appellant to establish that the 1960 Disposition conveyed an express title to the Disputed Room if the subsequent disposition in favour of the respondent's predecessors, fortified by prescriptive possession, was habile to include the room.

[35] The appellant made reference in her submission to the definition of a bounding title, and in particular to the well-established rule that where a title is properly to be regarded as a bounding title, prescription cannot operate beyond it. As Lord Justice Clerk Moncrieff observed in *Reid* v *McColl* (1879) 7 R 84 (p 90):

> "A bounding title is one in which the property is identified by its boundaries, as distinguished from one in which the identity and extent of the subject depends only on description. One, in the old legal phraseology of the civilians, was termed '*ager limitatus*', the other '*ager arcifinius*'. In the first, possession beyond the boundary was of no avail. In the second, possession was the measure of the right. Our own law has adopted the distinction, which is founded on the clearest principle, for where the boundary is expressed, possession beyond it cannot be in good faith, and can raise no presumption of previous grants."

Lord Moncrieff emphasised that where a boundary was expressed, the title would be a bounding title even if physical features or ownership of neighbouring land referred to in the description had disappeared altogether or changed with the passage of time, as had occurred in *Reid* v *McColl*. By way of contrast, in *Suttie* v *Baird* 1992 SLT 133, it was held that although a title was a bounding title in the sense that an attempt had been made to identify the property disponed, both in a plan and in a written description, by reference to its boundaries, it was insufficiently detailed and precise to exclude evidence to set the limits of prescriptive possession. It is unnecessary for us to examine these authorities further because the appellant's position in the present case is not, as we understand it, that the respondent's title is a bounding title that excludes the Disputed Room, but rather that the description is insufficiently precise to constitute a bounding title that *includes* the room, because attention requires to focus on the written description rather than on the plan.

[36] The relationship between a written description and a plan which "though believed to be correct, is not guaranteed" was considered in *Rivendale* v *Clark* [2015] CSIH 27, 2015 SC 558, concerning ownership of a vehicle track running in front of the appellant's house. Delivering the judgment of an Extra Division, Lord Drummond Young stated (paragraph [22]):

> "The dispositive clause of the 1960 disposition… contains three elements. The first of these is a reference to the area of ground 'occupied and possessed' by Catherine McQuilkan, the former tenant. The second is a statement that the subjects disponed 'are delineated in red and coloured pink on the plan annexed and subscribed by me as relative hereto'. The third is a statement that that plan 'though believed to be

> correct, is not guaranteed'. If the first of these had stood by itself, the title would not be a bounding title and the disponee and her successors could unquestionably have established title to the solum of the track by prescriptive possession. It is followed, however, by the second element, which indicates that the subjects possessed by the former tenant and disponed by the disposition are delineated in red and coloured pink on an annexed plan. In our opinion that reference to the plan must have a purpose. First, the general rule is that so far as possible the full wording of a clause in a disposition should be given effect, and the reference to the plan is an integral part of the description of the subjects in the dispositive clause. Secondly, the plan in question was professionally prepared, and for that reason it appears to be intended to fulfil a significant role in the disposition. Thirdly, and most importantly, without the plan the disposition was completely imprecise as to the subjects conveyed, and the obvious purpose of incorporating a plan was to denote the extent of those subjects. The reference would have no point otherwise. The dispositive clause must in our opinion be construed in the light of that clear objective."

As regards the statement that the plan was not guaranteed, the court held that its obvious purpose was the exclusion of warrandice in relation to the precise boundaries shown on the plan. Lord Drummond Young continued (paragraph 23):

> "…It is no doubt true that if a plan is only 'believed to be correct' it may be incorrect, as Profs Gretton and Reid indicate (*Conveyancing 2013*, p 46). Nevertheless this consideration is in our opinion outweighed by the factors discussed in the last paragraph: the reference to the plan must serve a purpose, and its purpose is to denote with reasonable accuracy the extent of subjects conveyed…"

The court found, in these circumstances, that the Lands Tribunal had been correct to have regard to the plan in determining the boundaries of the subjects conveyed to the appellant's predecessor in title, and in holding that because the track was not, according to the plan, within the subjects conveyed to her, the disposition was not habile to establish title to it by prescriptive possession.

[37] We agree that reference in the course of a written description to a professionally-prepared plan, even if the accuracy of the plan is not guaranteed or if it is declared not to be taxative, must have a purpose, and that that purpose is to denote with reasonable accuracy the extent of the subjects conveyed. As Lord Drummond Young noted, reference to a plan is

an integral part of the description of the subjects in the dispositive clause. In the context of the present case, those observations apply to the whole of the plan annexed to the 1966 Disposition, including the first-floor plan and, indeed, the hatched line on the ground floor plan indicating the location of the Disputed Room at first floor level. These features cannot simply be dismissed as irrelevant or inexplicable: their presence must be taken into account in determining, having regard to the whole description of the subjects disponed, including the whole of the plan, whether the title is habile to include the Disputed Room. We reiterate that the test is not one of certainty, nor even whether it is more likely than not that the granter's intention was to convey the disputed subjects, but rather, in Lord Moncrieff's words in *Auld* v *Hay*, whether "the instrument be conceived in terms consistent with and susceptible of a construction which would embrace such a conveyance". The following indicators support a construction that would embrace conveyance of the Disputed Room:

- the fact of inclusion of the first floor plan, and of the depiction of the location at first floor level of the Disputed Room on the ground floor plan;
- the fact that the "plan" is throughout referred to in the singular, encompassing the part entitled "first floor plan";
- the reference in the written description to the area of ground "delineated and coloured pink" on the plan, which when taken together with the inclusion of a pink delineation on the first floor plan (a delineation that must have had a purpose) allows a disjunctive interpretation to be placed upon the word "and" in the phrase "delineated and coloured pink".

[38] Against these indicators in favour of the respondent's title being habile to include the Disputed Room is the fact that the reference in the 1966 Disposition to the plan bears only to

refer to the area or piece of ground second disponed and not to the dwellinghouse first disponed. We acknowledge that this conflicts with the respondent's contention that the reference to delineation applies in the same way to the first floor plan, which can relate only to the subjects first disponed, as it does to the depiction of the area of ground delineated and coloured pink on the main plan. In our view this conflict, taken together with the references in the disposition to the mutual gable, precludes an argument on behalf of the respondent that his title is a bounding title without any need of evidence of possession of the Disputed Room. In the context of habile title, however, such a relatively minor conflict, which may simply have been a drafting slip, does not outweigh the indicators that we have identified that the description in the title, including the plan, was capable of conveying the Disputed Room, and does not require the court to adopt a construction which gives precedence to the written description and disregards the plan in whole or in part.

[39] Nor does the matter end with the proper weight to be attached to the plan. Further significant support for the respondent's contention is provided by two elements of the written description. In the first place, the dwellinghouse first disponed is described as being "all as presently occupied by our said disponees". It is uncontentious that in and prior to 1966 the Disputed Room was occupied by the respondent's predecessors in title, and that this would have been well known to the parties to the disposition. Inclusion of these words had the obvious purpose of constituting part of the description of the subjects conveyed. They cannot be dismissed as being devoid of clear meaning or as providing no more than information of passing interest.

[40] In the second place, the closing words of the conveyance of a right in common to the *solum* ("…so far as not erected on the said subjects (SECOND) hereinbefore disponed"), are a

clear indication of an awareness by the granter that the subjects intended to be conveyed by the 1966 Disposition were not, or at least might not be, erected wholly on the *solum* of the area of land second disponed. That awareness can only have applied to the Disputed Room.

[41] For all of these reasons, we accept the respondent's contention that the description in the 1966 Disposition, taken as a whole, was at least habile to include the Disputed Room and was therefore sufficient to found prescriptive possession by the respondent's predecessors in title. We hold that the Lands Tribunal was correct to find accordingly.

Disposal

[42] One final complication requires to be addressed. Although the tribunal found that the 1966 Disposition had been habile to convey the Disputed Room, and that the requisite prescriptive possession of the room had been achieved during the ownership of the subjects by Julia Seiffert, it held that the terms of the disposition granted in 2021 by Mrs Seiffert in favour of the respondent, under reference to the plan annexed thereto (reproduced at paragraph [12] above), did not convey the Disputed Room to the respondent. It followed that although rectification of the inaccuracy in the Register required the removal of the Disputed Room from the appellant's title PTH3637 it could not, as matters stood, be incorporated as part of the respondent's title because it still belonged to Mrs Seiffert. This finding was not disputed by the respondent, and the appellant took no issue with it. In its decision, the tribunal expressed the hope that the matter could be resolved by collaboration to undertake corrective conveyancing, and we express the same hope.

[43] In the meantime we refuse the appeal and affirm the tribunal's determination (at paragraph 181 of its decision) that there is an inaccuracy in the Land Register and that what

is required to rectify that inaccuracy is the removal of the Disputed Room from the appellant's title PTH3637. Questions of expenses are reserved.