

Appendix 2: Land Titles Research

- **Summary Court of Claims, Case 388**
- **Land ownership: 88-90 Princes and 123-125 Cumberland Streets, The Rocks**
- **Land Titles Schedule: Lot 8 Section 73 – Cumberland & Princes Street, The Rocks**
- **Notes To Titles**

Report of the Commissioners Appointed under the Act of Council of 5th Will. IV, No. 21, for Hearing and Examining Claims to Grants of Land.

Summary:

Case No. 388

Claimants Name and Address: Joseph Pashley, tailor, of Cumberland Street, Sydney, and others in trust for Elizabeth Boulton, of Sydney, widow, and her four children, - Henry, Elizabeth, Sophia, and Caroline Boulton.

Description of the Land: Twenty one and a half perches in the County of Cumberland, town of Sydney, Parish fo St Philip, allotment No. 8. of section No. 73; bounded on the East by Cumberland Street bearing North 11 degrees, East 89 ½ links; on the North by allotments No. 11 and 9 bearing West 17 degrees 172 links; on the West by the building line of Prince Street bearing South 12 degrees 15 minutes West 74 ¼ links; and on the South by allotments Nos. 7 and 5 bearing East 14 degrees 30 minutes South 107 links; then South 16 degrees 30 minutes West 23 ½ links; then East 13 degrees 30 minutes South 66 ½ links.

“The Commissioners have the honour to report in favour of the claim of Elizabeth Boulton, the widow of Thomas Boulton, for a Deed of Grant of this allotment, the description of which was advertised (in her name) in the Gazette Notice of 2nd February 1839, the surveyor having found her in possession. Elizabeth Boulton obtained this property from her mother, Anne Sandlands. Anne Sandlands, it was proved, (vide the deposition of John Cooper,) had been in the possession of this allotment so far back as 1805, and died about 29 years ago interstate (having been drowned) so that Elizabeth Boulton, who is her only child and heiress at law, and who has been residing on the allotment from her mothers death to the present time, establishes a right to the land by virtue of derivative and continuous possession thereof for twenty years and upwards. Some 30 years ago she intermarried with her late husband, Thomas Boulton, who has been dead for about two years, having, previous to his decease, made his Will dated 14th June, 1837, which was exhibited to the Commissioners and therein devised all his real estate to trustees for the benefit of his widow and four children, but, as the allotment does not appear, at any time, to have been his property, so as that he could dispose of it by Will, - Elizabeth Boulton not having in any way transferred or made over her right to him; (vide her own deposition and that of Cooper,) and as neither of the trustees appeared to support the Will of Boulton, which was, no doubt, made under the fallacious impression, that, on marriage, the real property of the wife vests in the husband: - The Commissioners respectfully recommend, that a Deed of Grant of the allotment in question may be prepared for Elizabeth Boulton, widow, of Prince and Cumberland Streets, Sydney, and her heirs.

“Dated this 19th day of July 1839.”

Deposition of Elizabeth Boulton

“Elizabeth Boulton, Cumberland Street Sydney.

“1807 Anne Sandlands gave the property to her daughter Elizabeth the wife of Thomas Boulton.

“1837 Thomas Boulton died having by his Will (which Elizabeth Boulton does not dispute) devised the premises to Joseph Pashley of Cumberland Street Sydney, Tailor, and others in trust for his wife the said Elizabeth Boulton for life and after her decease In trust for his four children Henry, Elizabeth, Sophia and Caroline until the youngest attain eighteen years or marry then to be divided between them share and share alike as tenants in common and their respective Heirs, exectutors and administrators.

“Note Joseph Pashley only acted in the Trust – Henry Boulton is of age, but Elizabeth, Sophia and Caroline Boulton are infants.

Elizabeth Boulton (signature)”

Deposition of John Cooper**Summary:**

- John Cooper, occupation given as Shoemaker.
- Knew Elizabeth Boulton's mother, name gives as Ann Sandilands
- Claims knowledge that Ann Sandilands was in possession of the allotment in question 35 years ago, approximately 1804. Also that Ann died via drowning whilst interstate about 29 years prior, approximately 1810
- Elizabeth and Thomas Boulton were married for 2 or 3 years prior to the death of Sandilands
- Thomas Boulton died 2 years ago, 1837. Elizabeth Boulton was, and remains, living on the land in question

Secondary Deposition/additional statement of Elizabeth Boulton, dated 30/7/1839

"Elizabeth Boulton of Sydney Widow being sworn [?] – I never made any transfer to my late husband of any sort or kind of the property in question – Pashley the Executor of my Husband's Will – has never troubled himself about it. It was me who applied to the Colonial Secretarys application –
Elizabeth Boulton (signature)

LAND OWNERSHIP
88-90 PRINCES AND 123-125 CUMBERLAND STREETS, THE ROCKS

On 30 September 1839 Elizabeth Boulton was granted 21 ½ perches of land known as Lot 8 in Section 73 in the Parish of St Philip, County of Cumberland¹. The allotment was described as,

...bounded on the east by Cumberland Street bearing North eleven degrees East eighty nine and a half links; on the North by Allotments Numbers Eleven and Nine bearing West seventeen degrees North one hundred and seventy two links; on the West by the building line of Princes Street bearing South twelve degrees fifteen minutes West seventy five and a quarter links, and on the South by Allotments Numbers Seven and Five bearing East fourteen degrees thirty minutes south one hundred and seven links, then south sixteen degrees thirty minutes West twenty three and a half links then East thirteen degrees thirty minutes South sixty six and a half links.

The land was granted to Elizabeth Boulton, widow of Thomas Boulton, in accordance with a report 'on Case No. 388 made on the 19 July 1839 by the Commissioners appointed under the Act of the Colonial Legislature'. Section 73 is shown in a map of the Parish of St Philip reproduced below.

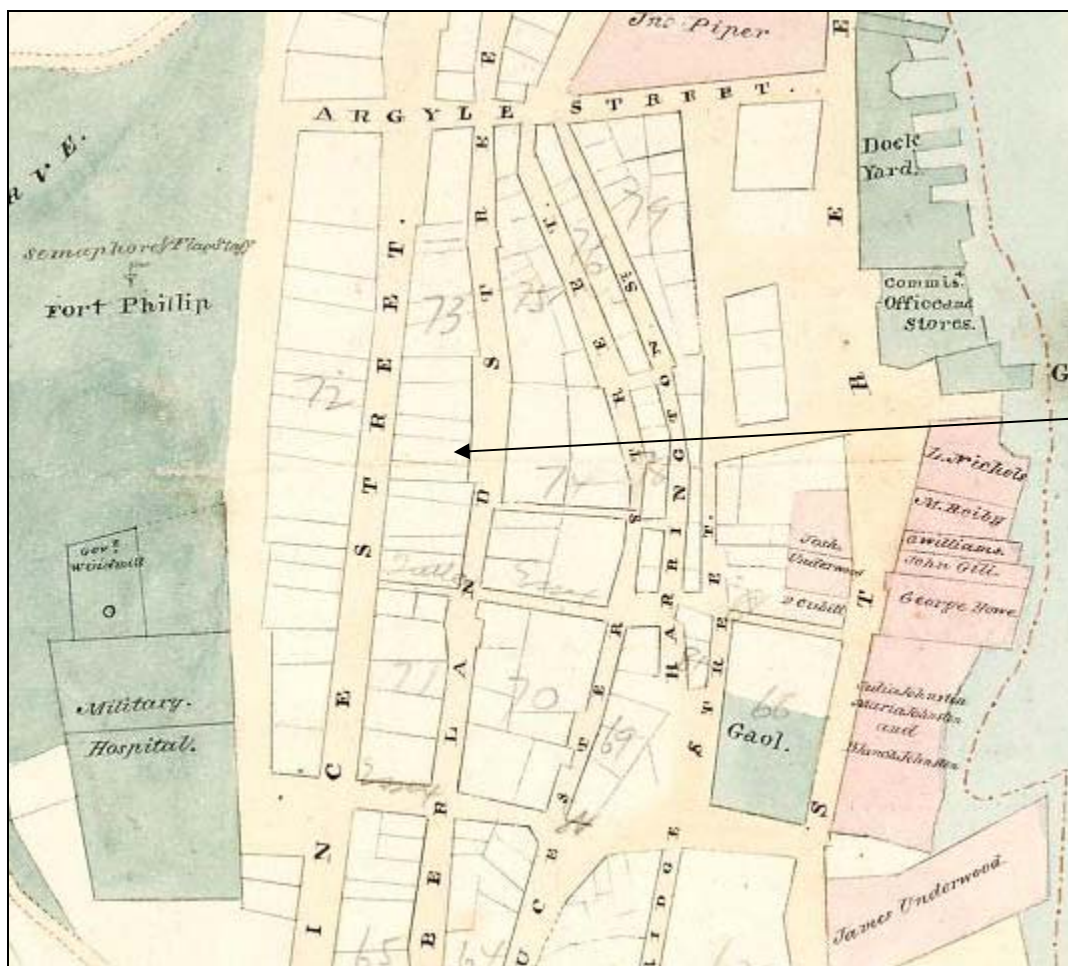


Figure 1: Part of the map of the Parish of St Philip dated c.1830s showing Section 73, within which Elizabeth Boulton's 1839 grant is located (Parish Map PMapMN05, Id no 14073701).

The annual quit rent was £1/1/6-, to be paid from 1 July 1829 until 30 June 1835, with ten shillings and nine pence due every year from then on. The date of the commencement of quit rent, prior to the date of the grant

¹ Refer to Land Titles Schedule

suggests that Elizabeth Boulton and her family were already occupying the site. Records showing that the grant was promised to Elizabeth or Thomas Boulton prior to this date have not been located in land titles records and would possibly be found in the Colonial Secretary's papers. A search of the index to the Colonial Secretary's papers shows that Thomas Boulton Junior is included in a list of grants and leases registered in the colony in 1809; and a Thomas Boulton is recorded as a stonemason of Cumberland Street in 1825.

Elizabeth Boulton was recorded in Sydney Municipal Council Assessment records as owning property in Princes Street from at least 1845. A brick and a timber house are shown at Nos 98 and 100 respectively. In the 1850s problems with access to water supplies in vicinity of Princes Street resulted in correspondence between Elizabeth's son John Boulton, of 9 Princes Street, and the Council. John Boulton (1816-1897) objected to paying for water he claimed he didn't get with the result that he had to purchase it from water carts and threatened to discontinue the supply. The Inspector of Water Works replied that due to the high level of the street without a pump being installed the difficulties could not be resolved. The state of affairs was blamed on the previous inspector who had saved money by not excavating 'the hard rock' resulting in the water in the tunnel being low. Boulton thought that the Council's reply to his letter was unsatisfactory and correspondence continued without resolution of the matter being recorded in the index. Sanitation also presented a problem with a letter from Elizabeth Boulton of 9 Princes Street, dated 12 February 1855, informing the Sydney Municipal Council that due to her mother being taken ill she would require an extension of time concerning the privy and would attend to it in a week or two². Council indexes do not reveal the nature of the problem with the privy.

Elizabeth Boulton died on 19 June 1866 leaving her property between Cumberland and Princes Streets to four of her children. Her will instructed that the land be divided into four equal parts within six months of her death, with her sons John and Edward Boulton appointed as executors of her estate. Land titles indicate that portions of the land were distributed to John Boulton, Edward Boulton, Sophia Kilpatrick (née Boulton) and Elizabeth Bray (née Boulton), four of Elizabeth and Thomas Boulton's children. Descriptions of the land in the title deeds indicate that Elizabeth Bray inherited the northern-most part facing Princes Street, John Boulton inherited the lot immediately to the south, Sophia Kilpatrick acquired the northern-most lot facing Cumberland Street with Edward Boulton's lot immediately to the south. Sophia Kilpatrick's family is shown in the Council Assessment records as living in Princes Street and Cumberland Street in the 1860s and 1870s.

In February 1869 Edward Boulton, now residing in Wellington, New Zealand, sold his share of his Cumberland Street property to his brother John for £200. Elizabeth Boulton's daughter Sophia Kilpatrick died in September 1867 leaving her property to her children, Annie Maria Roffey (b.1856), Arthur Henry Kilpatrick (b. 1861), Elizabeth Margretta Maidment (1855 - 1880) and Alice Mary Kilpatrick (b. 1859). On the 1 November 1880 Annie Roffey sold her share to her brother-in-law Henry Maidment for £70. Maidment acquired another share of the property after his wife Elizabeth Maidment's death in the same year.

In 1883 John Boulton conveyed his Princes and Cumberland Street property to Alfred Whetton (sometimes shown as Whitton), a shipwright of Sydney for £1050. In the following year the quarter share bequeathed to Sophia Kilpatrick, and subsequently inherited by her children, was sold to Peter Francis Hart (1840-1917) a builder of Newtown for £450. Hart was the owner and builder contractor of Hart's Buildings off Gloucester Street [Newtown Project, Biographies]. Elizabeth Boulton's daughter Elizabeth Emma Bray, who had moved with her husband William to England, held her Princes Street lot until 1886 when it was also sold to Peter Hart for £600. This transaction marked the end of the Boulton family's link to the site in The Rocks that had lasted for more than forty-seven years.

Solicitors Eyre Goulburn Ellis and Henry Massey Makinson of Sydney purchased Hart's property in the Rocks in 1890 and it was subsequently transferred to Torrens Title. Eyre Ellis (d.1892) was the fourth conveyancing practitioner in New South Wales, establishing himself in business in 1859 and in partnership with Makinson from 1865. The certificate of title for The Rocks site issued in Makinson's name provides the first plan of the site of 10 perches extending between Princes and Cumberland Streets and is reproduced below.

² City of Sydney Archives Items 26/14/141, 26/13/1044, 26/12/0940, 26/12/899

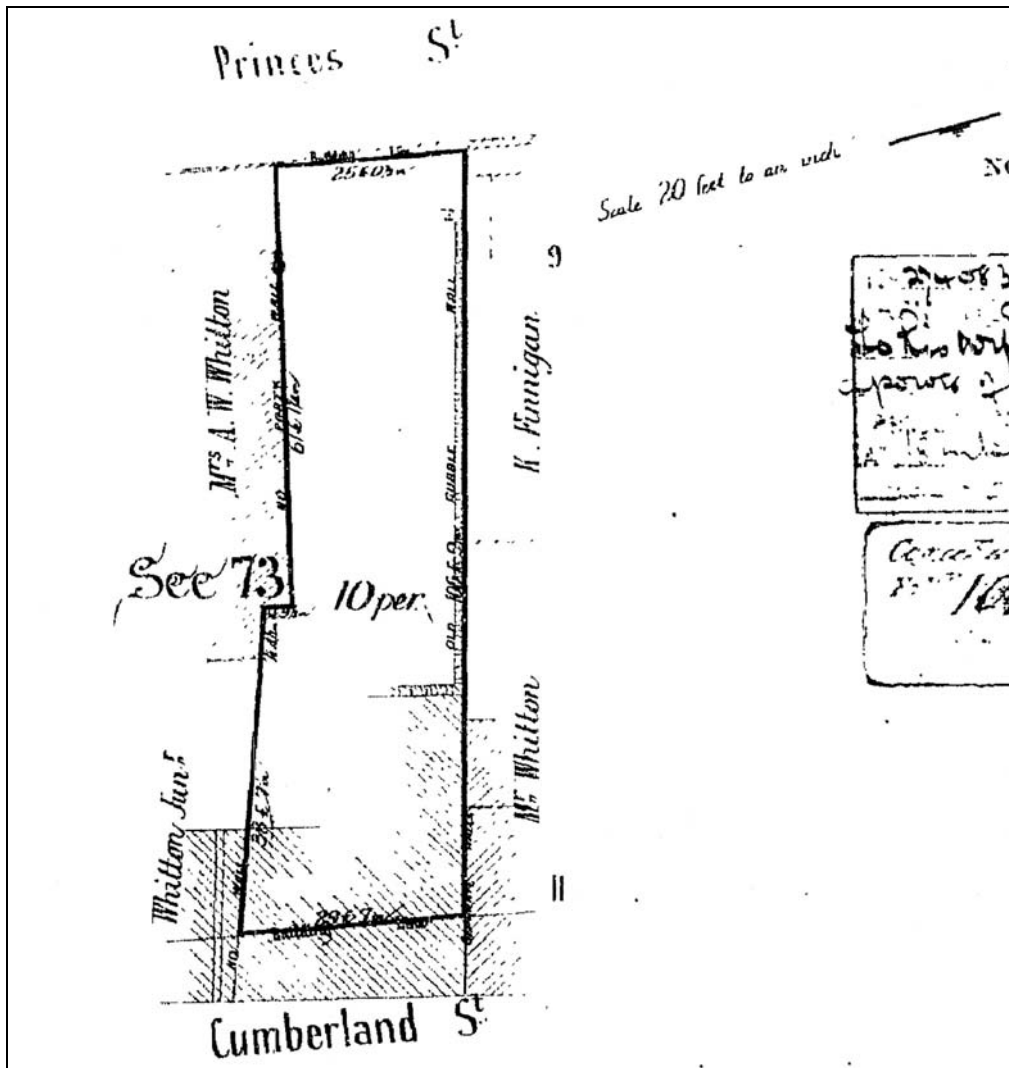


Figure 2: Plan of Henry Makinson's 10 perch site part of 21 ½ perches granted to Elizabeth Boulton in 1839.

Interestingly the building footprint shown on the plan extends beyond the boundary of the site on its eastern and south-eastern boundaries. This could be due to the planned realignment of the street or a simply an indication that the buildings encroached into the street.

In 1902 all of the land between Cumberland and Princes Streets once owned by Elizabeth Boulton was resumed with adjacent sites by the Department of Public Works.

BIBLIOGRAPHY

Land titles and associated documents, NSW Department of Lands.

Parish Maps, NSW Department of Lands.

Index to the NSW Registry of Births, Deaths and Marriages.

Items 26/14/141, 26/13/1044, 26/12/0940 & 26/12/899, Archives Investigator, City of Sydney Council Archives.

Assessment Records, City of Sydney Council Archives.

Peter Francis Hart, Biography, Newtown Project, City of Sydney,

<http://cityofsydney.nsw.gov.au/newtownproject/biography1/biography4.html>, accessed 4 May 2009.

Index to the Colonial Secretary's Papers, State Records of NSW.

LAND TITLES SCHEDULE

LOT 8 SECTION 73 - CUMBERLAND & PRINCES STREET, THE ROCKS

DATE	REAL PROPERTY DESCRIPTION		INSTRUMENT OF TRANSFER	FROM	TO
	Lot & DP	CT/V & F			
30 Sep 1839	Lot 8 Sec 73 Psh St Philip Co. Cumberland 21 ½ p	Series 50 No 59	Town Grant	Governor Sir George Gipps	Elizabeth Boulton , widow of Thomas Boulton deceased
21 Feb 1869	Part of Lot 8 Section 73 [¼ share of Elizabeth Boulton's grant]	Book 112 No 676	Conveyance	Edward Boulton , formerly of Wellington New Zealand, now of Pauhau ta nui [<i>Pauatahanui</i>] in the province of Wellington	John Boulton , freeholder of Sydney
1 Nov 1880	Part of Lot 8 Section 73 [share in ¼ share of Elizabeth Boulton's grant]	Book 210 No 48	Conveyance	Annie Roffey , wife of William Roffey, plumber of Sydney	Henry Maidment , dealer of Pyrmont
3 Jan 1883	Part of Lot 8 Section 73 [2 x ¼ shares of Elizabeth Boulton's grant]	Book 261 No 331	Conveyance	John Boulton , shipwright of Sydney	Alfred Whetton , shipwright of Sydney
20 Jul 1883	Part of Lot 8 Section 73 [¼ share of Elizabeth Boulton's grant]	Book 273 No 530	Conveyance	Henry Maidment , Alice Mary Kilpatrick , spinster, Arthur Henry Kilpatrick , shipwright	Peter Francis Hart , builder of Newtown
18 Mar 1886	Part of Lot 8 Section 73 [¼ share of Elizabeth Boulton's grant]	Bk 337 No 942	Conveyance	William Bray, of Darlinghurst Boynor [Bognor?], Sussex, England, & Elizabeth Emma Bray	Peter Francis Hart , Esquire of Sydney
24 Jun 1890	Part of Lot 8 Section 73	Bk 440 No 893	Conveyance	Peter Francis Hart , builder of Newtown	Eyre Goulburn Ellis & Henry Massey Makinson , solicitors of Sydney
25 Jul 1890	Part of Lot 8 Section 73 - 10 p	Primary Application No. 8144	Conversion to Torrens Title		Eyre Goulburn Ellis & Henry Massey Makinson , solicitors of Sydney
4 Nov	Part of Lot 8	Vol 988 Fol	Certificate of		Henry Massey

DATE	REAL PROPERTY DESCRIPTION		INSTRUMENT OF TRANSFER	FROM	TO
	Lot & DP	CT/V & F			
1890	Section 73 - 10 p	134	Title		Makinson , solicitor of Sydney
31 Dec 1897	Part of Lot 8 Section 73 10 p	Vol 988 Fol 134	Tfr with Power of Appointment No 274083	Henry Massey Makinson	Margaret Frances Makinson, wife of Henry Makinson
10 Jul 1902	Psh St Philip Co. Cumberland [Described but not including Lot or Section numbers]	Bk 721 No 301	Notification of Resumption	Alfred Whetton Junior, contractor of 36 Boyce St, Glebe Point	Minister for Public Works
<i>In 1902 all four properties resumed by the Minister of Public Works - Title search discontinued</i>					

Notes to Titles

Book 273 No 530 – 20 July 1883

Conveyance between Henry Maidment, dealer, Alice Mary Kilpatrick, spinster, Arthur Henry Kilpatrick, shipwright, all of Sydney, in respect of the will of Elizabeth Boulton and Peter Francis Hart, builder of Newtown, dated 3 Jan 1883. Land conveyed in consideration of £450.

Elizabeth Boulton, widow of Thomas Boulton

Will of Elizabeth Boulton made 24 August 1863 instructing her land to be divided into four equal parts within six months of her death. This portion bequeathed to her daughter Sophia Kilpatrick, wife of Francis Kilpatrick. Land bounded by other portions of land bequeathed to her daughter Elizabeth Bray, and her son Edward Boulton

Elizabeth Boulton died 19 June 1866 and probate was granted on 11 July 1866. Elizabeth appointed her sons John and Edward Boulton as her executors. [Reg BDM Death Elizabeth Boulton No.736/1866 Aged 75 years Sydney]

Sophia Kilpatrick died 22 September 1868 leaving four children: - Elizabeth Margretta Kilpatrick, born 26 March 1855, Annie Maria Kilpatrick, born 31 October 1856, Alice Mary Kilpatrick, born 7 June 1859 and Arthur Henry Kilpatrick, born 28 August 1861.

Elizabeth Margretta Kilpatrick married Henry Maidment on 1 April 1871. Elizabeth Maidment died on 28 May 1880.

Annie Maria Kilpatrick married William Roffey in September 1878.

Annie Roffey released her share to Henry Maidment.

Land bequeathed to Sophia Kilpatrick in Cumberland Street is described as,

...bounded on the east by Cumberland Street aforesaid. On the West by the land thereafter bequeathed in trust for her daughter Elizabeth Bray. On the South by that portion of the so divided land therein before bequeathed to her son Edward. And on the North by the land of Mr Forster [?].

£450 consideration.

Book 112 No 676 – 21 Feb 1869

Conveyance between Edward Boulton, formerly of Wellington New Zealand, and John Boulton, freeholder of Sydney

Summary of description of Elizabeth Boulton's land –

Bounded on the east by Cumberland street on the west by Princes Street on the north by the properties of Mr Forster and Mr Watson and on the south by William Andrews and Mr Johnson.

Summary of description of land inherited by Edward Boulton -

In Cumberland Street, bounded on the west by John Boulton's land, bounded on the north by land bequeathed to Sophia Kilpatrick and bounded on the south by the Mr Johnson's land.

£200 consideration

Book 261 No 331 – 3 Jan 1883

Conveyance between John Boulton, shipwright of Sydney and Alfred Whetton, shipwright of Sydney, dated 3 Jan 1883. Land conveyed in consideration of £1050.

...commencing at a point in Cumberland Street being the south east corner of Sophia Kilpatrick's allotment and bounded towards the East by Cumberland Street bearing southerly thirty feet on the south-west by a line bearing north westerly forty feet on part of the north west by a line north easterly fourteen feet nine and a half inches again towards the south west by a line bearing north westerly seventeen feet again towards the north west by a line bearing north east twenty feet three inches and towards the north east by a line easterly fifty five feet three inches to the commencement.

Also

...a portion of Lot 8 of Section 73 commencing on the eastern side of Princes Street at the south west corner of said Lot 8 and bounded on the west by Princes Street bearing northerly twenty five feet on the north by a line bearing easterly sixty three feet dividing it from Elizabeth Bray's portion on the east by a line dividing it from the land hereinbefore described bearing southerly twenty four feet and on the south by part of the northern boundary of Lot 7 bearing westerly sixty feet nine inches to the point of commencement.

Book 337 No 942 – 18 Mar 1886

Conveyance between William Bray and Elizabeth Emma Bray of Darlinghurst Boynor [Bognor?] Sussex England, and Peter Francis Hart, Esquire of Sydney.

...portion of allotment number eight of section number seventy three commencing at the north west corner of said allotment in the eastern side of Princes Street and bounded on the west by that street bearing south twelve degrees fifteen minutes west twenty five feet in the south by a line bearing easterly sixty three feet on the east by a line bearing northerly twenty five feet three inches and on the north by a line bearing west seventeen degrees north sixty five feet to he point of commencement and containing an area of one thousand five hundred and ten square feet.

£600 consideration.

PA No 8144 – 25 Jul 1890

Primary application made by Eyre Goulburn Ellis and Henry Massey Makinson, both solicitors of Sydney re part of Allotment 8 Section 73. Land occupied by John Smith of 123 Cumberland Street, as a weekly tenant. Ref to CT issued Vol 988 Fol 134

Land description: -

All that piece and parcel of land ... being part of allotment number 8 of section 73

... commencing at a point in the east side of Princes Street and being the south west corner of lot 9 and bounded thence on the north by lot 9 being a line passing partly along the north side of a rubble wall and between two other walls and bearing easterly one hundred and [six?] feet nine inches to Cumberland Street thence on the east by that street bearing southerly [twenty?] nine feet seven inches thence on the south by lines bearing westerly in all forty five feet eleven and a half inches thence in the west by a line bearing northerly three feet nine and a half inches and thence again on the southerly a line passing along the north side of a wall and bearing westerly sixty one feet one and a quarter inches to Princes Street and thence in the west by Princes Street bearing northerly twenty five feet and a half of an inch to the point of commencement.

Schedule: -

30 Sep 1839	Grant to Elizabeth Boulton
11 Jul 1866	Probate of will of Elizabeth Boulton
1 Sep 1880	Annie Roffey to Henry Maidment Bk 210 No 48
20 Jul 1883	Conveyance, Henry Maidment and others to Peter Francis Hart Bk 273 No 530
18 Mar 1886	Conveyance, William Bray and another to Peter Francis Hart Bk 337 No 942
28 May 1890	Deed of confirmation, William Charles Bray and another to Peter Francis Hart Bk 440 No 73
28 May 1890	Deed of confirmation, William Charles Bray and another to Peter Francis Hart Bk 440 No 892
24 Jun 1890	Conveyance, Peter Francis Hart to Eyre Goulburn Ellis and Henry Massey Makinson Bk 440 No 893.

Book 721 No 301 – 10 Jul 1902

Notice of Resumption between Alfred Whetton Junior, contractor of 36 Boyce St, Glebe Point and the Minister of Public Works. Consideration £1901/1/4.

Schedule of lands: -

All that parcel of land ... commencing at a point in Cumberland street being the south eastern corner of Sophia Kilpatrick's allotment and bounded towards the east by Cumberland St bearing southerly 30 ft [??] the south west by a line bearing north westerly 40 ft in part of the north west by a line north easterly 14 ft 9 inches [again?] towards the south west by a line bearing north [easterly] 14 ft again bounded the north west by a line bearing north easterly 20 ft 3 inches and towards the north east by a line bearing easterly 55 ft 3 inches to the commencing point. And also all that parcel of land ...being portion of Lot 8 of 73 commencing on the eastern side of Princes St at the south western corner of said Lot 8 and bounded on the [west?] by Princes St bearing northerly 25 ft on the north by a line bearing easterly 63 ft dividing it from Elizabeth Bray's portion to the east by a line dividing it from the land hereinbefore described bearing southerly 24 ft and in the south by part of the northern boundary of Lot 7 bearing westerly 60 ft 9 inches to the point of commencement.

Births, Deaths and Marriages

Children of Elizabeth (d.1866) and Thomas Boulton (d.1837? aged 52)

John Boulton (1816-1897) m. Ann Witney (m.1861)

Edward B. Boulton (1818-1895) m. Mary Atkinson (m.1850)

Sophia Boulton (?-1867) m. Francis Kilpatrick

Elizabeth E. Boulton (?) m. William Bray

Charles (b.1824)

Henry (b.1807)

Susannah (b.1809)

Thomas (b.1814)

William (b. 1822)

Children of Sophia Boulton (b.?- 22 Sep 1867) and Francis M. Kilpatrick, labourer of Princes Street

Elizabeth Margretta (1855 - 1880) m. Henry Maidment (m. 1871)

Annie Maria (b.1856) m. William Roffey (m. 1878)

Alice Mary (b. 1859)

Arthur Henry (b. 1861)