



Michaelmas Term
[2023] UKPC 43
Privy Council Appeal No 0064 of 2022

JUDGMENT

**Francis Chitolie and another (Appellants) v Saint
Lucia National Housing Corporation (Respondent)**

**From the Court of Appeal of the Eastern Caribbean
Supreme Court (Saint Lucia)**

before

Lord Briggs
Lord Sales
Lord Burrows
Lord Stephens
Lord Richards

JUDGMENT GIVEN ON
5 December 2023

Heard on 3 July 2023

Appellant

Myriam Stacey KC
Richard Moules
(Instructed by Sheridans (London))

Respondent

V Dexter Theodore KC
Edith Petra Jeffrey-Nelson
Esther Green-Ernest
(Instructed by BDB Pitmans LLP (London))

LORD SALES, LORD BURROWS AND LORD RICHARDS:

1. Introduction and factual background

1. Under the rules of prescription laid down in the Saint Lucia Civil Code, title to land may be acquired by uninterrupted possession for 30 years. The central issue in this appeal is the effect of the Saint Lucia Torrens system of land registration on rights to land that were in the course of being acquired by prescription at the time the Torrens system was introduced.

2. It is important to make clear that, while all Torrens systems share the goal of achieving, so far as possible, certainty (by indefeasibility) of title by registration, they can and do differ in their precise details. It is therefore essential in this case to focus on the particular provisions applying to the Saint Lucia Torrens system and not to assume that decisions in other jurisdictions with a Torrens system can simply be applied across to Saint Lucia. This point was forcefully made by Sir Terence Etherton, giving the judgment of the Board, in *Arthur v Attorney General of the Turks and Caicos Islands* [2012] UKPC 30. He said at paras 13-15:

“Registration of title was introduced into Australia by Sir Robert Torrens in 1858. The system, which came to be known as the Torrens system and was first embodied in the South Australian Real Property Act 1858, spread to the other colonies in Australia and New Zealand and later to many other countries in the Commonwealth and elsewhere. The objective of the system was to achieve complete certainty of title. [But that objective] has never been achieved...

The fact that the Torrens system has been implemented in different countries with varying degrees of flexibility was emphasised by the Board in *Santiago Castillo Ltd v Quinto* [2009] UKPC 15, (2009) 74 WIR 217, when considering the provisions in the Belize Registered Land Act 1974 for rectification of the register...

It is necessary, therefore, when considering the effect of legislation implementing the Torrens system in any particular jurisdiction, to focus on the provisions of the particular legislation in question, and to take special care when considering the relevance and usefulness of judgments in cases in other jurisdictions where the legislation, policy

considerations and general principles of law may be different.”

3. The Torrens system was implemented in Saint Lucia by two linked statutes in 1984: the Land Adjudication Act (which we will sometimes refer to as the “LAA”) and the Land Registration Act (which we will sometimes refer to as the “LRA”). The project underpinning first registration in the new system was known as the Land Registration and Titling Project (the “LRTP”) and, in so far as relevant to the facts of this case, it is not in dispute that that project was being undertaken in mid-1987.

4. The disputed land is referred to as Block 1020B Parcel 227 (which subsequently became Block 1020B Parcels 441, 444, 446, 447) and comprises 229.05 acres. Under the new Torrens system, title to the disputed land was first registered by the Land Registry in the name of the National Development Corporation on 23 June 1987. The National Development Corporation was the sole claimant to the disputed land during the LRTP. Mr Francis Chitolie and Mr Vance Chitolie, who are the appellants, made no claim to the disputed land during the LRTP although Francis did make a claim to another unconnected parcel of land. In July 2008 title to the disputed land was transferred to the Saint Lucia National Housing Corporation (“NHC”) with that title being registered on 31 July 2008 by the Land Registry.

5. The proceedings that are the basis of this appeal were begun by NHC, the respondent, against the appellants on 11 March 2009 alleging trespass by the appellants. The appellants counterclaimed alleging trespass by the respondent. At the heart of the defence and counterclaim was the appellants’ argument that they had acquired prescriptive title to the disputed land, based on long possession, which gave rise to an overriding interest under section 28(f) of the LRA; and that they were therefore entitled to a declaration that they were the lawful owners of the disputed land and were entitled to be registered as owners by rectification of the register.

6. More specifically, the appellants have throughout submitted that they acquired good title by prescription, applying the law laid down in Article 2103A of the Saint Lucia Civil Code, because of 30 years relevant possession of the disputed land since 1976 at the latest (and indeed they alleged that they and their predecessors had been lawfully occupying the disputed land for over 100 years). Their central argument on this appeal is that, at the start of the Torrens system in 1987, they were in the process of acquiring rights by prescription over the disputed land; and being in that process constituted an overriding interest under section 28(f) of the LRA so that registration was not required. On the appellants’ argument, therefore, they acquired title by prescription in 2006 at the latest. That was made up of at least 11 years possession prior to the introduction of the Torrens system (1976 – 1987) and 19 years possession thereafter (1987-2006).

7. There is no dispute that, at the start of the Saint Lucia Torrens system, an accrued title by prescription fell to be treated in the same way as a documentary title (ie a title by deed). Rather the issue in dispute is how the Torrens system has dealt with rights that, at the time of first registration under the new system, were in the course of (or in the process of) being acquired by prescription (that is, where the relevant possession was for a period of less than 30 years prior to first registration under the new system, which in this case was 23 June 1987).

8. The High Court and the Court of Appeal dealt with many issues that are not now relevant. On the central issue with which the Board is concerned both the High Court and the Court of Appeal held that the appellants did not have an overriding interest by reason of prescription. This was based on the reasoning that a period of possession prior to first registration under the Torrens system did not count towards the 30 years. In this case the relevant period prior to the commencement of the action for trespass in 2009 was therefore only 21 years (1987 – 2009) which fell short of the required 30 years. The appellants now appeal to the Board.

2. The statutory framework

9. The two linked statutes implementing the Torrens system were the Land Adjudication Act 1984, which came into force on 8 August 1984, and the Land Registration Act 1984, which came into force on 15 July 1985.

(1) Land Adjudication Act 1984

10. The LAA was concerned with an essentially short-term activity which was to ensure as accurate a record as possible of title to land for the purposes of first registration under the new Torrens system. Section 4 provided for the Minister having responsibility for Agriculture to make orders designating adjudication areas, and to appoint an adjudication officer for each adjudication area. The adjudication officer was to appoint demarcation officers, recording officers and survey officers to act under his direction. Demarcation officers and survey officers were given statutory rights of entry and of requiring information as to the boundaries of land. The Minister was also to appoint a Land Adjudication Tribunal with a legally qualified chairperson to hear appeals from the adjudication officer. We shall now set out in full the sections of the LAA that are most relevant to this case.

11. “2. Interpretation

In this Act, except where the context otherwise requires –

...

‘interest in land’ includes any right or other interest in or over land which is capable of being recorded under the provisions of the Act;

...

5. Adjudication sections

The Adjudication Officer shall divide the adjudication area into two or more adjudication sections or declare the whole area to be a single adjudication section, and shall give each adjudication section a distinctive name.

6. Notice by adjudication officer

(1) The Adjudication Officer shall prepare a separate notice in respect of each adjudication section and in each such notice shall —

(a) specify as nearly as possible the situation and limits of the adjudication section;

(b) declare that all interests in land will be ascertained and recorded in accordance with the provisions of this Act;

(c) require any person who claims any interest in land within the adjudication section to make a claim either in writing or in person or by his agent duly authorised according to law, within the period and at the place and in the manner specified in the notice;

(d) require all claimants to land within the adjudication section to mark or indicate the boundaries of the land claimed in such manner and before such date as shall be required by the Demarcation Officer.

(2) The Adjudication Officer shall —

(a) cause such notices and schedule, if any, to be published at the office of the Registrar of Deeds and such other offices within the State as he thinks fit; and

(b) cause the substance of such notice and schedule if any, to be made known throughout the adjudication area and elsewhere by publication in the *Gazette* and in at least one local newspaper and in such other manner as he considers to be most effective for the purpose of bringing it to the attention of all persons affected thereby.

...

8. Claims...

(1) Every person including the Crown claiming any land or interest in land within an adjudication section shall make his claim in the manner and within the period fixed by the notice given under section 6.

...

9. Safeguarding of rights of absent persons ...

(1) If the Adjudication Officer, Demarcation Officer or Recording Officer is satisfied that any person who has not made a claim has a claim to any interest in land within the adjudication section the Adjudication Officer, Demarcation Officer or Recording Officer may, in his discretion proceed as if a claim had been made, and may call upon the Registrar of Deeds to supply him with a certified copy of any document of title relevant thereto.

...

15. Disputes

(1) If in any case -

(a) there is a dispute as to any boundary whether indicated to the Demarcation Officer or demarcated or readjusted by him, which the Demarcation Officer is unable to resolve; or

(b) there are two or more claimants to any interest in land and the Recording Officer is unable to effect agreement between them,

the Demarcation Officer or the Recording Officer as the case may be shall refer the matter to the Adjudication Officer.

(2) The Adjudication Officer shall adjudicate upon and determine any dispute referred to him under subsection (1), having due regard to any law which may be applicable, and shall make and sign a record of the proceedings.

16. Principles of adjudication etc

(1) In preparing the adjudication record —

(a) if the Recording Officer is satisfied that a person —

(i) is in public, continuous, uninterrupted, unequivocal peaceable possession as proprietor of a parcel of land other than a parcel which is Crown Land and has been in such possession, by himself or his predecessors in title, for an uninterrupted period of thirty years or more; or

(ii) has a good title to the parcel and that no other person has acquired or is in course of acquiring a title thereto under any law relating to prescription or limitation, and that he would succeed in maintaining the title against any other person claiming the land or any part thereof,

the Recording Officer shall record that person as the owner of the parcel and declare his title to be absolute;

(b) if the Recording Officer is satisfied that any land is entirely free from private rights, or that the rights existing in or over it do not amount to full ownership and are not such as to enable him to proceed under paragraph (d) of this subsection, he shall record the land as Crown Land;

(c) if the Recording Officer is satisfied that any land is subject to any right which is registrable as a lease, hypothec or servitude under the Land Registration Act 1984, he shall record such particulars as shall enable the right and the name of the person entitled to the benefit thereof to be registered;

(d) if the Recording Officer is satisfied that a person is in possession of or has a right to a parcel but is not satisfied that such person is entitled to be recorded under paragraph (a) of this subsection as the owner of the parcel with absolute title, the Recording Officer may nevertheless record that person as the owner of the parcel and declare his title to be provisional and shall record —

(i) the date on which the possession of that person shall be considered to have begun;

(ii) particulars of any deed, instrument or other document by virtue of which any right or interest adverse to or in derogation of the title of that person might exist; or

(iii) any other qualification which affects the title.

...

20. Appeals against the adjudication record

(1) The Minister or any person named in or affected by the adjudication record or demarcation map who considers such record or map to be inaccurate or incomplete in any respect or who is aggrieved by any act or decision of the Demarcation Officer or Survey Officer or by any entry in or omission from the adjudication record by the Recording Officer may, within ninety days of the day upon which notice of completion of the

adjudication record is published, give written notice of his intention to appeal to the Adjudication Officer in respect of the act, decision, entry or omission concerned and the appeal shall be heard and determined by the Adjudication Officer.

...

23. Finality of adjudication record

After the expiry of ninety days from the date of publication of the notice of completion of the adjudication record ... the adjudication record shall, subject to the provisions of the Land Registration Act, 1984, become final and the Adjudication Officer shall sign a certificate to that effect and shall deliver the adjudication record and the demarcation map to the Registrar together with all documents received by him in the process of adjudication.”

12. It is very important to this case that, under section 6, and subject to the discretionary safety-net in section 9(1), any person claiming an interest in land was required, by the notice that had to be issued by the Adjudication Officer, to make a claim; and, under section 16, the Recording Officer could record a person as the owner with absolute title based on either title acquired by prescription (because of 30 years relevant possession) or a documentary title, or, if a person was in possession of land but the Recording Officer was not satisfied that that person had an absolute title, the person could be recorded as being an owner with provisional title. Where a person was recorded as being an owner with provisional title on this basis, they were acknowledged on the face of the Land Register to be in the course of acquiring full title by prescription and were accorded a degree of legal protection in the meantime under section 24 of the LRA (set out in para 14 below).

(2) Land Registration Act 1984

13. The LRA provided for the establishment and maintenance of the Land Register by the Land Registrar. Under a Torrens system, it is the registration that confers title. Hence the Torrens system was described by Barwick CJ in *Breskvar v Wall* (1971) 126 CLR 376, 385 as “not a system of registration of title but a system of title by registration”.

14. We shall now set out the provisions of the LRA that are most relevant in this case. Although not set out below, it is helpful to bear in mind that, under sections 97 and

98, the Land Registrar or a court may rectify the register in limited circumstances, for example, as regards rectification by a court, where there has been registration, including first registration, by fraud or mistake.

“9. The Land Register and the Land Adjudication Act

(1) The Land Register shall comprise a register in respect of every parcel which has been adjudicated in accordance with the Land Adjudication Act and a register in respect of each lease required by this Act to be registered.

(2) Each register shall show whether the land is private land or Crown Land and, in respect of private land, whether the title is absolute or provisional, and shall be divided into 3 sections as follows-

(a) the property section, containing a brief description of the land or lease ... and, where the title is provisional, of the information recorded in the adjudication record under section 16(1)(d) of the Land Adjudication Act and a reference to the Registry Map and filed plan, if any;

(b) the proprietorship section, containing the name, and, where possible, address of the proprietor ...

...

10. Compilation of the Land Register

Whenever an adjudication record has become final under section 23 of the Land Adjudication Act and the adjudication officer has delivered the adjudication record to the Registrar, the Registrar shall prepare a register for each parcel shown in the adjudication record and for any lease required to be registered, and shall register therein any of the particulars in the adjudication record which requires registration.

11. Registration

(1) The first registration of any parcel shall be effected by the preparation of a register in accordance with the provision of section 9 ...

(2) Every subsequent registration shall be effected by an entry in the register in such form as the Registrar may direct, and by the cancellation of the entry, if any, which it replaces.

23. Effect of registration with absolute title

Subject to the provisions of sections 27 and 28 ... the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject—

(a) to the leases, hypothecs and other encumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register.

...

24. Effect of registration with provisional title

Subject to the provisions of section 27, the registration of any person as the proprietor with a provisional title of a parcel shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of that proprietor arising before such date or under such instrument or in such other manner as is specified in the register of that parcel; but save as aforesaid, such registration shall have the same effect as to registration of a person with absolute title.

28. Overriding interests

Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may subsist and affect the same, without their being noted on the register—

...

(f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;

(g) the rights of a person in actual occupation of land or in receipt of the income thereof save where inquiry is made of such person and the rights are not disclosed;

...

29. Conversion of provisional into absolute title

(1) Any proprietor registered with a provisional title or any interested person may at any time apply to the Registrar to be registered or to have the proprietor registered, as the case may be, with an absolute title.

(2) If the applicant satisfies the Registrar that the qualification to which the provisional title is subject has ceased to be of effect, the Registrar shall make an order for the registration of the proprietor with absolute title after such advertisement as the Registrar may think fit.

(3) On the making of any such order or on the application of any interested party after the expiration of 12 years from the date of first registration with a provisional title, the Registrar shall substitute in the register the words ‘absolute title’ for the words ‘provisional title’ and the title of the proprietor shall thereupon become absolute.”

15. It can be seen from the above provisions that the LRA, and the compilation of the Land Register, was dependent on the work carried out in accordance with the LAA. The two statutes were therefore closely linked in the implementation of the Torrens system.

It is of particular importance in this case to stress that, first, overriding interests are valid without being noted on the register and that, secondly, by section 28(f), a right “in process of being acquired... by prescription” is included in the list of overriding interests.

(3) Article 2103A of the Saint Lucia Civil Code

16. Section 16(1)(a)(i) of the LAA (see para 11 above) reflects the substantive law of acquisition of title by prescription. The details of the law on prescription are contained in Articles 2047 - 2132 of the Saint Lucia Civil Code. Most importantly, by Article 2103A, “Title to immovable property, or to any servitude or other right connected therewith, may be acquired by sole and undisturbed possession for thirty years ...”.

17. It should be noted that Article 2047 of the Civil Code draws a distinction between what is termed “positive” and “negative” prescription. But the Board does not need to consider that distinction for the purpose of deciding this case and will say nothing more about it.

3. The judgments of the courts below

(1) The High Court

18. The trial of the action in the High Court, after many delays and an attempt at mediation, finally took place in December 2018. In a judgment delivered on 16 July 2020, Cenac-Phulgence J held that the claim for trespass by NHC against Francis and Vance Chitolie succeeded and the counterclaim failed. She granted NHC an injunction against the Chitolies and awarded damages of \$88,000. The central issue with which the Board is concerned was dealt with at paras 131 – 172. In essence the judge decided as follows on that central issue:

(i) The decision of the Court of Appeal of the Eastern Caribbean Supreme Court in *Joseph v Francois* SLUHCVAP 2011/0025 is authority for the principle that first registration under the Torrens system requires alleged adverse possession by another person prior to that registration to be ignored where no claim was made by that other person during the LRTP (ie where there was no claim by that other person to be registered with absolute or provisional title, depending on the period of possession which was alleged). In that case, during the LRTP, Jacob Fanus had claimed title to the relevant land by long possession. His claim was not disputed and he was duly registered with provisional title in 1987 which was subsequently updated to absolute title in 2005. It was held that the appellants, in relation to a claim for trespass against them commenced by

Jacob Fanus in 2004, could not succeed in alleging that they had acquired title by prescription (they alleged that they had lived on the land for over 50 years) in relation to possession prior to 1987. As was said by Pereira CJ (with whom Baptiste JA and Michel JA agreed) in *Joseph v Francois* at para 27:

“the relevant period for the purposes of prescription operating as a bar to Jacob Fanus’ claim must be reckoned, not from some time prior to the LRTP, but as commencing from the time Jacob Fanus became registered proprietor in 1987. As such, the defence of prescription was bound to fail as this period fell far short of the thirty (30) year period by which the claim could be prescribed.”

(ii) It would undermine the purpose of the LRTP if a person could rely on possession before the LRTP to ground a claim based on prescription or to defeat a claim for trespass. “This would make nonsense of the scheme and render grave uncertainty to the system of registration by title, which is the opposite of its intended effect” (para 156).

(iii) The LRTP provided an opportunity for the appellants, which they did not take, to have claimed the land whether by way of title documents or long possession. Indeed, it was incumbent on the appellants to ensure that they took steps to notify their interest in the land to the recording officer during the LRTP if they wished to protect it, but they did not do so. Moreover, as the judge explained, at para 166:

“It is clear from the evidence that Francis was familiar with the LRTP process, having himself claimed 1022B 37 on behalf of the heirs of Stephen Chitolie. Why then did he not pursue his interest in the Property with the same vigor and determination he does now?”

(iv) The decision and reasoning of the Privy Council in *Graham-Davis v Charles* [1994] 2 WLUK 392; 43 WIR 188, 194, on an appeal from Antigua and Barbuda, should not be applied because the relevant legislation introducing the Torrens system in that jurisdiction was significantly different from that in Saint Lucia. The critical difference was that under the legislation in Antigua and Barbuda, the adjudication officer had no power to vary any registration of land under the previous Title by Registration Act. It therefore made sense under that system for the Board to have held that the first registration could not affect rights acquired or in the process of being acquired by prescription. In contrast, in Saint

Lucia an adjudication officer had full powers to determine interests after a claims procedure. As Cenac-Phulgence J said at para 165:

“The LRTP in Saint Lucia was an all-encompassing procedure requiring all persons who had interest in land whether based on long possession or other documentary title to make their claim and the land adjudication officer had the power to award their interest. This is the reason that in Saint Lucia first registration, or rather the judicial process under the LRA and LAA during the LRTP which culminated in first registration, interrupts prescription.”

(2) Court of Appeal

19. The Court of Appeal (Michel JA, Farara JA (Ag) and Henry JA (Ag)) dismissed the appeal by the Chitolies. The judgment was given by Farara JA (Ag) with whom the other two Justices of Appeal agreed. The Court of Appeal’s reasoning on the central issue with which the Board is concerned is in paras 160 – 204. The essence of that reasoning was as follows:

(i) Having not made a claim to the disputed land during the LRTP, it was not open to the appellants, by way of defence or counterclaim, to assert a possessory right acquired, or in the process of being acquired, prior to the LRTP (para 164).

(ii) The decision of the Board in *Graham-Davis v Charles* was distinguishable because, under the legislation introducing the Torrens system in Antigua and Barbuda, the adjudication officer was required to publish a notice declaring that any interest in land under the existing Title by Registration Act would be carried forward to the new register under the Registered Land Act 1975 (which was the new register for the Torrens system). Moreover, by a proviso to section 15(2) of that Act, the adjudication officer had no power to adjudicate rival claims to vary any interests in land registered under the existing Title by Registration Act. That contrasted with the position under the legislation introducing the Torrens system in Saint Lucia.

(iii) Similarly, the recent decision of the Caribbean Court of Justice in *George v Guye* [2019] CCJ 19 (AJ), dealing with the position in Dominica, was distinguishable. The relevant statutory provisions implementing the Torrens system in Dominica were similar to those in Antigua and Barbuda. In Dominica, the relevant legislation expressly stated that adverse possession was an exception to indefeasibility.

(iv) The earlier decision of the Court of Appeal in Saint Lucia in *Joseph v Francois* was a binding precedent which should be followed in this case. Jacob Fanus had first registered title (itself based on 30 years possession) to the relevant land under the new Torrens system on 11 March 1987 by going through the adjudication process albeit that the claim had not been contested. It was not open to another person subsequently to seek to rely on prescription by reason of a period of possession prior to that registration.

(v) The provisions of the relevant legislation, such as sections 8 and 16 of the LAA, made clear that, in order to protect their interest in the land, the Chitolies should have made a claim under the LRTP but had failed to do so.

(vi) Farara JA (Ag) summarised the kernel of his reasoning at para 189:

“... in my judgment, the law is clear, the first registration of [the disputed land] in the name of NDC as proprietor extinguished any claim which the appellants or any of them had acquired or may have been in the process of acquiring based upon their actual occupation of the said land or receipt of the income from it. Any claim which the appellants make based upon occupation of and receipt of income from the disputed land Parcel 227 prior to 1987, were and have been extinguished by the conjoint operation and legislative effect of the LAA and LRA. Accordingly, the learned judge was correct to so conclude, and to also conclude that the appellants’ claim would have to be reckoned from 1987, whether such claim is based upon long possession, adverse possession or prescription.”

4. The Board’s reasons for upholding the lower courts

20. In the Board’s view, the reasoning and decisions of the lower courts, on the central issue with which we are concerned, were correct. This is for the following five reasons.

(1) The legislative scheme is clear, coherent and comprehensive and expressly covers rights in the course, or process, of being acquired by prescription

21. A straightforward interpretation of the words of the relevant provisions of the LAA and the LRA (see paras 10-15 above), read as a whole, shows that a clear,

coherent and comprehensive legislative scheme was enacted and that that scheme expressly covers rights in the course, or process, of being acquired by prescription.

22. Section 6(1)(c) and section 8(1) of the LAA laid down that, assuming the Adjudication Officer complied with his or her duty to publish an appropriate notice, a person claiming any interest in land was *required* to make a claim to have that interest registered. Although there was a discretionary safety-net provided by section 9(1) of the LAA, it is therefore clear that it was a mandatory requirement to make a claim in order to protect an interest in land. The discretion under section 9(1) would have to be exercised according to ordinary public law principles, with due regard to the purpose of the legislation to achieve as definitive and comprehensive register of land titles as was reasonably possible. A person who failed to make a claim to register their interest as required under sections 6 and 8 would have to show that they had a very good excuse for that failure. Very importantly, section 2 defined an “interest in land” as including “any right or other interest in or over land which is capable of being recorded under the provisions of the Act”.

23. It is not in dispute that a person who had an accrued interest in land by documentary title (ie title by deed) or because that person had been in possession of land for 30 years (ie a title by prescription), was required to make a claim. Subject to the discretionary safety-net in section 9(1), if they made no such claim their title would be extinguished if someone else made a claim to the land and was registered as having title.

24. The registered title is also subject to any effect section 28 of the LRA might have, which is what is in issue on this appeal. But section 28 does not remove the obligation, pursuant to section 6(1)(c) and section 8(1) of the LAA, on a person claiming to have an interest in land to make such a claim in the course of the LRTP. This is unsurprising because, as appears from the provisions of the LAA and the LRA and explained further below, the purpose of the introduction of the Torrens system in Saint Lucia was to allow title to land to be established by entries on the face of the Register and that purpose would be undermined if owners could sit on their hands during the elaborate LRTP process and later seek to assert their title on the basis of materials outside the Register.

25. An analogous approach applies to those who, at the time the new system was taking effect, had been in continuous possession of land but for less than 30 years. Such a person was “in course of acquiring a title under ... any law relating to prescription” under section 16(1)(a)(ii) of the LAA. The Board agrees with the submission of V Dexter Theodore KC, counsel for the respondent, that, applying section 16(1)(d) of the LAA, the Recording Officer could record that person as having provisional title to the property and the date on which the possession of that person was considered to have begun. Sections 9(2), 24 and 29 of the LRA confirm this. The legislation provides that registration of provisional title on the basis of such an interest has significant effects: it

qualifies as first registration under section 11 of the LRA and has the further effects specified in sections 24 and 29 of that Act. Since an interest of that kind could be recorded in that way, it follows that such a person had an “interest in land”, under the definition in section 2 of the LAA (“any right or other interest in or over land which is capable of being recorded under the provisions of the Act”) and that person was therefore required to make a claim under sections 6 and 8 of the LAA, as explained above. Again, this is unsurprising, given the purpose of the legislation.

26. Let us assume, therefore, that in 1987 a person (X) had 10 years relevant possession. X was in the course of acquiring a title by prescription and was required to make a claim under sections 6 and 8 of the LAA. If such a claim were made, the Recording Officer might record X as having provisional title under section 16(1)(d) of the LAA with the date that X’s possession began. So in that situation, if the Recording Officer did record provisional title, the 10 years would be counted and time would not run afresh from 1987. The requirement to complete an additional period of possession before absolute title was acquired would be a qualification affecting the title, within the meaning of section 16(1)(d); once completed, that qualification to which the provisional title was subject would have ceased to be of effect and the Registrar would be obliged to convert the provisional title into absolute title pursuant to section 29(2) of the LRA. If no claim was made by X, or deemed to be made by X pursuant to the discretionary safety net in section 9(1), and the land was registered in someone else’s name without any reference to X, X could no longer rely on his or her pre-1987 possession of the land.

27. This interpretation of the LAA does not of course deny that relevant possession beginning after 1987 would count as an overriding interest under section 28(f) of the LRA. Where that possession has been for a period of less than 30 years, it would be an overriding interest because that subsection includes rights “in process of being acquired” by prescription. Put another way, it is clear that, under section 28(f) of the LRA, possession beginning after first registration is recognised despite non-registration.

28. It can therefore be seen that, read together, the LAA and the LRA have produced a clear, coherent and comprehensive Torrens scheme; and that rights in the course, or process, of being acquired by prescription *after but not before* 1987 are overriding interests.

29. Myriam Stacey KC, for the appellants, suggested that sections 6 and 8 of the LAA imposed no obligation on anyone to make a claim, that it was optional for someone to do so and that if they omitted to do so that did not affect their property rights or interests. The Board does not agree. The language of those provisions is clear and there would be no need for the discretionary safety-net in section 9(1) of the LAA if it was optional to make a claim in response to the notice given under section 6.

30. Ms Stacey further submitted that it was inappropriate to construe the legislation as the courts below had done because the practical effect of this would be that a person in unlawful possession of land would have to advertise that fact by making a claim; that claim would be in conflict with any claim to register title to the land by the person with absolute title to it; the conflicting claims would give rise to a dispute which pursuant to section 15 of the LAA would have to be referred to the Adjudication Officer for determination; and on the reference of that dispute, the person in unlawful possession of the land would be bound to lose the dispute and would not be able to have their interest registered once that had occurred. On this approach, therefore, the legislation would undermine the acquisition of title by prescription whereas it was supposed to accommodate and allow for such acquisition.

31. The Board does not accept this submission. In the first place, since the legislative scheme is designed to flush out and resolve conflicting claims to title to land, it is not surprising that it should have this effect. Nor is it surprising that in a dispute between a person with absolute title and a person in unlawful occupation, the former should succeed. The object of the scheme is to produce as definitive and comprehensive a register of title as is reasonably possible, not to protect the interests of people in unlawful occupation of land against those with absolute title. But in any event, it is possible that a person may be in occupation of land where there is no one who comes forward with a claim that they have absolute title. In such a case the legislative regime will have the effect, in accordance with the purpose of the production of such a register, of ensuring that provisional title is registered which can then be turned into absolute title pursuant to section 29 of the LRA.

(2) The contrary interpretation would undermine the purpose of the Torrens system in Saint Lucia

32. The purpose of the Torrens system in Saint Lucia was to have a register that, from the start, could be relied on as definitively establishing title. In line with that, the LRTP was concerned to flush out claims to ensure that the register would be as comprehensive as possible. For a person with an accrued title, or in the course of acquiring a title by prescription, who did not make a claim during the LRTP, to be allowed successfully to assert title after someone else has been registered as having title, would undermine the certainty of the system.

33. It is of course true that, by reason of section 28 of the LRA, overriding interests constitute exceptions to the certainty of the title as registered. But, as far as relevant possession is concerned, section 28(f) is an exception only once the system is up and running. As regards past possession, if no claim was made during the LRTP, the slate is wiped clean.

(3) Avoiding absurdity

34. Let us return to the hypothetical example of a person (X) in 1987 having had 10 years relevant possession. If one were to treat X as not needing to make a claim, and to treat the 10 years relevant possession as counting towards prescription, this would produce the absurd consequence that X would be in a better position than a person with absolute title in 1987, being either a full documentary title or acquired by prescription. Those persons, subject only to the safety-net in section 9 of the LAA, would indisputably lose title by not making a claim during the LRTP. If a person with absolute title is liable to lose that title by their failure to make a claim to have it registered, it would be nonsensical for X, a person with no established title at all, but in the course of seeking to acquire title by prescription through unlawful possession of the land, to be in a better position.

(4) The Torrens system in other jurisdictions may not lead to the same result

35. Ms Stacey prayed in aid the legislation governing the Torrens systems in other Caribbean countries. In particular, she pointed to the decision of the Board, on appeal from Antigua and Barbuda, in *Graham-Davis v Charles* and of the Dominica Court of Appeal in *George v Guye*. She submitted that those decisions supported the view that relevant possession prior to the introduction of the Torrens system does count towards there being an overriding interest based on prescription.

36. The Board disagrees with those submissions. In line with the comments in *Arthur v Attorney General of the Turks and Caicos Islands*, paras 13-15 (set out at para 2 above), it is potentially misleading to read across from one Torrens system to another. All depends on the particular legislative provisions in play and the policy choices made. The Board agrees with both the lower courts that *Graham-Davis v Charles* is distinguishable, and with the Court of Appeal that *George v Guye* is for the same reasons distinguishable (Cenac-Phulgence J did not mention this case, presumably because it is so recent), because the relevant provisions in Antigua and Barbuda and in Dominica are significantly different from those in Saint Lucia. See paras 18(iv) and 19(ii) and (iii) above. In a nutshell, the different legislative schemes in those other jurisdictions made clear that the introduction of the Torrens system was not as radical a break with what had gone before as that introduced in Saint Lucia.

37. It should also be pointed out that the reasoning of the Board in *Graham-Davis v Charles* based on fairness proves too much in the Saint Lucia context. Lord Jauncey, giving the judgment of the Board, said the following, at p 199:

“It would be manifestly unfair that a person who had acquired or was in the process of acquiring an overriding interest in a

parcel of land and upon whom no specific notice had been served should forfeit such interests simply because he had not become aware of the publication by the adjudication officer of the statutory notice under section 6 of the Land Adjudication Act 1975.”

38. That reasoning proves too much in the context of Saint Lucia because it is clear that, under the scheme of the Saint Lucia legislation, even a person with an absolute documentary title, who has not been served with a specific notice, is liable to lose that title by failing to make a claim during the LRTP in response to the notices and publications issued by the Adjudication Officer pursuant to section 6(2) of the LAA. The notice scheme was designed to bring to the attention of those affected the requirement to make a claim. Any potential unfairness arising from the operation of the system, where for some legitimate reason a person was unaware of the relevant notices and publications and so could properly be excused for their failure to make a claim to register their title, was addressed by the discretionary safety-net set out in section 9(1) of the LAA.

39. It should be added that, on the particular facts of this case, Francis Chitolie was familiar with the LRTP process: see para 18(iii) above. It therefore appears that he would not have had good grounds for inviting an exercise of discretion in his favour under section 9(1).

(5) The need for clear words if proprietary rights are to be taken away

40. It was submitted by Ms Stacey that it is a well-recognised principle of statutory interpretation that proprietary rights cannot be removed, at least without compensation, unless the wording of the statute clearly allows that; and that here the words of the statute are not clear. The Board agrees that there is such a principle, which can be regarded as falling within the ambit of the wider “principle of legality” recognised in well-known cases such as *R v Secretary of State for the Home Department, Ex p Pierson* [1998] AC 539, 573-575 and *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115, 130–131. But the Board rejects this submission for two main reasons. First, it is inaccurate to describe the Saint Lucia Torrens system as taking away proprietary rights. Rather there was a transparent process, with notice provisions, designed to alert those with an interest in land to the need to make claims. Moreover, there was a discretionary safety-net for those who, for example, might be absent during the process or who otherwise had a good excuse for failing to participate in it. This was not a system of compulsory acquisition of land without compensation. Secondly, in any event, it was clear from the words of the legislation that, if proprietary rights were not claimed, or deemed to be claimed pursuant to section 9, they would be lost. This was justified for strong reasons of public policy, in order to produce as definitive and comprehensive a register of title as was reasonably possible. It is not in dispute that the

legislation had the effect of eliminating *some* property rights if claims to register them were not made, and the issue is how far that effect extends according to the proper interpretation of the legislation. So far as that is concerned, there is no sound reason why persons in the position of the appellants, occupying land unlawfully, should be in a better position than people with absolute title who are liable to lose that title in the working through of the legislative scheme. As has been explained at paras 21-33 above, the legislation set up a clear, coherent and comprehensive system and it would undermine the purpose of that system if the appellants' submissions on section 28(f) were to be accepted.

5. The views of the local courts

41. The Board notes that both lower courts held in favour of the respondent. Although the appeal turns on statutory interpretation and is a matter of law, not fact, the Board considers that it is of relevance that the local courts, with close knowledge of the way in which land in Saint Lucia is occupied and owned and of how the particular Torrens system enacted in Saint Lucia has been operating, have both come to the same conclusion by much the same reasoning.

6. A subsidiary jurisdictional issue

42. A subsidiary issue raised on the appeal, although barely touched on, concerned whether the Land Registrar, rather than a court, has jurisdiction to determine whether title has been acquired by prescription in Saint Lucia. In the light of the Board's decision on the main issue, there is no need for us to consider this matter and we prefer to say nothing about it.

7. Conclusion

43. For all the above reasons, the Board will humbly advise His Majesty that the appeal should be dismissed.