IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL OF SAINT HELENA

IN THE MATTER OF:

LARRY FRANCIS

Appellant

-and-

THE ATTORNEY GENERAL OF SAINT HELENA

(On behalf of the Crown)

Respondent

APPELLANT'S WRITTEN CASE

For hearing on 16 July 2026

A. INTRODUCTION

1. This is an appeal concerning the former dairy of Napoleon Bonaparte, an 1833 statute governing the affairs of the East India Company, and the system of land registration in one of the most remote inhabited islands on earth.

2. Specifically, this is an appeal of the Court of Appeal's judgment of 14 January 2025 in which the Court determined that Crown land in St Helena cannot be acquired through prescription under section 135 of the Registered Land Ordinance 1980 ("**the 1980 Ordinance**").

3. The essence of the Court of Appeal's judgment is that due to a statute passed during the reign of William IV concerning the rights of the East India Company, and a generically worded saving provision in the 1980 Ordinance, St Helenians today cannot acquire Crown land by way of adverse possession.

4. The Appellant advances three grounds of appeal:

   <u>Ground 1:</u> The Court of Appeal was wrong to conclude that section 159 of the Registered Land Ordinance 1980 prevents prescription of Crown Land acquired by statute.

   <u>Ground 2</u>: The Court of Appeal was wrong to conclude that the disputed land was transferred to the Crown's ownership through operation of s.112 of the St Helena Act 1833.

   <u>Ground 3:</u> The Court of Appeal wrongly concluded that it was not entitled to have regard to the record of legislative proceedings concerning the passage of the 1980 Ordinance.

B. SUMMARY OF CASE

5. This appeal concerns land in Longwood, St Helena conveyed to the Crown from the East India Company in the early nineteenth century. This land, which up until 1821, formed part of the estate housing Emperor Napoleon, was held by the Court of Appeal to be incapable of acquisition by prescription pursuant to s.135 of the 1980 Ordinance[1].

6. The Court of Appeal reached this conclusion in consequence of the saving provision at s.159 of the 1980 Ordinance read alongside the sole surviving provision of the St Helena Act 1833[2].

7. The 1833 Act varied the East India Company's privileges in respect of the Indian subcontinent and extended the Company's Charter for an additional twenty years. A single section of the Act also transferred sovereignty of the island from the East India Company to the Crown. Section 112 of what is now known as the St Helena Act 1833 provides:

    The island of St Helena, and all forts, factories, public edifices, and hereditaments whatsoever in the said island, and all stores and property thereon fit or used for the service of the government thereof, shall be vested in his Majesty, and the said island shall be governed by such orders as his Majesty in council shall from time to time issue in that behalf.

8. Section 159 of the 1980 Ordinance reads:

    Nothing in this Ordinance affects any of the interests, rights, powers and privileges conferred on the Crown or the Government by any other written law.

9. The Court of Appeal appeared to have found that section 112 of the 1833 Act created an interest in the disputed land. Accordingly, the Court of Appeal held that section 159

[1] Prescription is similar to adverse possession in England and Wales
[2] Previously referred to as the Government of India Act 1833.

of the 1980 Ordinance has the effect of precluding the acquisition of Crown Land on St Helena by way of prescription under s.135 of that same Ordinance.

C. FACTUAL BACKGROUND AND CHRONOLOGY

10. On 25 March 1995, the Appellant entered a lease with the Governor of St Helena in respect of two light industrial units located in Longwood, St Helena known as units 240 and 242.

11. Sandwiched between units 240 and 242 is another light industrial unit, unit 241. In 1995, the Appellant took possession of unit 241 and has occupied it ever since.

12. In 2006, the Appellant also occupied unit 249, which is a first-floor unit sitting above the entire floorspace of units 240, 241 and 242.

13. All of the units form part of the former dairy to Longwood House, Napoleon Bonaparte's residence from 1815 to his death in 1821. A map held by the National Archives[3] indicates that by 1830, the land surrounding Longwood House was held by the East India Company for commercial purposes with much of the land let out or earmarked for sale.

14. In light of his possession of the units, the Appellant avers that he has acquired ownership of the land by prescription pursuant to s.135 of the Registered Land Ordinance 1980 which provides as follows:

    (1) The ownership of land may be acquired by peaceable, open and uninterrupted possession for a period of 15 years without the permission of any person lawfully entitled to such possession.

    (2) Any person who claims to have acquired the ownership of land by virtue of subsection (1) may apply to the Registrar for registration as proprietor of the land.

[3] Not available to the Court of Appeal or the Supreme Court as it was held by the National Archives in London in paper copy only.

15. Section 139 of the Ordinance provides that the Registrar of Lands may give effect to prescription under s.135 of the Ordinance by rectification of the register. The Appellant duly applied for rectification of the register in respect of parcels 241 and 249 on 18 July 2023.

16. On 30 October 2023, the Crown objected to that application on the ground that, for various reasons, the Attorney General considered that Crown Land could not be acquired by prescription[4]. One ground of objection related to s.159 of the Ordinance.

17. This was understood to be the first occasion on which the Crown had ever asserted that Crown land cannot be acquired by prescription.[5]

18. On 21 February 2024, the Registrar stated a case to the Supreme Court of St Helena on this issue of whether Crown Land can be acquired by prescription.

19. On 16 July 2024, the Chief Justice handed down judgment finding that there was no legal bar to Crown land being acquired by prescription.

20. The Attorney General appealed to the Court of Appeal on two grounds:

    (a) That section 31 of the Constitution requires to be purposively construed and, so construed, does not permit acquisition of Crown Land by prescription pursuant to section 135 of the Registered Land Ordinance.

    (b) The saving provision at section 159 of the Registered Land Ordinance precludes application of acquisition by prescription at section 135 to Crown Land.

21. On 14 January 2025, the Court of Appeal concluded that:

[4] Despite this argument having never been advanced in the preceding 43 years when applications for prescription of Crown land were made.
[5] See §9 of the Supreme Court judgment

(a) The land was acquired by the Crown pursuant to s.112 of the St Helena Act 1833.

(b) Such land cannot be acquired by prescription under s.135 of the 1980 Ordinance because this would affect the interests conferred on the Crown by s.112 of the 1833 Act, and prescription is therefore prohibited under s.159 of the Ordinance.

22. On 15 May 2026, HE the Governor sent a letter to the Appellant's solicitors whereby he granted permission, pursuant to s.4 of the Legislative Council Proceedings Ordinance 1974 for the record of the passage of the 1980 Ordinance through the Legislative Council to be admitted into this appeal. The section of the record relied upon by the Appellant is of the Government Secretary moving the Bill:

"*Sir, when I introduced the Land Adjudication Bill to the last session of this Honourable House, I pointed out to Members that the next step after successful defining of boundaries is to provide for the proper registration of title so that each parcel of land identifiable with all interests such as rights of way, mortgages and easements recorded. I now move to this second stage by the presentation of this Bill entitled the Registered Land Ordinance.*

The Bill comprises twelve parts, some of which are subdivided into Divisions each dealing with a particular issue relating to the setting up of the land Registry, the appointment and powers of the Registrar of Lands and the obligations of Proprietors of land. The Bill further goes on to set down in print - to codify – the land law as it relates to St. Helena. This covers disposition of land, leases and charges upon land, easements, restrictive agreements and profits and licences. Each is clearly defined so that, in future, there can be no doubt as to the rights and obligations of any person dealing with land either as a proprietor, testator, a lessee or lessor.

An interesting feature is the right of prescription which entitles a person to absolute ownership of land, probably belonging to someone else or the Crown, after that person has squatted in peaceable, open and uninterrupted possession for a period of 15 years."

23. Under the 1966 Constitution of St Helena, the Government Secretary was one of three *ex-officio* members of the Legislative Council alongside the Treasurer and the Governor.

24. The record of proceedings was only disclosed by the Attorney General on the morning of the Court of Appeal hearing. In consequence, the statutory requirement under s.4 of the 1974 Ordinance was not brought to the Court's attention, and indeed appears to have been unknown to both parties.

D. LEGAL FRAMEWORK

Admissibility of Hansard Entries in St Helena

25. Section 47 of the Constitution of St Helena provides that there shall be a Legislature for St Helena consisting of Her Majesty and the Legislative Council.[6]

26. Article 9 of the Bill of Rights 1689 has no application in St Helena. Instead, s. 70 of the Constitution provides that the privileges, immunities, and powers of the Legislative Council, the Speaker and its other Members may be determined and regulated by local Ordinance, but shall not exceed the corresponding privileges, immunities, and powers of the House of Commons of the United Kingdom or of its members.[7]

27. The Legislative Council of St Helena legislated to specify its privileges, immunities and powers through the Legislative Council Proceedings Ordinance 1974. Section 4 of that Ordinance provides:

4. No evidence relating to any of the following matters, that is to say—

a) debates or proceedings in the Council or a committee of the whole Council;

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6 Equivalent provisions appeared in s 14 of Schedule 1 to the St Helena (Constitution) Order 1966 and s 15 of Schedule 1 to the St Helena Constitution Order 1988.

7 Equivalent provisions appeared in s 39 of Schedule 1 to the St Helena (Constitution) Order 1966 and s 39 of Schedule 1 to the St Helena Constitution Order 1988.

(b) the contents of any document laid before the Council or a committee of the whole Council, or any proceeding of or before the Council or a committee of the whole Council,

is admissible in any proceedings before a court or person authorised by law to take evidence unless the court or such person is satisfied that permission has been given by the Governor for such evidence to be given.

28. The 1974 Ordinance was passed at a time when, under the Common Law, records of Parliamentary debates were inadmissible in Court[8]. It follows that, pursuant to s.14 of the Constitution, the Legislature of St Helena elected to legislate to vary the exclusionary rule. The test for the admissibility of Parliamentary material is simply whether the Governor has granted permission for such material to be admitted into proceedings.

Land Registration in Commonwealth Countries and Territories

29. In 1963, the Kenyan Registered Land Law was passed a year before Kenyan Independence. Versions of this statute were subsequently adopted in Nigeria, Malawi, Seychelles, Solomon Islands, Belize, Anguilla, Antigua and Barbuda, the British Virgin Islands, and the Turks and Caicos Islands[9] as well as St Helena through the 1980 Ordinance.

30. Each of those jurisdictions have made specific policy choices regarding publicly owned land, for example:

(a) Section 135 of the Turks and Caicos Registered Land Ordinance Cap. 9.01[10], Part IX provides for the acquisition of land by prescription in Turks and Caicos, but states *"Provided that no person shall so acquire the ownership of Crown Land."*.

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[8] See, for example, *Coleman v Coleman* [1973] Fam 10 at 17 and *R v Governor of Winson Green Prison, Birmingham ex p Littlejohn* [1975] 1 WLR 893 at 900

[9] SAA Cooper, *Equity and Unregistered Land Rights in Commonwealth Registration Systems, Oxford University Commonwealth Law Journal* 3(2) 201 - 224, January 2003

[10] Enacted in 1967 but subsequently amended

(b) Section 138 of the Registered Land Act of Belize[11] provides for the acquisition of land by prescription in Belize, but states that national land cannot be acquired by prescription unless the possession relied on has been for a period of 30 years as opposed to the 12 years specified for privately held land.

(c) Sections 134 - 135 of the Registered Land Act 1967 of Malawi deals with the acquisition of land by prescription in Malawi. Section 134(1) provides that no person may acquire public or customary land by prescription.

31. The record of Legislative Council Proceedings indicates that St Helena made a conscious policy decision not to exclude Crown Land from liability to acquisition by prescription.

Conveyances by Statute in St Helena

32. The Law of St Helena allows for the conveyance of land by statute in a number of circumstances:

(a) Section 211 of the Companies Ordinance 2004 provides that any property of a company which has not been disposed of at the date of the company's dissolution vests in the Crown. This could, of course, include freehold property.

(b) Section 16 of the Land Acquisition Ordinance 2006 provides that where the Attorney General enters into possession of land in accordance with the other provisions of that Ordinance, the land vests in the Crown from the date of possession.

(c) The English Law (Application) Ordinance 2005 read with s.46(1(i) (vi) of the Administration of Estates Act 1925 in the case of an intestacy, real property of a deceased person may vest in the Crown.

[11] Passed on 1977 but subsequently amended

E. GROUND 1: SECTION 159 DOES NOT PREVENT PRESCRIPTION OF LAND ACQUIRED BY STATUTE

33. Section 159 of the 1980 Ordinance is intended to preserve the statutory rights and privileges of the Executive. It is concerned with ongoing interests, rights and privileges created by written law[12]. It is not concerned with all pieces of land conveyed by statute. That issue is dealt with by s.121 of the 1980 Ordinance which simply provides that where the Crown has become entitled to land under any written law, the Registrar must register the Crown as the proprietor.

34. There is an obvious and crucial distinction between a statute which simply transfers the private law ownership of land at a given moment to the Crown and a statute which creates an ongoing interest or right in respect of land. Section 112 of the 1833 Act as well as the other examples given at §28 above are all simple conveyances by statute and fall into the former category.

35. As to the latter category and examples of the type of statutory provisions which would create an ongoing right or interest capable of protection under s.159:

    (a) The Forestry Ordinance 1954 gives the Chief Forestry Officer significant rights to enter into and conduct works on privately held land designated as protected private forest; these rights could not be extinguished through the operation of the 1980 Ordinance by reason of s.159 of the Ordinance.

    (b) The Registration of Land under the 1980 Ordinance could not, by reason of s.159, prevent the Attorney General from taking temporary possession of the land in question pursuant to s.31 of the Land Acquisition Ordinance 2006.

    (c) The Airport Development Ordinance 2006 allowed the Governor to regulate the activities of persons within a designated Airport Development Area. The acquisition or registration of that land through the 1980 Ordinance, nor any other

[12] Such as section 3 of the Aviation Ordinance 2015 which empowers the Governor to control land used for aviation purposes including by the extinguishing of various property rights.

provision of that Ordinance could affect the Governor's power under the 2006 Ordinance by reason of s.159 of the 1980 Ordinance.

(d) If St Helena were to adopt a statute in similar terms to any of the following:

i. Section 62 of the Kenyan Constitution which provides that certain specified categories of land shall be Public Land and shall be held by the Central Government on trust for the people of Kenya. Such categories of land include all roads and thoroughfares provided for by an Act of Parliament, all rivers, lakes and other water bodies as defined by an Act, the territorial sea and EEZ, and the seabed, and all land between the high and low water marks.

ii. An equivalent of s.21(1) of the National Trust Act 1907 applied to Crown property[13].

iii. A Statute which grants the Crown an ongoing right or duty to retain ownership over a specified property. An example of such wording from the nineteenth century is found in Parliament's direction that Highgate Wood and Queens Wood shall "*become vested in the [City of London Corporation] and be held by them and their successors forever subject to the provisions of this Act in mortmain[14] in perpetuity, any statute or rule of law to the contrary notwithstanding and the Corporation shall hold the said lands and every part of the same"[15].*

36. Thus, the Court of Appeal erred in concluding that merely because ownership of the land initially vested in the Crown by operation of statute, section 159 prevents its acquisition through prescription. The purpose of s.159 is not to protect private law ownership of land, even where that private ownership of land is acquired through a statutory conveyance.

[13] Section 21(1) provides that certain categories of National Trust property shall be inalienable.
[14] The perpetual, inalienable ownership of real estate by a corporation or legal institution
[15] See also the Epping Forest Act 1878, the Hampstead Heath Act 1871 for the type of statutes which could create an ongoing statutory right to own land.

37. Further, when regard is had to the history of the development of the 1980 Ordinance, it is clear that the template for the legislation was the Kenyan Registered Land Law 1963. Where other countries and territories adopted the forms of the legislation, they made specific policy decisions as to whether to expose crown land to the risk of being acquired by prescription. The record of the legislative proceedings in 1980 makes clear that the St Helena legislature understood that if passed, the legislation may lead to Crown land being acquired through prescription. However, it did not elect to include the exclusionary provisions adopted by other Commonwealth legislatures in Belize, Malawi, or the Turks and Caicos Islands. This is indicative of a positive policy choice not to exclude Crown land from prescription.

38. Further, the very fact that other legislatures felt the need to specifically exclude public land from prescription shows that on the default drafting stemming from the Kenyan legislation, Crown Land would be susceptible to being acquired by prescription.

31. In *R (Best) v The Chief Land Registrar* [2015] EWCA Civ 17 the Court was concerned with the question of whether s.144 Legal Aid and Sentencing of Offenders Act 2012, which made squatting a criminal offence amounted to a bar to obtaining adverse possession through conduct which amounted to an offence under that section. Arden LJ held:

107. The Consultative Document and Report make it crystal clear that the adverse possession provisions of the LRA serve valuable social and economic purposes, including that of ensuring that land is kept marketable and is not "sterilised" by the inaction of the true owner. Land is a valuable commodity. It provides space for homes, offices and agriculture. But, in addition to that, land can be used to raise money to create new businesses and help the economy.

…

iv) The Registrar's approach deprives the law of adverse possession of the important quality of coherence by introducing strange distinctions and bizarre results which have no connection with Parliament's purposes in enacting the law of adverse possession. I attach weight also to this.

32. The same rationale applies here. If the legislature wished to exclude prescription of Crown Land, it would have explicitly said so. Indeed, under s.160, titled "*Ordinance to bind Crown and Government*" there is no mention of the Crown being immune from claims of adverse possession. As observed by Sales LJ at paragraph 80 of *Best*, Parliament is not lightly to be taken to have legislated with the intention of producing capricious and arbitrary effects.

33. Thirdly, the legislature provided for any issues which were not explicitly dealt with in the Ordinance. Section 161 of the Ordinance provides:

Any matter not provided for in this Ordinance or in any other written law in relation to land, leases and charges registered under this Ordinance and interests therein is to be decided in accordance with the principles of justice, equity and good conscience.

34. It is plainly incompatible with the principles of justice, equity and good conscience to deny a non-self-governing people the right to acquire public land by prescription based on a nineteenth century statute which effected the transfer of sovereignty over their island from a private company to the Crown. This is particularly so where their democratically elected representatives had plainly understood that the 1980 Ordinance would allow for the acquisition of Crown Land.

39. As set out at paragraph 9 of the Chief Justice's judgment, prior to this case, the Respondent had never before asserted that Crown Land acquired by statute cannot be acquired by prescription. This novel interpretation of s.159 of the 1980 Ordinance is misconceived:

(a) ***Firstly***, if the 1833 Act did transfer the land in question, it served to effect a transfer in a specific moment in time from the East India Company to the Crown. From the moment of the transfer onwards, the Crown's interest was governed by the ordinary principles of private law and was not preserved by statute. The legislative act was akin to a conveyance by statute. It did not, properly construed, create any ongoing interest, right, power or privilege conferred on the Crown or the Government. It follows that s.159 could not operate to prevent the acquisition of the land under s.135 of the Ordinance.

(b) *Secondly*, the record of legislative proceedings from 1980 and legislative history of the 1980 Ordinance including the approach adopted by other Commonwealth legislatures strongly indicates that the Court of Appeal's interpretation of the statute is wrong.

(c) *Thirdly*, there is no policy reason why land acquired by statute may not be subject to Prescription, but that land purchased by the Crown in the usual way may be. Such an approach would be arbitrary and anomalous.

(d) *Fourthly*, the Respondent's new construction would be unworkable given the paucity of records held on the island. In each case, the Land Registrar would have to establish whether the Crown acquired land through statute, or whether it had acquired in return for consideration. The inability of the Crown to adduce records relating to the acquisition of the disputed land in this case demonstrates how unworkable this situation would be.

F. GROUND 2: NO ACQUISITION THROUGH THE 1833 ACT

40. The Court of Appeal was clear at paragraph 58 of its judgment that its decision was predicated on the Crown having acquired the land in question through s.112 of the 1833 Act. Indeed, the Court of Appeal and Supreme Court appear to have proceeded on the basis that the Crown acquired ownership over ***all*** land on St Helena through s.112 of the 1833 Act. This starting point was wrong.

41. There were two sections of the original version of the 1833 Act which were relevant to the disposal of land. Section 4 of the Act required that the East India Company dispose of all of its commercial businesses and "*with all convenient speed… make sale of all Merchandize, Stores, and Effects and Home and Abroad distinguished in their Account Books as Commercial Assets, and all their Warehouses, Lands, Tenements,*

Hereditaments, and Property whatsoever which may not be retained for the purposes of the Government of the said Territories".

42. Thus, section 4 imposed an obligation on the East India Company to dispose of any commercial property not required for the purposes of governing of India. By contrast, section 112 had two effects:

(a) It vested the Sovereignty/Lordship of St Helena in the Crown; and

(b) It vested all real property fit or used for the service of Government in St Helena in the Crown.

43. The use of the word "*vested*" to indicate a transfer of sovereignty was common in colonial era legislation. For example, The Government of India Act 1858 transferred sovereignty of the Indian sub-continent from the East India Company to the Crown following the Indian Mutiny. Section 1 of that Act proclaimed that "*all Territories in the possession…of [the East India Company]… shall become vested in Her Majesty*". Plainly, that legislation did not transfer ownership, in a private law sense, of the entirety of the Indian sub-continent. Similarly, the reference in the 1833 Act to the island of St Helena vesting in the Crown does not indicate that the Crown acquired ownership of the entire island in a private law sense.

44. The only properties and hereditaments which vested in the Crown were those fit for or used in the service of Government such as the Governor's residence, the seat of Government, military establishments, and the like. Section 112 did not extend to private properties used for commercial purposes. This is significant because contemporaneous records indicate that the properties in issue in this case were in fact in commercial use in the early 1830s.

The correct interpretive approach

45. When considering the text of s.112 of the 1833 Act, the Court is concerned with an Act of Parliament passed 36 years before the establishment of the office of

Parliamentary counsel. The 1833 Act is plainly not drafted with the clarity and precision of modern statutes. Where the Court is considering a historic statute, it ought to give less weight to the linguistic meaning and apply greater focus on the purpose of the enactment as an interpretation aid[16]. In *R (Andrews) v Secretary of State for the Environment, Food and Rural Affairs* [2015] EWCA Civ 669, the Court of Appeal held:

30. We start by observing that the 1801 Act is not drafted with the degree of accuracy and consistency of language that is found in modern statutes. As Sales J said at para 24 of his judgment in Edwards & Walkden (Norfolk) v The City of London [2012] EWHC 2527 (Ch) (a case about an 1860 Act governing Smithfield Market which was drafted in a similar style):

"The 1860 Act is a Victorian statute enacted before the creation of the Office of the Parliamentary Counsel in 1869 (the office of dedicated statutory drafters now available to the Government), which is not drafted with the precision and clarity which has come to be expected of statutory drafting since then."

…

35. As the judge said at para 70 of his judgment, it is possible to read the provisions of the 1801 Act several times and to see apparently different meanings on each reading… This is not a promising basis on which to mount a linguistic argument as to the meaning of section 10 of the 1801 Act.

36. Even in relation to modern statutes, which are drafted by skilled specialist draftsmen and are assumed to be drafted with precision and consistency, the courts adopt a purposive (in preference to a literal) interpretation so as to give effect to what is taken to have been intended by Parliament. We use the phrase "purposive interpretation" as shorthand for an interpretation which reflects the intention of Parliament. The court presumes that Parliament does not intend to legislate so as to produce a result which (i) is inconsistent with the statutory purpose or (ii) makes no sense or is anomalous or illogical. A purposive interpretation is all the more

[16] P.441, 12.2, Bennion, Bailey and Norbury on Statutory Interpretation, 8th Edn

appropriate in a statute which is couched in language which is less consistent and more imprecise than that generally found in modern statutes.

46. Accordingly, the Board ought to adopt a purposive approach to the construction of the 1833 Act taking care to avoid anomalous or illogical results. An interpretation of s.112 of the 1833 Act which transferred the ownership of all land in St Helena to the Crown is unsustainable for the following reasons:

(a) *Firstly*, the purpose of the statute, which was entitled "*the East India Company Charter Bill*" when passing through Parliament was i. To cause the East India Company to dispose of its commercial enterprises; ii. To extend the Charter of the East India Company with certain modifications; and iii. To transfer responsibility of St Helena from the East India Company to the Crown. The long title of the Act when passed was "*An Act for effecting an Arrangement with the East India Company, and for the better Government of His Majesty's Indian Territories*"[17]. The East India Company plainly was not in a position to agree to dispose of land which they did not own. Further, enforcing the transfer of privately held commercial land to the Crown would not in any way further the purposes of the Act. It would also be inconsistent with the Parliamentary intention behind s.4 of the Act which was for the East India Company to dispose of its commercial holdings through private sales.

(b) *Secondly*, it is a well-established principle of law that in the absence of any clear indication to the contrary, it is presumed that Parliament intends legislation to conform to the established principles of legal policy[18]. If Parliament had intended to abolish private ownership of land in St Helena and to vest all property and hereditaments in the Crown, this would have been a major departure from existing legal policy, and Parliament would have stated this intention in clear and unambiguous terms.

(c) *Thirdly,* many of the properties which were held in private ownership prior to the 1833 Act coming into force have remained in private ownership to the present day. On the

[17] see See 13.2 *et seq* of Bennion, Bailey and Norbury on Statutory Interpretation, 8th Edn in support of the proposition that the title of the Act may be used to deduce its purpose.
[18] See *Minet v Leman* (1855) 20 Beav 269 at 278; See 26.1 *et seq* of Bennion, Bailey and Norbury on Statutory Interpretation, 8th Edn

Court of Appeal's judgment, all these properties were vested in the Crown by operation of law and, therefore, have been rightfully owned by the Crown since the statute came into force. It would follow that title did not properly rest with those who have sold, bought, bequeathed or inherited these properties over the two centuries following passage of the Act. Further, the properties' inhabitants would not be entitled to claim adverse possession however long they have occupied the land they consider themselves to own. Accordingly, a significant proportion of the population could be deprived of the properties which they were hitherto understood to own. This construction of the 1833 Act:

i. Gives rise to an absurd, unworkable and impractical statutory regime and therefore ought to be rejected[19].

ii. Is incompatible with the presumption that Parliament does not intend results which are unreasonable[20].

iii. Would be a novel interpretation of the 1833 Act which is inconsistent with the principle of good faith under s.2(a) of the Constitution as well the right to respect for one's home under s.13(1) of the Constitution.

47. The only construction of the 1833 Act which is consistent with the purpose of the legislation, and which avoids a perverse result is the one contended for by the Appellant - that the Act transferred sovereignty over St Helena and land used for Government purposes to the Crown but did not affect the ownership of privately held land, or land put to commercial use.

48. Land owned by the East India Company in St Helena but not fit for or used for the service of Government was similarly not conveyed by reason of s.112 of the 1833 Act. If the effect of the Act was to transfer all property owned by the East India Company to the Crown, then the words "*fit or used for the service of the government*" would have

[19] See 13.2 *et seq* of Bennion, Bailey and Norbury on Statutory Interpretation, 8th Edn; *H v Warrington Borough Council [2014] EWCA Civ 398.* See *Fender v St John-Mildmay* Co Litt 148 for principle that law should serve the public interest

[20] *IRC v Hinchy* [1960] AC 748; *R (Edison First Power Ltd) v Central Valuation Officer* [2003] UKHL 20

been entirely superfluous. St Helena continued to be an important staging post between Britain and India until the opening of the Suez Canal in 1869. It would have been extremely surprising if the East India Company did not retain any commercial property in St Helena between the 1833 Act fully coming into force in 1836 and the Company being abolished in 1858.

49. There was nothing in the evidence before the Supreme Court or the Court of Appeal to indicate that the land was used for or fit for Government service. In light of the only near contemporaneous document available, if the matter is remitted, the Appellant shall argue that it is clear that in 1833 the land was used solely for commercial purposes and therefore would not have been transferred pursuant to the 1833 Act.

Conclusion on Ground 2

50. The Court of Appeal erred in assuming that either (i) All land in St Helena was conveyed pursuant to s.112 of the 1833 Act; or (ii) All land owned by the East India Company in 1833 was conveyed to the Crown following the passage of the 1833 Act.

G. GROUND 3: STATUS OF THE LEGISLATIVE PROCEEDINGS FROM 1980

37. Ground 3 was pleaded in the following terms:

The Court of Appeal wrongly concluded that it was not entitled to have regard to the record of legislative proceedings concerning the passage of the 1980 Ordinance.

38. On 12 June 1980, the Government Secretary introduced the Registered Land Bill, he said the following to the legislature:

*An interesting feature is the right of prescription which entitles a person to absolute ownership of land, probably belonging to someone else **or the Crown**, after that person has squatted in peaceable, open and uninterrupted possession for a period of 15 years."*

[Emphasis Added]

39. As set out below, the Court of Appeal sought to apply the rule in *Pepper (Inspector of Taxes) v Hart 1993 AC 59* at p. 634D and having done so, declined to have regard to the record of the 12 June 1980 proceedings on the ground that the wording of the legislation was not ambiguous or obscure.

40. The Appellant submits that the Court of Appeal erred:

(a) In the first instance because the rule in *Pepper (Inspector of Taxes) v Hart 1993 AC 59* at p. 634D does not apply in St Helena. The Legislative Council legislated in 1974 to place conditions on the admissibility of records of legislative debates. The Constitution makes specific provision for the Legislative Council to legislate on such matters and s.47 of the Constitution specifically allows for a divergence in approach from the approach taken to matters relating to the House of Commons. Therefore, the Court of Appeal erred in applying the *Pepper v Hart* test at all.

(b) In the alternative, on a correct application of the *Pepper v Hart* rule, the Court ought to have had regard to the record of legislative proceedings.

41. In circumstances where the Governor has given his consent under the 1974 Ordinance for the Board to have regard to the record of legislative proceedings, it may be that Ground 3 adds little, and the Board can simply have regard to the Hansard entry when determining Ground 1.

<u>The 1974 Ordinance</u>

42. As set out at §§24-27 above, the legal framework governing the permissibility of considering parliamentary material is fundamentally different in St Helena from the United Kingdom. The exclusionary rule from which *Pepper v Hart* provides an exception simply does not apply. The legislation is clear that evidence relating to proceedings in the Legislative Council is admissible where the Court is satisfied that the Governor has given permission for such evidence to be given. Where the legislature has made specific provision there is no room for Common Law rules to be applied.

43. Of course, once a record of legislative council proceedings is admitted as an external aid to construction of a statute, the ordinary rules governing the application of external aids shall apply:

(a) It is for the Court to decide what weight or importance to attach to any external aid admitted, depending on all the circumstances, including the other interpretive factors relevant to the case[21].

(b) *"Government statements, however they are made and however explicit cannot control the meaning of an Act of Parliament[22]. "*

44. In consequence of the Attorney General's extremely late disclosure of the 12 June 1980 Hansard entry, neither party appears to have been aware of s.4 of the 1974 Ordinance, the consent of the Governor was not sought and, had it been sought, it is highly unlikely that it could have been granted before the commencement of the hearing.

45. The Court of Appeal's conclusion that *Pepper v Hart* was the applicable test to the admission or consideration of Parliamentary material was *per incuriam* as neither party addressed the Court on the provisions of s.47 of the Constitution or s.4 of the 1974 Ordinance.

46. Had the Court of Appeal been directed to the relevant statutory material and heard full argument it would not have applied the English Common Law test and instead it would have given an opportunity for the consent of the Governor to have been sought and, had that consent been granted, would have had regard to the 12 June 1980 record of proceedings.

[21] *Benion on Statutory Interpretation,* 8th Edn at 2.4.
[22] *Ibid*

Pepper v Hart

31. It is understood that the Respondent shall argue that a party seeking to rely on Parliamentary material must:

(a) Obtain the Governor's consent; and
(b) Satisfy the *Pepper v Hart* test.

32. This submission is not supported by the test set out in the 1974 Ordinance or by any St Helena case law. In the Appellant's submission if the Respondent were right, then this would give rise to a number of public policy concerns and place an unreasonable burden on those seeking to rely on legislative council proceedings.

33. However, even if the test in *Pepper v Hart* does apply in St Helena, it was misapplied by the Court of Appeal.

34. At paragraph 56 of its judgment, the Court of Appeal declined to have regard to the record of proceedings for two reasons:

(a) Firstly, the Court did not consider that the words of s.159 of the 1980 Ordinance was ambiguous or obscure or that the literal meaning of the words of s.159 would lead to an absurdity.

(b) Secondly, the Court did not consider that the words of the Government Secretary clearly reveal the legislative intention or mischief, because of the use of the word "*probably*".

35. Both of these reasons were predicated on Lord Browne-Wilkinson's speech in *Pepper (Inspector of Taxes) v Hart 1993 AC 59* at p. 634D[23]:

[23] The same principles apply to devolved legislatures and, therefore, are likely to also apply to the legislatures of overseas territories – see *R (Driver) v Rhondda Cynon Taf County Borough Council* [2020] EWHC 2071 (Admin)

'In my judgment, subject to the questions of the privileges of the House of Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee that any statement other than the statement of the Minister or other promoter of the Bill is likely to meet these criteria.'

36. The Court of Appeal's application of the *Pepper v Hart* test was misconceived in the following respects:

(a) ***Firstly,*** for the reasons set out above, in respect of the acquisition of Crown Land by prescription, s.159 of the 1980 Ordinance is ambiguous and the application of s.159 in respect of the 1833 late Georgian Act is inherently obscure. The test for whether a provision is ambiguous is merely whether "*it is genuinely open to two possible constructions"*[24]. The fact that the Chief Justice reached a contrary conclusion to the Court of Appeal strongly suggests that section 159 is genuinely open to two possible interpretations. In any event, given the express consideration of land acquired by statute in s.121 of the Ordinance, it is clearly possible that s.159 does not preclude the prescription of land historically acquired by statute. As such, it was entirely permissible applying the *Pepper v Hart* test to use the records of legislative proceedings as an external aid to construction.

(b) ***Secondly***, on a fair reading, the record of legislative proceedings clearly reveals the legislative intention as it demonstrates:

i. That the Executive and the sponsor of the Bill clearly envisaged that the Prescription provisions of the Bill would apply to Crown Land.

[24] *Re OT Computers* [2004] EWCA Civ 653

ii. That nobody had section 112 of the 1833 Act in mind when the 1980 Ordinance was passed into law.

(c) ***Thirdly,*** the Court of Appeal appeared to have proceeded on the basis that the only circumstances in which a record of parliamentary proceedings could be admitted is where the *Pepper v Hart* test is satisfied. This was wrong:

i. Prior to *Pepper v Hart* it was permissible to rely on Hansard entries in order to identify the mischief and context of legislation, but not to attempt to deduce Parliament's intention through words used in debate[25].

ii. In *Presidential Insurance Co Ltd v Resha St Hill* [2012] UKPC 33 at paragraph 23, the Board emphasised the distinction between considering Hansard entries to establish the mischief and context of legislation and the "*more radical separate principle recognised in Pepper v Hart"* which involves looking at parliamentary reports to try to discover the intentions of the Government. The test in *Pepper v Hart* only need to be satisfied in order to try to deduce the intentions of the Government through Parliamentary reports.

iii. Here the record of the legislative report shows the legislative context to be a system where there was until recently no provision for defining boundaries, and at the time of the Ordinance's passing no statutory provision for land registration or for prescription. The mischief which the Bill sought to cure was uncertainty as to land ownership and the lack of a system of prescription[26]. Plainly the legislative intention of achieving certainty over land ownership was relevant to a purposive construction of s.159 of the Ordinance. As set out above, the Court of Appeal's construction causes significant uncertainty.

[25] *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G.* [1975] A.C. 591

[26] See Lord Hoffman's speech in House of Lords in R v Oxfordshire County Council, ex p. Sunningwell Parish Council [2000] 1 AC 335 in which he said "*Any legal system must have rules of prescription which prevent the disturbance of long-established de facto enjoyment"*

H. CONCLUSION

37. It is respectfully averred that:

(a) The Court of Appeal erred in its construction of s.112 of the 1833 Act and s.159 of the 1980 Ordinance.

(b) That only land fit for, or used in the service of Government transferred to the Crown in consequence of the 1833 Act.

(c) That the Court of Appeal erred in not having regard to the record of legislative proceedings.

I. POSTSCRIPT

38. On 08 May 2026, the Attorney General applied for permission to amend his notice of intention to participate in order to challenge the Court of Appeal's clear conclusion that s.31 of the Constitution did not bar the acquisition of Crown Land by prescription. This application has not yet been determined. It had previously been understood that the Attorney General was not seeking to renew this ground of appeal which he had advanced before the Court of Appeal, it having been roundly rejected by both the Supreme Court and the Court of Appeal.

39. Plainly a generic power for the Governor to "*make and execute grants and other dispositions of any land or other immovable property in St Helena that is vested in Her Majesty in right of the Government of St Helena"* is not capable of preventing Crown Land from being acquired by prescription, this is particularly so as s.31 is stated to be *"subject to… any other law"*.

40. The *"right, power or privilege"* created by s.31 of the Constitution and which therefore stands to be preserved under s.159 of the 1980 Ordinance is to *make and execute grants and other dispositions of any land or other immovable property* owned by the Crown. The fact that some Crown land is acquired by prescription does not in any way affect

or undermine the Governor's power to dispose of or grant land and other immovable property owned by the Crown. There is nothing in the wording of s.31 of the Constitution which suggests that the ***only*** means by which Crown land can be alienated is by the exercise of the power set out in s.31 of the Constitution.

41. Beyond these observations, the Appellant would respectfully adopt the reasoning of both the Supreme Court and the Court of Appeal in respect of s.31 of the Constitution. The Attorney General's apparent submission that a provision empowering the Governor to execute grants and other dispositions of Crown Land when read purposively[27] somehow excludes the possibility of the conveyance of Crown Land by prescription or other operation of law is unarguable.

42. The Appellant is neutral on the question of the Attorney General's amendment application. However, it is to be noted that the Attorney General was aware of this appeal for over a year before indicating his intention to challenge the Court of Appeal's conclusions on s.31 of the Constitution. It is not clear on what basis the Attorney General shall seek to argue that the Court of Appeal was wrong as this was not set out in any detail in the application to amend. The Chief Justice made the following observations about the Crown's case at §29 of the first instance judgment: *"It is fair to say that the Crown's case has evolved and changed and this has not always been easy to follow.* " Respectfully, the Attorney General's latest application is a continuation of that pattern of litigation conduct.

43. The Appellant had applied for an extension of time to file his Written Case to fully consider the implications of the amendment application. As there is no guarantee that the Attorney General's amendment application shall be determined by the extended deadline, this document is filed on a protective basis. However, if the Attorney General is granted permission to challenge the Court of Appeal's conclusions on s.31 of the Constitution, the Appellant would respectfully invite the Court to grant permission to the Appellant to file and serve a short addendum note dealing with any new arguments raised by the Attorney General in respect of s.31 of the Constitution.

[27] *Minister of Home Affairs and Anr v Fisher* [1979] 3 All ER (PC) 21

44. Accordingly, the Appellant is neutral on the amendment application subject to the following two caveats:

(a) The Appellant should be granted an opportunity to respond to any new points advanced by the Respondent in respect of s.31 of the Constitution; this is particularly important given the evolving and changing nature of the Respondent's case below; and

(b) The hearing date of 16 July 2026 should not be imperilled.

Joshua Hitchens

Outer Temple Chambers

Walter Scott

Public Solicitor

29 May 2026