

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL JCPC 2025/0040
ON APPEAL FROM THE COURT OF APPEAL OF ST HELENA

BETWEEN:

LARRY FRANCIS

Appellant

-and-

THE ATTORNEY GENERAL OF ST HELENA
(on behalf of the Crown)

Respondent

STATEMENT OF FACTS AND ISSUES

Wording shown in square brackets is not agreed and the basis of the parties' non-agreement is set out in footnotes.

A. INTRODUCTION

1. This appeal arises from an application made by the Appellant on 18 July 2023 for the Registrar of Lands to rectify the register to reflect his acquisition of property known as Units 241 and 249 in Longwood, St Helena by prescription (which is similar to adverse possession in England & Wales). That property is currently registered as Crown Land. The appeal concerns the question of whether in St Helena Crown Land may be acquired by prescription.

B. STATUTORY FRAMEWORK¹

Saint Helena Act 1833

2. This is an Act of the Westminster Parliament that was originally known as the Government of India Act 1833. The sole remaining provision is s 112, which 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.

¹ The parties agree that the statutory provisions set out in this section are accurate. Whether they are relevant depends on the issues that are before the Board, on which the parties disagree: see paragraph 36 below.

The Constitution

3. The St Helena, Ascension and Tristan da Cunha Constitution Order, 2009 (**Constitution Order**) was made (insofar as it relates to St Helena) under s 112 of the Saint Helena Act 1833. The Schedule contains the Constitution of St Helena, Ascension and Tristan da Cunha (**Constitution**).²

4. Section 31 of the Constitution provides:³

Subject to this Constitution and any other law, the Governor or any person duly authorised by him or her in writing under his or her hand may, in Her Majesty's name and on Her Majesty's behalf, 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.

5. Section 47 of the Constitution provides that there shall be a Legislature for St Helena consisting of Her Majesty and the Legislative Council.⁴
6. Section 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 Ordinance but shall not exceed the corresponding privileges, immunities, and powers of the House of Commons of the United Kingdom or of its members.⁵

Registered Land Ordinance, 1980

7. The Registered Land Ordinance, 1980 (**Registered Land Ordinance**) was enacted by the Legislative Council of St Helena.
8. Part IX relates to prescription. Section 135 provides:

- (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 The previous constitutions were found (principally) in Schedule 1 to the St Helena (Constitution) Order 1966 and Schedule 1 to the St Helena Constitution Order 1988.

³ Equivalent provisions appeared in s 44 of Schedule 1 to the St Helena (Constitution) Order 1966 and s 51 of Schedule 1 to the St Helena Constitution Order 1988.

⁴ 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.

⁵ 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.

- (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.

- 9. Section 136 sets out principles for determining possession.
- 10. Section 137 sets out the procedure for an application.
- 11. Section 138 addresses the acquisition of easements and profits by prescription.
- 12. Part X relates to rectification and compensation. Relevantly, s 139(1)(b) provides that the Registrar may rectify the Register if any person has acquired an interest in land by prescription under Part IX.
- 13. Part XII contains miscellaneous provisions. Relevantly, s 159 provides:

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.

- 14. Section 160 provides:

Subject to section 159, this Ordinance binds the Crown and the Government.

English Law (Application) Ordinance, 2005

- 15. The English Law (Application) Ordinance, 2005 provides for the application of English law in St Helena. Section 3 provides:

- (1) Subject to subsection (2) and other provisions of this Ordinance, the Adopted English Law applies in St Helena.
- (2) The Adopted English Law applies to St Helena only in so far as it is applicable and suitable to local circumstances, and subject to such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.

- 16. Section 4 provides:

The Adopted English Law applies to St Helena only insofar as it is not inconsistent with—

- (a) any enactment of the Parliament of the United Kingdom which extends to St Helena otherwise than by virtue of this Ordinance;
- (b) any Order of Her Majesty in Council which extends to St Helena otherwise than by virtue of this Ordinance; or

(c) any provision made by or under any law enacted by a legislature in St Helena.

17. “Adopted English Law” is defined in s 2 to mean (i) the common law of England, including the rules of equity and (ii) the Acts of Parliament which are in force in England at the time of commencement of the Ordinance.

Legislative Council Proceedings Ordinance, 1974

18. Section 4 of the Legislative Council Proceedings Ordinance, 1974 provides:

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;
- (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 person is satisfied that permission has been given by the Governor for such evidence to be given.

C. STATEMENT OF FACTS

19. On 25 March 1995, the Appellant entered into 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.
20. Sandwiched between units 240 and 242 is another light industrial unit, unit 241. The Appellant alleges that, in 1995, he took possession of unit 241 and has occupied it since.
21. The Appellant alleges that, in 2006, he also occupied unit 249, which is a first-floor unit sitting above the entire floorspace of units 240, 241, and 242.
22. The Appellant made a prescription claim relating to units 241 and 249. He applied for rectification of the register in respect of those units on 18 July 2023.
23. 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.

- D. The Appellant argues that, prior to this objection, it had been widely accepted that Crown land could be acquired by prescription in St Helena, and the Crown had never previously contended to the contrary. The Appellant argues that, in consequence, Crown land has previously been acquired by prescription.

E. **PROCEDURAL HISTORY**

24. On 21 February 2024, the Registrar stated a case to the Supreme Court of St Helena under s 146 of the Registered Land Ordinance on the issue of whether Crown Land can be acquired by prescription.
25. Before the Supreme Court, the Attorney General argued that Crown Land could not be acquired by prescription for four reasons:
- (a) first, s 135 of the Registered Land Ordinance cannot bind the Crown as it is subordinate to the Constitution and must be interpreted consistently and in conformity with it;
 - (b) second, s 31 of the Constitution expressly prohibits acquisition by prescription of Crown Land when it reserves disposition to the Governor or with his consent;
 - (c) third, acquisition by prescription of Crown Land is impliedly prohibited by s 31 of the Constitution (or it must be given a purposive interpretation); and
 - (d) fourth, acquisition by prescription of Crown Land is prohibited by the saving provision in s 159 of the Registered Land Ordinance read with s 112 of the Saint Helena Act 1833 and/or s 31 of the Constitution.
26. On 16 July 2024, the Chief Justice handed down his judgment: *Francis v Attorney General of St Helena* [2024] SHSC 6.
27. The Chief Justice found that there was no legal bar to Crown Land being acquired by prescription.
28. The Attorney General appealed to the Court of Appeal on two grounds:

- (a) That s 31 of the Constitution requires to be purposively construed and, so construed, does not permit acquisition of Crown Land by prescription pursuant to s 135 of the Registered Land Ordinance.
 - (b) The saving provision at s 159 of the Registered Land Ordinance precludes application of acquisition by prescription at s 135 to Crown Land.
29. On 14 January 2025, the Court of Appeal allowed the appeal and handed down its judgment: *Attorney General of St Helena v Francis* [2024] SHCA 5.
30. The Court of Appeal rejected the Attorney General’s first ground of appeal and found that s 31 of the Constitution does not prevent the acquisition of Crown Land by prescription (at [26]–[32]).
31. However, the Court of Appeal upheld the second ground of appeal, holding that:
- (a) s 159 of the Registered Land Ordinance read together with s 31 of the Constitution did not prevent Crown Land from being acquired by prescription (at [35]);
 - (b) however, by reason of s 159 of the Registered Land Ordinance, Crown Land acquired by operation of s 112 of the Saint Helena Act 1833 could not be affected by s 135 of the Registered Land Ordinance (at [57]); and
 - (c) accepting the proposition that the Crown did acquire an interest in land by virtue of the Saint Helena Act 1833, which was how the matter was argued in front of the Chief Justice, the answer to the posed question was ‘no’ (at [58]).
32. Very shortly before the hearing before the Court of Appeal, the Attorney General disclosed a record of legislative proceedings concerning the passage of the Registered Land Ordinance. The Government Secretary, in moving that the Bill be read for the first time, said:

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.

33. The Court of Appeal declined to have regard to the record of legislative proceedings because, applying *Pepper v Hart* [1993] AC 593, (i) the words of s 159 of the Registered Land Ordinance were not ambiguous or obscure and the literal meaning would not lead to an absurdity and (ii) the words of the Government Secretary did not clearly disclose the legislative intention or mischief because of the use of the word “*probably*”.
34. On 30 April 2025, the Court of Appeal granted final leave to appeal.
35. These proceedings have (to date) solely been concerned with the preliminary issue of whether Crown Land can be acquired by prescription. There has been no trial of the substance of the Appellant’s claim.

F. ISSUES

36. The following issues arise for the Board:
 - (a) **Issue 1:** Can Crown Land in St Helena be acquired by prescription, in particular given section 159 of the Registered Land Ordinance read with s 112 of the Saint Helena Act 1833 [or s 31 of the Constitution⁶]?
 - (b) **Issue 2:** [Was all private property in St Helena acquired by the Crown through operation of statute under the Saint Helena Act 1833? If so, did this conveyance by

⁶ The Appellant contends that s 31 of the Constitution is not properly before the Board. In the absence of agreement on this point, the Attorney General has filed an amended notice of intention to participate (and an application for permission to rely on it) to make clear that he relies on s 31 of the Constitution (as he did in the courts below).

statute create an interest, right, power, or privilege capable of being preserved under s 159 of the Registered Land Ordinance?^{7]}

- (c) **Issue 3:** [Does the rule in *Pepper v Hart* [1993] AC 593 apply in respect of the Legislative Council of St Helena?^{8]}
- (d) **Issue 4:** Did the Court of Appeal err in its application of the rule in *Pepper v Hart* [1993] AC 593?

7 May 2026

Joshua Hitchens

Outer Temple Chambers

Counsel for the Appellant

Mohammud Jaamae Hafeez-Baig

Brick Court Chambers

Counsel for the Respondent

⁷ The Appellant contends that this issue is before the Board and is set out in [13]–[15] of the Grounds of Appeal. The Attorney General’s position is that the issue was not decided by the courts below, that it is inconsistent with the way the parties conducted the case below, and that if the issue needs to be determined it should be determined at first instance once the proceedings are remitted.

⁸ The Appellant contends that this issue is before the Board. The Attorney General’s position is that the issue was not decided by the courts below and is not included in the Grounds of Appeal (which are inconsistent with it: see footnote 8 of the Grounds of Appeal). The Attorney General has invited the Appellant to amend his notice of appeal (and apply for permission to amend) but the Appellant has not done so.