Trinity Term
[2022] UKPC 32
Privy Council Appeal No 0090 of 2017

JUDGMENT

Mohan Jogie (Appellant) *v* Angela Sealy (Respondent) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lady Arden
Lord Leggatt
Lord Burrows
Lord Stephens
Lady Rose

JUDGMENT GIVEN ON
15 August 2022

Heard on 9 December 2021

Appellant
Anand Beharrylal QC
Siân McGibbon
Melissa Ramdial
(Instructed by Ronald Dowlath (Port of Spain))

Respondent
Keston McQuilkin
Andre Rudder
(Instructed by Charles Russell Speechlys LLP (London))

LORD BURROWS (with whom Lady Rose agrees):

1. Introduction

1. This case raises some difficult questions on an aspect of the law of intestate succession. The claimant and respondent, Angela Sealy, is the daughter of Cynthia Abbott who died intestate on 21 December 2006. The claim was commenced by Angela Sealy on 1 February 2012. However, it was not until 2 November 2012 that letters of administration were granted to Angela Sealy and her brother Osden Abbott, who are both also entitled, along with others (there are two other siblings), to the benefit of the estate. It is unclear why there was such a delay in obtaining the grant of administration. Nor has there been any explanation for why Angela Sealy did not seek more limited forms of grant (for example, a "grant ad litem" for the purposes of litigation or a "grant ad colligenda bona" for the purposes of preserving assets) which could have been obtained quickly. A consequence of the delay is that her claim faces potential legal obstacles which could have been avoided. The Board has to decide whether, on a close examination of the common law and the civil procedure rules in Trinidad and Tobago, those obstacles are insurmountable.

2. The essential facts can be quickly set out. Cynthia Abbott was, by reason of the relevant statute in Trinidad and Tobago (the Land Tenants (Security of Tenure) Act: see below para 9), the long-leaseholder of land, namely No 8 Bhagoutie Trace, San Juan. The lease was to last for 30 years and, at any time during the first 30 years, could be renewed once for a further 30 years by Cynthia Abbott or her successors in title. The first period of 30 years of the lease expired on 31 May 2011. Cynthia Abbott had given no notice to renew the lease prior to her death (on 21 December 2006). But on 11 January 2011, a few months prior to the expiry of the first 30 years, Angela Sealy gave the landlord, Mohan Jogie, who is the defendant and appellant, a notice of renewal. She alleges that thereafter, both before and after 31 May 2011, Mohan Jogie has attempted to prevent her entering the land (for example, by placing padlocks and chains on the gates). On 1 February 2012, she commenced an action, purportedly as "Representative of the Estate of Cynthia Abbott", for a declaration of her rights to the tenancy of the land and for the tort of trespass to land against Mohan Jogie seeking damages and an injunction. However, at that stage, she had still not obtained the grant of administration.

3. It is well-established that, in contrast to the position of an executor of a will, an administrator (and I shall throughout use this term to include an administratrix) generally only acquires the right to act on behalf of an estate once the grant of administration has been made. The position is well-summarised in the leading text,

Williams, Mortimer and Sunnucks on Executors, Administrators and Probate, 21st ed, (2018), para 5-13 (footnotes omitted):

> "In contrast with the position for an executor, for an administrator, the general rule is that a party entitled to a grant of administration can do nothing as administrator before obtaining a grant. This is because he derives his authority entirely from his appointment by the court; his entitlement to apply for a grant derives from the Probate Rules, and confers no title. Before this, the deceased's property vests in the Public Trustee. After appointment, an administrator has the same rights and liabilities and is accountable as if he were the executor."

4. Assuming that Angela Sealy can otherwise prove her case that the defendant has committed trespass to land (as the lower courts have decided she can, albeit that, as is explained in para 19 below, there is a lack of clarity as to whether the finding of trespass is confined to conduct of the defendant after January 2012), she faces two linked legal obstacles. Both arise from the fact that she was not granted letters of administration (along with her brother) until 2 November 2012 which was some 22 months after she gave notice of renewal of the lease and some ten months after she commenced proceedings. Applying the general rule set out above, that an administrator only acquires the right to act on behalf of an estate once the grant of administration has been made, it is submitted by Anand Beharrylal QC, counsel for Mohan Jogie, that she had no standing either to renew the lease or to commence these proceedings and that, therefore, the renewal of the lease is ineffective and the proceedings are a nullity. Counsel for Angela Sealy, Keston McQuilkin, submits that the "relation back" doctrine applies to validate both the renewal of the lease and the proceedings. There are also relevant civil procedure rules of Trinidad and Tobago to consider and these are set out immediately below.

2. Relevant civil procedure rules of Trinidad and Tobago

5. New civil procedure rules came into force in Trinidad and Tobago in September 2005. The new rules were made under section 78 of the Supreme Court of Judicature Act. In very general terms, they mirror the reforms to the civil procedure rules made in England and Wales in 1999 following the report of Lord Woolf. But they are not identical to the civil procedure rules in England and Wales so that one cannot simply read across from one to the other. The civil procedure rules to which we have been referred in this case are CPR (T&T) rules 1 and 21.4. It is also helpful to set out here

CPR (T&T) rule 21.7 as it was discussed in one of the Trinidad and Tobago cases to which we were referred.

6. CPR (T&T) rule 1 reads as follows:

> "**The overriding objective**
>
> 1.1(1) The overriding objective of these Rules is to enable the court to deal with cases justly.
>
> (2) Dealing justly with the case includes -
>
> (a) ensuring, so far as is practicable, that the parties are on an equal footing;
>
> (b) saving expense;
>
> (c) dealing with cases in ways which are proportionate to -
>
> (i) the amount of money involved;
>
> (ii) the importance of the case;
>
> (iii) the complexity of the issues; and
>
> (iv) the financial position of each party;
>
> (d) ensuring that it is dealt with expeditiously; and
>
> (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Application by the court of the overriding objective

1.2 The court must seek to give effect to the overriding objective when it -

(1) exercises any discretion given to it by the Rules; or

(2) interprets the meaning of any rule.

Duty of the parties

1.3 The parties are required to help the court to further the overriding objective."

7. CPR (T&T) rule 21.4 reads as follows:

"**Representation of persons who cannot be ascertained, etc, in proceedings about estates, trusts and the construction of written instruments**

21.4(1) This rule applies only to proceedings about -

(a) the estate of someone who is dead;

(b) property subject to a trust; or

(c) the construction of a written instrument.

(2) The court may appoint one or more persons to represent any person or class of persons (including an unborn person or persons) who is or may be interested in or affected by the proceedings (whether at present or for any future, contingent or unascertained interest) where -

(a) the person, or the class or some member of it, cannot be ascertained or cannot readily be ascertained;

(b) the person, or the class or some member of it, though ascertained cannot be found; or

(c) it is expedient to do so for any other reason.

(3) An application for an order to appoint a representative party under this rule may be made by -

(a) any party; or

(b) any person who wishes to be appointed as a representative party.

(4) A representative appointed under this rule may be either a claimant or a defendant.

(5) Where there is a representative claimant or representative defendant, a decision of the court is binding on everyone he represents."

It should be noted that CPR (T&T) Part 21, which includes CPR (T&T) rule 21.4, is headed "Representative Parties"; and that in general, but with the express exception of rule 21.4 (and presumably also rule 21.7 which is set out in the next paragraph), rule 21 "applies to any proceedings where five or more persons have the same or a similar interest in the proceedings."

8. CPR (T&T) rule 21.7 says this:

"**Proceedings against the estate of a dead party**

21.7(1) Where in any proceedings it appears that a dead person was interested in the proceedings then, if the

dead person has no personal representatives, the court may make an order appointing someone to represent his estate for the purpose of the proceedings.

(2) A person may be appointed as a representative if he -

(a) can fairly and competently conduct proceedings on behalf of the estate of the deceased person; and

(b) has no interest adverse to that of the estate of the deceased person.

(3) The court may make such an order on or without an application.

(4) Until the court has appointed someone to represent the dead person's estate, the claimant may take no step in the proceedings apart from applying for an order to have a representative appointed under this rule.

(5) A decision in proceedings where the court has appointed a representative under this rule binds the estate to the same extent as if the person appointed were an executor or administrator of the deceased person's estate."

3. The Land Tenants (Security of Tenure) Act (Chap 59:54)

9. It is helpful to set out at this stage the relevant provisions of the Land Tenants (Security of Tenure) Act in Trinidad and Tobago which is the statute governing Cynthia Abbott's lease and the purported renewal of it by Angela Sealy.

"**2. Interpretation**

In this Act unless the context otherwise requires -

…

“tenant” means any person entitled in possession to land under a contract of tenancy whether express or implied, and whether the interest of such person was acquired by original agreement or by assignment or by operation of law or otherwise; and includes a tenant at will and a tenant at sufferance and "tenancy" shall be construed accordingly.

4. Conversion of tenancies to statutory leases

(1) Notwithstanding any law or agreement to the contrary but subject to this Act, every tenancy to which this Act applies subsisting immediately before the appointed day shall as from the appointed day become a statutory lease for the purposes of this Act.

(2) A statutory lease shall be a lease for thirty years commencing from the appointed day and, subject to subsection (3), renewable by the tenant for a further period of thirty years.

(3) In order to exercise the right of renewal conferred by subsection (2), the tenant shall serve on the landlord a written notice of renewal on or before the expiration of the original term of the statutory lease.

(4) Upon service of the notice by the tenant under subsection (3), the statutory lease shall be deemed to be renewed for a period of thirty years subject to the same terms and conditions and to the same covenants, if any, as the original term of the statutory lease but excluding the option for renewal.

…

6. Option for renewal

Where under section 4 a tenant has an option for renewal of his lease and gives notice of renewal under section 4(3), the

> rights and obligations of the landlord and the tenant arising from the notice shall enure for the benefit of and be enforceable against them, their executors, administrators and assigns to the like extent (but no further) as rights and obligations arising under a binding contract for sale freely entered into between the landlord and the tenant; and accordingly references to the tenant and the landlord in relation to matters arising out of any such notice shall include their respective executors, administrators and assigns."

4. The reasoning and decisions of the courts below

10. At first instance in the High Court in a judgment dated 17 October 2013 (Claim No CV 2012-00415), after a hearing on 11 June 2013, Rahim J decided that there were four issues that needed determination. First, was the claimant entitled to the benefit of the statutory lease under the provisions of the Land Tenants (Security of Tenure) Act? Secondly, was the claimant a proper person to serve the notice of renewal of the lease and by what date did that notice have to be served? Thirdly, had she, as matter of fact, served the notice? Fourthly, was the defendant liable to the claimant in trespass?

11. Rahim J held that the claimant was entitled to the benefit of the statutory lease because the lease subsisted at the date of death of Cynthia Abbott and, under the Land Tenants (Security of Tenure) Act, the benefit of the lease passed to her successors in title (ie those entitled to the benefit of her estate) and that included the claimant. That was to apply the interpretation of the Act laid down by the Court of Appeal of Trinidad and Tobago in *Hector v Keith* Civil Appeal No 6 of 2010. He then decided that, while the "arguments of relation back are inapplicable in the present case" (para 33 of his judgment), the claimant, as a tenant, was a proper person to serve the notice of renewal and she had done so by a letter dated 11 January 2011 which was therefore received by the defendant prior to the relevant date for renewal which was 31 May 2011. Finally, while rejecting the claim for trespass by the alleged cutting down of trees by the defendant in April 2011 (on the grounds that there was no evidence that that trespass had been committed by the defendant, his servants or agents), Rahim J decided that the defendant committed trespass by occupying the premises (although it is not made clear whether the date that this trespass commenced was January 2011 or January 2012). He ordered an injunction to restrain any further trespass by the defendant, damages of $3,000 (plus interest) and costs against the defendant of $14,000.

12. It is important to add that, by an earlier court order, dated 27 February 2012, and after a contested application, Rahim J had appointed Angela Sealy as the representative of the estate of the deceased. No reasons for that order were given by the judge. Mr Beharrylal submits, and this has not been challenged by Mr McQuilkin, that that order was made, and was understood by the parties to be made, by Rahim J in purported exercise of a power under the CPR (T&T) rule 21.4 (see para 7 above). But Mr Beharrylal submits that that there was no such power to make that order.

13. The defendant appealed Rahim J's judgment of October 2013 to the Court of Appeal of Trinidad and Tobago (Jamadar JA, Bereaux JA and Jones JA) which chose to deliver a short ex tempore judgment, dated 28 June 2017, dismissing the appeal. The judgment was given by Jamadar JA and is unreported but was made available to the Board as part of the transcript of the Court of Appeal proceedings. The Court of Appeal decided that Rahim J had been incorrect in reasoning that (without reliance on the relation back doctrine) the claimant was a tenant at the time she served the notice of renewal of the lease, because the estate had not been administered at that date. Nevertheless, the Court of Appeal held that the doctrine of relation back did here apply to validate the renewal of the lease. Applying *Mills v Anderson* [1984] QB 704, the claimant had purported to renew the lease for the benefit of the estate. The renewal was therefore validated and, as there were no arguments addressed to the Court of Appeal on the judge's orders in relation to the findings of trespass, the Court of Appeal saw no reason to interfere with them.

14. It would appear that the Court of Appeal would also have been willing to apply relation back to the issuing of the proceedings but considered that this was unnecessary because of the order made by Rahim J on 27 February 2012. What Jamadar JA said, in relation to this, was the following:

> "Even this action was commenced by [Angela Sealy] with the intention to seek the benefit of the estate. On the filing of the papers, an application was made for her to be constituted as such. An Order of the Court was made accordingly, after argument, there has been no appeal and the matter proceeded on the basis that she was therefore duly constituted to bring this action."

15. Without intending any criticism of the courts below, who were doing the best they could in the light of the evidence and submissions presented to them, it can be seen from this summary of the judgments below that they give the Board relatively limited assistance on the issues that now have to be decided. On this appeal, the Board has been primarily addressed on, and is concerned to decide, the application of the

relation back doctrine both as regards the renewal of the lease and the issuing of proceedings. Rahim J took the view that the arguments as to relation back were inapplicable in this case but went on, incorrectly in the Court of Appeal's view, to decide that the lease could be renewed by the claimant because she was a tenant. The claimant accepts that the Court of Appeal was correct (and Rahim J was incorrect) on the tenancy point (ie that one can only say that Angela Sealy was a tenant if relation back applies) so that that is no longer an issue. The Court of Appeal held that relation back was applicable to the renewal of the lease but did so by reliance on just one case (*Mills v Anderson*). The question of relation back in relation to the nullity of proceedings was not focussed on in either of the courts below apparently because they regarded the order of Rahim J, dated 27 February 2012, as validating the proceedings.

16. In considering the relevant law in this case, it is convenient, first, to assume that the proceedings are valid and to look at the trespass to land claim with particular reference to the renewal of the lease before going on, secondly, to ask whether the proceedings are a nullity.

5. The trespass to land claim with particular reference to the renewal of the lease

(1) Introduction

17. On the assumption that the proceedings are valid, the Board is here concerned to examine the trespass to land claim with particular reference to the renewal of the lease. It has been seen in paras 10-11 and 13 above that this was treated as the fourth issue in Rahim J's judgment and that the Court of Appeal did not interfere with the decision and orders made in relation to the trespass claim. It was common ground between the parties that the relevant common law in Trinidad and Tobago is the same as that in England and Wales.

18. I should make clear at the outset that I reject the submission of Mr Beharrylal that it was not open to the Court of Appeal to decide the case on relation back, in relation to the renewal of the lease, because that had not been an issue for the appeal. The complaint is that counsel was taken by surprise when the Court of Appeal made clear in their questions to him during the hearing that they wanted to hear submissions on the relation back of the notice of renewal. Although the Court of Appeal conducted the hearing in a robust manner, I do not accept that there is a ground of appeal arising from the approach taken by the court. In any event, Mr Beharrylal has now had a full opportunity before the Board to raise all the arguments on relation back that he

wishes and, in that way, any possible unfairness in the Court of Appeal has been redressed.

19. In her statement of claim Angela Sealy alleged that acts of trespass were committed by Mohan Jogie both prior to 31 May 2011 (when the original lease expired) and after 31 May 2011 (after the original lease expired). It is clear that Rahim J rejected the claim that the defendant had been responsible for trespassing by cutting down trees on the land in April 2011 because the claimant had failed to prove that those acts were committed by the defendant or his servants or agents. But the claimant also alleged that it was observed in or around January 2011 that the original padlock placed on the gate by the Abbott family had been cut and replaced by new chains and a new padlock. The claimant's lawyers wrote to the defendant requesting the removal of the padlock and chains and this was complied with. Rahim J did not specifically refer to this alleged act of trespass but, having earlier observed that the defendant accepted that he had gone into occupation in January 2012 but not January 2011 as alleged, Rahim J merely said at para 51 that the court was of the view that the defendant had committed a trespass by entering premises that he had no lawful authority to enter. No mention was made by Rahim J of when that trespass started. However, I take the view that, as regards matters prior to 31 May 2011, Rahim J must have found, at the very least, that the replacement of the padlock with new chains and a new padlock in or around January 2011 constituted acts of trespass by the defendant. It is therefore helpful first to consider acts of trespass committed prior to 31 May 2011 before going on to the difficult renewal question which only concerns trespass committed after that date.

(2) Trespass prior to 31 May 2011

20. Although the trespass to land arose after the death of Cynthia Abbott (so that we are not concerned with the survival of the deceased's claim under the equivalent to what, in English law, is the Law Reform (Miscellaneous Provisions) Act 1934), it is clear that, in so far as there were acts of trespass prior to 31 May 2011, there is a trespass claim for the benefit of the estate. The explanation is that, by the relation back doctrine, the personal representative (ie the administrator) is treated as having had standing to sue for the benefit of the estate (ie for the protection of the estate) from the date of the death of the intestate deceased rather than from the later date when the personal representative had authority to act on behalf of the estate. Therefore, as clearly accepted in early cases such as *Tharpe v Stallwood* (1843) 5 Manning and Granger 760 and *Morgan v Thomas* (1853) 8 Ex 302, there is no problem about an administrator suing in tort for, for example, trespass to goods even though the tort was committed after the death of the intestate. As Parke B said in the latter case at p 307:

> "It is only in those cases where the act is for the benefit of the estate that the relation back exists, by virtue of which relation the administrator is enabled to recover against such persons as have interfered with the estate, and thereby to prevent it from being prejudiced and despoiled."

Relation back is also given as the explanation for why a tort action can be brought in, for example, *Fred Long & Son Ltd v Burgess* [1950] 1 KB 115, 121 and 123 ("relation back" applies to protect the estate from wrongful injury in the interval) and *Mills v Anderson* (I examine these two cases in detail below).

21. It is therefore clear that, as regards trespass committed prior to 31 May 2011, the doctrine of relation back means that, on the assumption that valid proceedings were instituted by Angela Sealy on behalf of her mother's estate, she was entitled to succeed in an action for the tort of trespass on behalf of the estate.

(3) Trespass after 31 May 2011

22. The crucial additional factor here is that, for there to be a valid claim for trespass committed after 31 May 2011, one has to decide that the notice to renew the lease given by the claimant on 11 January 2011 was valid. This turns on whether one can apply the relation back doctrine to validate retrospectively that notice of renewal even though, at the time when given, the claimant had no authority to give that notice of renewal on behalf of the estate. If relation back applies, it is clear that an administrator of a deceased's tenant's estate comes within the definition of "tenant" in section 2 of the Land Tenants (Security of Tenure) Act (set out at para 9 above) because of the words "by operation of law".

23. As we have indicated, the single case relied on by the Court of Appeal to support the view that relation back applied in relation to the renewal of the lease was *Mills v Anderson*. Here the claimant's son was killed on a moped when it collided with a tractor owned by defendant. Before taking out letters of administration, the father settled the claim but, when he became administrator, he refused to accept payment under the settlement and sued for a higher sum of damages (because, since the settlement, an estate had become entitled to a higher sum of damages by reason of the development in the law brought about by *Gammell v Wilson* [1982] AC 27 allowing loss of earnings in the "lost years" to survive). Ben Hytner QC, sitting as a Deputy High Court Judge, held that the claimant, as administrator, was not bound by the settlement. The general rule was that acts done before administration had no legal effect. But, as an exception to that, relation back did apply where an act was done for

the benefit of the estate; and what was meant by this was that objectively (ie looking back from what one now knew) the act was for the benefit of the estate. Here the settlement was not for the benefit of the estate so that relation back did not apply to bind the administrator to the settlement. After citing several passages from *Williams Mortimer and Sunnucks* and some old cases referred to in that book (in particular, *Morgan v Thomas* (1853) 8 Ex 302, see para 20 above, and *Bodger v Arch* (1854) 10 Exch 333, see para 25 below), Ben Hytner QC said the following at pp 710-711:

> "I have … to consider whether an act done for the benefit of the estate means objectively an act which looking back is of benefit to the estate or whether it may include acts which were done subjectively for the benefit of the estate even though looking back they have not benefited the estate at all … I am satisfied, looking at all the cases as a whole, that relation back only occurs where it would be beneficial to the estate for the general doctrine not to operate. The exception applies to prevent injury to the estate, and in my judgment, the approach should be a purely objective one."

24. The judge was therefore accepting that while, in general, relation back does not apply to validate acts done on behalf of the estate prior to the grant of administration, there are exceptions provided the act is objectively for the benefit of the estate. On the facts, any such exception could not be made out because the act was objectively detrimental, not beneficial, to the estate. It is arguable that the judge's reasoning in *Mills v Anderson* accepts too wide a doctrine of relation back and that relation back is not concerned at all with retrospectively validating acts done on behalf of the estate (and, as I explain later in this judgment, it is certainly clear law that relation back does not extend to validating proceedings that were a nullity) but is much narrower and is concerned only with the administrator having standing to sue in respect of a cause of action that accrued to the estate after the death but before the grant of administration. However, whether one takes the wider or narrower view, the actual decision in *Mills v Anderson* would be the same. Moreover, and without the benefit of submissions on all relevant authorities, I am content to accept that the reasoning in *Mills v Anderson* (and the approach in *Williams, Mortimer and Sunnocks* at paras 5.18-5.19) is correct in taking the wider view which recognises that relation back (at common law) can extend to acts carried out for the objective benefit of the estate (albeit not to validate proceedings that were a nullity) rather than just being concerned with the administrator's standing to sue in respect of a cause of action accruing to the estate after the death. It is also noteworthy that, in addition to the treatment in *Williams, Mortimer and Sunnocks*, *Mills v Anderson* is referred to without any hint of criticism in other books on succession, such as Sherrin and Bonehill, *The Law and*

Practice of Intestate Succession 3rd ed, (2004) para 3-002 and Sloan, *Barkowski's Law of Succession* 4th ed, (2017) pp 386-387.

25. The case of *Bodger v Arch,* referred to by Ben Hytner QC, may also be regarded as offering support for that wider view in the sense that relation back was applied to validate a contract made by a claimant with the defendant while the claimant was managing his deceased wife's affairs but prior to being granted letters of administration. It was held (although Baron Parke doubted this aspect of the decision) that the action by the claimant as administrator (ie after the grant of administration) for breach of that contract was not barred by the six-year limitation period because there had been the equivalent of part payment by the defendant some five years prior to the commencement of the action so that time started to run again from that part payment. As regards the validation by an administrator of a prior agreement, Baron Parke, giving the judgment of the Court of Exchequer (Parke, Alderson, Platt and Martin BB) said the following, at pp 339-340:

> "Suppose an actual promise to have been made to the plaintiff before he was administrator and within six years, either in writing or accompanied by a part payment …, we have no doubt the action would have been maintainable. It would have constituted a new contract with the plaintiff as administrator, founded on the consideration of the old debt; … and this being a contract with a person acting on behalf of the intestate's estate, and not on his own account, the administration would have relation back in order not to lose the benefit of that contract, upon the same principle that an action of trover is maintainable for a conversion of goods of an intestate after his death and before the grant of administration, and that an action of assumpsit by an administrator as such will lie on a contract of sale of goods of the intestate by a person meaning to act as agent for the benefit of the estate between the death and grant of administration…"

26. I am therefore content to accept that relation back can validate, for example, the making or renewal of a contract by the administrator before the grant provided that that act was objectively beneficial to the estate.

27. Nevertheless there is a serious obstacle to applying relation back in the context of the renewal of a lease. That is because, at least on the face of it, the effect of the renewal would be to take away, retrospectively, vested proprietary rights, here of the

landlord, and would create considerable uncertainty for the landlord. That relation back may not apply where it would have such an effect is indicated by *Long v Burgess* [1950] 1 KB 115. Mrs Burgess was a contractual tenant and lived with her two sons. She died intestate on 7 November 1948. On 18 November 1948, the landlord served a notice to quit on the President of the Probate, Divorce and Admiralty Division (the equivalent today of the Public Trustee). It was assumed without argument that the landlord had the right to terminate the lease, as from 27 Nov 1948, by giving the appropriate period of notice. The only question at issue before the Court of Appeal was whether that notice to quit could be served on the President. It was held that it could. By section 9 of the Administration of Estates Act 1925 (replaced now by section 14 of the Law of Property (Miscellaneous Provisions) Act 1994) the property vested in the President. It followed that the notice to quit could be served on the President. Landlords could not be expected to wait and see how matters turned out in relation to the administration of the estate. As a result, the subsequent grant of the letters of administration could not relate back to the date of death so as to undermine the notice to quit.

28. Bucknill LJ and Asquith LJ gave judgments, with which Hodson LJ agreed, holding that relation back could not here apply. Bucknill LJ said the following at pp 119 - 120:

> "I think that, on principle, and, historically, the vesting of the estate in the President is a positive act with some legal substance. Normally the court, formerly composed of the Probate Judge, appoints a person or persons to deal with the property of the intestate through a grant of administration, but I see no reason why in a case of necessity the President should not have legal power to give directions about the property. If he cannot do so, no one can. That is why the property is vested in him. If the President's position is such as I have indicated, I think he must have the legal capacity to receive a valid notice to quit, and such notice, after the proper lapse of time, has full legal effect. If no grant of administration has been made, there is no other person but the President to whom the notice to quit can validly be given. At any date subsequent to the death of the intestate, a grant of administration may be made. There is no time limit in this matter. If a grant made years after the death is to make invalid the notice to quit validly given to the President, confusion and uncertainty will prevail and injustice may be done to those who have acted on the assumption that the notice to quit given to the President had full legal effect."

Particularly important is the central part of Asquith LJ's reasoning at p 123 where he said this:

> "[T]he principle of 'relation back' cannot be applied so as to invalidate interests lawfully acquired in the interval; and that to apply it in circumstances such as those of the present case leaves the landlord, it may be for years, in a position of intolerable doubt as to his rights; for instance, whether or not he can safely re-enter and deal with the property."

29. I accept that *Long v Burgess* is not on all fours with the present case. It did not concern a notice of renewal. Rather the question was whether the landlord's notice to quit, given to the President of the Probate, Divorce and Admiralty Division (now the Public Trustee) in whom land is vested where there is an intestacy, should count as effective against tenants who were not entitled to stay on in the relevant property. The answer was held to be "yes". The refusal to apply relation back and the fear of creating uncertainty for landlords was in the context of landlords being contractually entitled to serve a notice to quit.

30. However, the reasoning of the Court of Appeal, and especially that of Asquith LJ, makes clear that relation back will not apply where it results in retrospectively depriving a landlord of proprietary rights. That would be a recipe for confusion and uncertainty in respect of proprietary rights where clarity and certainty are essential. On the facts of this case, and unless relation back applied, it would appear that, after 31 May 2011, the 30-year lease had expired, not having been renewed by Cynthia Abbott prior to her death or, after her death but before 31 May 2011, by administrators on behalf of her estate. As of 1 June 2011, there was no tenancy and the defendant was entitled to act on that being the position as regards his proprietary rights (and he did so act by exercising his rights as owner to take back exclusive possession of the land). For that position to be unwound by the application of relation back once there had been the grant of administration some 17 months later (on 2 November 2012) would unacceptably deprive the landlord of his vested proprietary rights.

31. A possible counter-argument is that, once Angela Sealy had given Mohan Jogie the notice of renewal on 11 January 2011, he should have been aware that those acting on behalf of the estate would be likely to seek to assert tenancy rights; and one might even say that his proprietary rights were in some sense conditional on no notice of renewal being served by a person who might subsequently be appointed administrator. But at the time the notice of renewal was served, Angela Sealy had not been appointed administrator and to treat the landlord's rights as conditional would

place the landlord in a position of uncertainty as to his proprietary rights potentially for a significant period of time ie until administrators were granted letters of administration. Indeed, administrators might never be appointed. As Asquith LJ said, at p 123, in the passage cited above, this "leaves the landlord, it may be for years, in a position of intolerable doubt as to his rights; for instance, whether or not he can safely re-enter and deal with the property."

32. Mohan Jogie was entitled to treat Angela Sealy's purported renewal as invalid as she had not at that time been granted letters of administration. She had many years to obtain a grant of administration after her mother's death on 21 December 2006 and before the required renewal date of 31 May 2011. Had she obtained the grant of administration at any time before 31 May 2011, she could have validly given the notice of renewal, on behalf of the estate, before that date since, by reason of section 4(3) of the Land Tenants (Security of Tenure) Act (see para 9 above), a notice of renewal could be served at any time before expiry of the initial period of thirty years. Alternatively, she could have sought a "grant ad colligenda bona" for the purposes of preserving assets which would have been a quick process. But she took neither of those steps. It would seem that a further possible alternative would have been for her to ask the relevant state official (the equivalent to the Public Trustee in England and Wales) to consider renewing the lease on behalf of the estate. Although I have some sympathy for Angela Sealy, it is not open to us, without unacceptably disrupting well-settled law and thereby undermining the landlord's vested proprietary rights, to allow relation back to apply in this situation.

33. In the course of the hearing, the Board asked the parties to consider the possibility of drawing an analogy to the principle of ratification that applies in the law of agency; and subsequent written submissions on ratification were received. That one can draw that analogy derives support from *In re Watson* (1886) 18 QBD 116 at first instance. Wills J, sitting with AL Smith J, said at p 119 that, although not satisfied on the facts, had the person making the contract for the benefit of the estate been the person (Phillips) who later became administrator, ratification would have been effective:

> "It seems to be a principle of law that where work is done on the credit of the estate by the order of one who afterwards obtains administration and ratifies the contract, the estate is bound if the work done is for the benefit of the estate. The essential conditions are that there should be a contract with some person professing to act for the estate, that the contract should be for the benefit of the estate, and that the person in question should afterwards become administrator

> and should after being so appointed have ratified the contract. Under those circumstances the case comes within the principle of law that a subsequent ratification of a contract by a person with authority to ratify it relates back to and supports the contract."

On appeal to the Court of Appeal that decision was affirmed on the facts: (1887) 19 QBD 234 (Lord Esher MR, Lindley and Lopes LJJ). But Wills J's obiter dicta was doubted by Lord Esher MR. He said, at p 235:

> "Speaking for myself only, I doubt whether Phillips, after he became administrator, and so was acting in the interests of other persons, could have ratified a prior contract made with himself."

34. Although there is the obvious similarity that ratification, like relation back, operates to validate retrospectively what, at the time, was done without authority, it is my view that, on careful reflection, it is probably more confusing than helpful to draw an analogy between ratification (in the law of agency) and relation back (in the context of the administration of an estate). The rules governing ratification and relation back are significantly different (for example, as I explain at paras 66-67 below, an agent's bringing of proceedings without authority can be ratified whereas relation back does not validate proceedings that were a nullity when commenced). Relation back does not deal with a principal and agent situation and, on the facts of this case, one is not even dealing with two different people. Rather we are dealing with one and the same person, Angela Sealy, acting in two different capacities. Even if the two people are different, it is well-established that, for ratification in the law of agency, the principal has to be in existence/competent at the time the agent has acted (see, for example, *Kelner v Baxter* (1866) LR 2 CP 174); and, in the situation with which we are dealing, there is no administrator (ie no competent principal in existence) at the time the "agent" has acted. In summary, Angela Sealy was not purporting to act as an agent for a disclosed principal, who could ratify her actions, and it is probably confusing to treat her as if she were in an analogous position.

35. Even if it were thought that the analogy is a useful one, examination of the law on ratification tends to support the view that relation back does not apply to the renewal of the lease because it is well-accepted, as a general rule, that ratification, in the law of agency, is inapplicable where it would operate to undermine accrued proprietary rights. As it was put by Cotton LJ in obiter dicta in the classic case on ratification, *Bolton Partners v Lambert* (1889) 41 Ch D 295, 306, "an estate once vested cannot be divested". Although it has subsequently been clarified that this is not an

absolute rule, and there can be exceptions where no injustice is caused to a third party, that remains the general rule. In *The Borvigilant* [2003] EWCA Civ 935; [2003] 2 Lloyd's Rep 520, para 87, Clarke LJ said the following:

> "[I]n the vast majority of cases it would be unjust to the third party to give effect to a ratification if to do so would divest a vested property right. Indeed in the case, for example, of vested real property rights it is difficult to think of an example of a case [that would constitute an exception to the general rule]. The same is no doubt true of other property rights."

(See also the earlier general discussion in *Presentaciones Musicales SA v Secunda* [1994] Ch 271, 280, 284-286). Therefore, even if one assumes that it is useful to consider ratification by analogy, ratification would normally not be permitted where it would deprive an owner of proprietary rights (and a fortiori where those rights were acquired 17 months before ratification).

(4) Two further submissions

36. Although I accept the main submission made by Mr Beharrylal that, because it would undermine the landlord's vested proprietary rights, relation back cannot validate the renewal of the lease, I reject two further submissions made by him as to why, on these particular facts, relation back could not apply to validate the renewal of the lease.

37. First, he submitted that relation back was inapplicable because Angela Sealy has not joined with her co-administrator, Osden Abbott, in confirming the renewal of the lease. In my view, this is not a valid objection because the general rule (with the exception of conveyances of real property and share and stock transfers) is that the act of one joint administrator is treated as the act of all of them and is binding on them: *Williams, Mortimer and Sunnocks*, para 50-69, approved by Newey J in *Birdseye v Roythorne & Co* [2015] EWHC 1003 (Ch), paras 30-33.

38. Secondly, I reject the submission of Mr Beharrylal that, in giving notice to renew the lease, the claimant was acting for her own benefit and not for the benefit of the estate (as is required by the relation back doctrine). Her interests and that of the estate were closely linked; and, although we are here concerned with the renewal of the lease and not the bringing of proceedings, it is significant that she made clear

throughout that she was bringing those proceedings on behalf of the estate. It is also implicit that, by its reliance on *Mills v Anderson*, the Court of Appeal regarded this requirement of the relation back doctrine to be satisfied. I consider that it was entitled to do so.

(5) Conclusion on the renewal of the lease and the trespass claims

39. My conclusion in relation to the renewal of the lease is that relation back does not apply (from when Angela Sealy was appointed co-administrator) to validate that renewal. That means that the claim for trespass cannot succeed as regards conduct of Mohan Jogie after 31 May 2011.

40. Although that was the main trespass claim, and was the basis for the injunction obtained, the invalidity of the renewal of the lease does not invalidate the claim for trespass to land before 31 May 2011. Although I accept that that claim for trespass is relatively trivial, and may lead to only a small sum of damages, it is a valid tort claim that can be brought on behalf of the estate. It is therefore incumbent on us to go on to consider the second issue, on which we heard very full argument, which is whether the proceedings are a nullity.

6. Are the proceedings a nullity?

(1) The contrast between executors and administrators

41. We have seen (see para 3 above) that it is well-established that, in contrast to the position of an executor of a will, an administrator generally only acquires the right to act on behalf of an estate once the grant of administration has been made. In the context of litigation, this is illustrated by, for example, *Chetty v Chetty* [1916] 1 AC 603 in which one question at issue was whether a limitation period of three years ran from the date of the testator's death or from the later appointment of an administrator pendente lite. In holding that the limitation period ran from the date of death, because the deceased had left a will, Lord Parker, giving the judgment of the Privy Council (on an appeal from Singapore), said the following, at pp 608-609:

> "It is quite clear that an executor derives his title and authority from the will of his testator and not from any grant of probate. The personal property of the testator, including all rights of action, vests in him upon the testator's death, and the consequence is that he can institute an action in the

> character of executor before he proves the will. He cannot, it is true, obtain a decree before probate, but this is not because his title depends on probate, but because the production of probate is the only way in which, by the rules of the court, he is allowed to prove his title. *An administrator, on the other hand, derives title solely under his grant, and cannot, therefore, institute an action as administrator before he gets his grant. The law on the point is well settled …*"
> (Emphasis added)

42. However, the rule that an administrator only has standing to sue on behalf of the estate after the grant of administration does not mean that claims cannot be made for the period between the intestate's death and the grant of administration. By reason of the relation back doctrine such claims can be brought by the administrator once validly appointed. However, the difficulty for the claimant on the facts of this case is that the action for trespass was commenced by her (on 1 February 2012 and there were amendments to her statement of case on 5 March 2012 and 6 June 2012) prior to the grant of letters of administration to her and her brother on 2 November 2012; and that action was not recommenced (and no amendments were sought or made to the claim form and statement of case) after she and her brother were appointed co-administrators. On the face of it, therefore, her action, although stated to be in her capacity as "Representative of the Estate of Cynthia Abbott", was a nullity because, when commencing the action, she had no standing to sue on behalf of the estate. According to the submissions of Mr Beharrylal it is clear law, as laid down by the Court of Appeal in England and Wales in, for example, *Ingall v Moran* [1944] KB 160, and applied recently in *Millburn-Snell v Evans* [2011] EWCA Civ 577; [2012] 1 WLR 41, that the relation back doctrine does not apply to validate retrospectively proceedings that were a nullity when commenced. Moreover, according to the submissions of Mr Beharrylal, there are no civil procedure rules that can assist the claimant on the facts of this case.

43. I must now examine in some depth the relevant case law, in particular *Ingall v Moran* and *Millburn-Snell v Evans*. In so doing, it should be stressed at the outset that it was common ground between the parties that the relevant common law in Trinidad and Tobago is the same as that in England and Wales.

(2) *Ingall v Moran ("Ingall")*

44. The claimant's son had been killed in a road accident caused by the defendant's negligence. The claimant commenced an action against the defendant under the Law Reform (Miscellaneous Provisions) Act 1934. As the defendant had been working for a

public authority, a short one-year limitation period applied to the claim. The claim was commenced within that time period. However, the son had died intestate and the claim was started before the claimant had been granted letters of administration. A few months after the one-year limitation period had expired, the claimant was granted letters of administration. It was held by the Court of Appeal (Scott, Luxmoore and Goddard LJJ), overturning the trial judge, that the proceedings were a nullity because the claimant had not been granted letters of administration at the time the writ was issued and the doctrine of relation back could not be used to cure the nullity. The decision was particularly harsh because, given that the limitation period of one year had expired, no action could have succeeded after the letters of administration were granted. The claim was therefore lost to the estate. Luxmoore LJ said the following at p 169:

> "I have no doubt that the plaintiff's action was incompetent at the date when the writ was issued, and that the doctrine of the relation back of an administrator's title to his intestate's property to the date of the intestate's death when the grant has been obtained cannot be invoked so as to render an action competent which was incompetent when the writ was issued. In my judgment, the learned judge was wrong in coming to the contrary conclusion. It follows that no proper action was commenced before the statutory period of limitation expired. That period expired before any grant of administration was obtained, and the right of action was lost to the intestate's estate. Although I cannot help feeling some regret I have no doubt but that the appeal must be allowed and the action dismissed."

Goddard LJ was of the same view, at p 172:

> "[It is not] necessary to consider the many cases which show that once letters are granted the title of the administrator relates back to the death. They have no application to this question. All they show is that, once letters have been obtained, the title relates back so that the administrator may sue in respect of matters which have arisen between the date of the death and the date of the grant, just as he may sue in respect of a cause of action that had accrued to the intestate before his death, provided the cause of action survives. The result is that this action was, and always remained,

> incompetent, and judgment ought to have been entered for the defendant."

(3) Three Court of Appeal decisions on wrongful death claims applying *Ingall*

45. In the decade following *Ingall* there were three Court of Appeal decisions on wrongful death which applied *Ingall*: *Hilton v Sutton Steam Laundry* [1946] KB 65; *Burns v Campbell* [1952] 1 KB 15; and *Finnegan v Cementation Ltd* [1953] 1 QB 688. In each, there had been an alleged wrongfully caused death at work of a person who was intestate and, prior to the grant of administration, a claim was brought by the widow of the deceased under, inter alia, the Fatal Accidents Act 1846. In each case, it was held that, applying *Ingall*, the proceedings were a nullity because they were commenced prior to the grant of administration. And in each the consequence was that the limitation period for an action under the Fatal Accidents Act 1846 (which, at that time, was 12 months from the death) had expired so that that action was lost. This drastic consequence of the action being a nullity, which could not be revived by the relation back doctrine, was regretted by the judges but they considered that there was no route open to them to avoid it. For example, Denning LJ in *Burns v Campbell,* said at p 17:

> "I am sorry to say that we cannot grant an amendment to enable her to do this [ie to continue the claim in her subsequently-acquired capacity as administratrix], for it has been decided by this court … that we cannot."

In *Finnegan v Cementation Ltd,* Singleton LJ said, at p 699:

> "I would add that these technicalities are a blot upon the administration of the law, and everyone except the successful party dislikes them."

And in the same case, Jenkins LJ said at p 700:

> "I share the regret expressed by my Lord in coming to that conclusion. It seems to me to be a case in which a technical blunder has deprived the plaintiff of her remedy, although the blunder was not such as to affect the substance of the claim in any way, or to prejudice the defendants in defending the action in any degree."

(4) The legislative removal (in England and Wales) of *Ingall* where a limitation period has expired

46. Given the judicial criticism of the operation of *Ingall* where, as on the facts of *Ingall* and the other three cases referred to above, it would have the drastic effect when combined with the expiry of a limitation period of depriving the estate of a claim, it is not surprising that there has been legislative reform (in England and Wales) to remove that "blot upon the administration of the law". The Law Reform Committee in its 21st Report on Limitation of Actions (1977) (Cmnd 6923) recommended that, if a party acquired a new capacity, most obviously as in *Ingall* where the grant of letters of administration to a party was subsequent to that party's commencement of proceedings, a court could allow an amendment to alter the capacity of that party after the expiry of a limitation period. This recommendation was enacted in section 35(7) of the Limitation Act 1980 by which:

> "[R]ules of court may provide for allowing a party to any action to claim relief in a new capacity … notwithstanding that he had no title to make that claim at the date of the commencement of the action."

The relevant rules of court are now to be found in CPR rule 17.4(4). Rule 17.4 is headed "Amendments to statements of case after the end of a relevant limitation period" and rule 17.4(4) reads as follows:

> "The court may allow an amendment to alter the capacity in which a party claims if the new capacity is one which that party had when the proceedings started *or has since acquired*." (Emphasis added)

But it is very important to clarify that this legislative reform applies only in the extreme situation where a limitation period has expired. Section 35(7) of the Limitation Act 1980 and CPR rule 17.4(4) do not give the courts a general power to allow an amendment to alter the capacity in which the claimant is bringing a claim.

47. The legislative removal of *Ingall* in the context of the expiry of a limitation period was referred to by the Court of Appeal in obiter dicta in *Haq v Singh* [2001] EWCA Civ 957; [2001] 1 WLR 1594. The claimant was a discharged bankrupt who claimed damages for negligence against her former solicitors. The defendants alleged, correctly, that the claimant had no (personal) cause of action because that was vested

in her trustee in bankruptcy. After the limitation period had expired, the trustee in bankruptcy assigned the cause of action to the claimant. The judge at first instance allowed the claimant to amend her statement of case under CPR rule 17.4(4) because of a change of capacity and the expiry of the limitation period. The Court of Appeal allowed the defendants' appeal because there was here no change of capacity so that rule 17.4(4) did not apply. The claimant was suing in the same capacity and the action therefore remained a nullity. But in obiter dicta, Arden LJ (and Pill LJ), looking generally at CPR rule 17.4(4), made clear that that rule did cover a change of capacity in having later become an administrator on intestacy but after the expiry of the limitation period. They explained that this was the precise defect in the law that the Law Reform Committee's Report on Limitation of Actions (1977) (preceding the Limitation Act 1980 section 35(7) and CPR rule 17.4(4)) had been primarily concerned to address. It was therefore clear that *Ingall* (and the line of cases applying it) was no longer good law to the extent that CPR rule 17.4(4) empowered a court to allow the amendment of the statement of case, altering the capacity of the claimant after the grant of administration, despite the expiry of a limitation period. In Arden LJ's words at para 22:

> "The effect of CPR rule 17.4(4) is therefore to remove the effect of *Ingall v Moran* [1944] 1 K 160, the technicalities of which Singleton LJ in *Finnegan v Cementation Co Ltd* [1953] 1 QB 688, 699, described as a 'blot upon the administration of the law'."

Given some subsequent judicial confusion (referred to in para 54 below), it is necessary to clarify that Arden LJ was speaking in a context where CPR rule 17.4(4) arose: that is, where a limitation period had expired. Viewed in context, the correct interpretation of Arden LJ's obiter dicta is that she was not suggesting that CPR rule 17.4(4) had removed *Ingall* altogether.

48. The same point as that made by Arden LJ was made in obiter dicta of Lord Collins and Lord Walker in *Roberts v Gill & Co* [2010] UKSC 22, [2011] 1 AC 240. Lord Collins said at para 34:

> "[The amendment to the rules of court in what is now CPR rule 17.4(4)] gave effect to a recommendation of the Law Reform Committee, enacted as section 35(7), to deal with the anomaly that, where probate was granted to a person as executor, leave to amend to make a claim on behalf of the estate could be given because the title related back to the death, but where the plaintiff was subsequently granted letters of administration in such cases, the title related back

> to the date of the grant, which would have been after the issue of the writ. This had the effect of removing the grave injustice caused by such decisions as *Ingall v Moran* [1944] KB 160 (CA); *Hilton v Sutton Steam Laundry* [1946] KB 65 (CA); *Burns v Campbell* [1952] 1 KB 15; *Finnegan v Cementation Co Ltd* [1953] 1 QB 688 (CA)."

In the words of Lord Walker at paras 97-98:

> "The … uncompromising rule of practice [not to permit an amendment to deprive a defendant of a limitation defence] was applied even in cases (such as *Ingall v Moran* [1944] KB 160 and *Finnegan v Cementation Co Ltd* [1953] 1 QB 688) where the result was to shut out a meritorious claim, arising from a fatal accident, on what many would regard as a technicality. Indeed in the latter case Singleton LJ (at p 699) described the point as 'a blot upon the administration of the law'. These hard cases turned on the technical but long-established distinction between the position of an executor (whose standing relates back to the deceased's death, and is merely confirmed by probate) and an administrator (whose title depends on, and dates from, the grant of letters of administration). That distinction has ceased to be relevant, for present purposes, because of section 35(7) of the Limitation Act 1980 and CPR rule 17.4(4) (made pursuant to section 35(7))."

(5) *Millburn-Snell v Evans ("Millburn-Snell")*

49. In contrast to *Ingall* and the three Court of Appeal cases directly applying it, the facts of *Millburn-Snell* did not concern a wrongful death claim or the expiry of a limitation period. The claimants were the three daughters of a father who had died intestate. Without having been granted letters of administration, the claimants had issued proceedings in their personal capacity (but making clear in the Particulars of Claim that they were the personal representatives of their father) in respect of their father's claim, based on proprietary estoppel, to a half-share in the defendant's farm. Five days before trial, the defendant sought to have the claim struck out on the ground that the claimants had no standing to sue as they had not been granted letters of administration. The first instance judge struck out the claim and this was upheld by the Court of Appeal. The leading judgment was given by Rimer LJ with whom Hooper LJ

and, in a short concurring judgment, Lord Neuberger MR agreed. The central elements of the Court of Appeal's reasoning can be summarised as follows:

> (i) At common law, applying *Ingall,* the proceedings were a nullity and could not be revived by the relation back doctrine.
>
> (ii) There were no civil procedure rules which would permit a court to depart from that common law position. CPR rule 17.4(4) was irrelevant because one was not here dealing with where the limitation period had expired depriving the administrator, on behalf of the estate, of a successful action. And the rule primarily focussed on in the case, CPR rule 19.8(1)(b) ("Where a person who had an interest in a claim has died and that person has no personal representative the court may order … a person to be appointed to represent the estate of the deceased"), could not be used to override the common law position that the proceedings were a nullity. The purpose of CPR rule 19.8(1)(b) was to enable validly instituted proceedings to continue to trial despite a relevant death (usually of one of the parties). It was not concerned retrospectively to validate proceedings that were a nullity.
>
> (iii) As one of the claimants had now been appointed administrator, she could start proceedings afresh because the limitation period had not expired. If a new action were to be commenced, directions were given to ensure that there was no undue waste of costs in the light of the steps that had already been taken.

50. Rimer LJ said the following at para 16:

> "I regard it as clear law, at least since *Ingall*, that an action commenced by a claimant purportedly as an administrator, when the claimant does not have that capacity, is a nullity."

And at paras 29-30:

> "What [*Ingall*] decided, by a decision binding upon us, is that a claim purportedly brought on behalf of an intestate's estate by a claimant without a grant is an incurable nullity. Subject only to whatever rule 19.8(1) may empower, it follows that the claim the claimants issued was equally an incurable nullity. … I … consider that rule 19.8(1) has no application to

> the present case … rule 19.8(1) does not, in my view, have any role to play in the way of correcting deficiencies in the manner in which proceedings have been instituted. It certainly says nothing express to that effect and I see no reason to read it as implicitly creating any such jurisdiction. It is, I consider, concerned exclusively with giving directions for the forward prosecution towards trial of *validly* instituted proceedings when a relevant death requires their giving. In the typical case, that death will occur during their currency and will usually be of a party. More unusually, it may have preceded them. But on any basis it appears to me clear that it is no part of the function of rule 19.8(1) to cure nullities and give life to proceedings such as the present which were born dead and incapable of being revived. In ordinary circumstances there is no reason why anyone with a legitimate interest in bringing a claim on behalf of an intestate's estate should not first obtain a grant of administration and so clothe himself with a title to sue. I am unable to interpret rule 19.8(1) as providing an optional alternative to such ordinary course."

51. Lord Neuberger MR added the following in his short concurring judgment at para 41:

> "Arguments such as that which the defendant successfully raised before the judge in this case are never very attractive, and one of the purposes of the CPR is to rid the law of unnecessary technical procedural rules which can operate as traps for litigants. However, whatever one's views of the value of the principle applied and approved in *Ingall v. Moran* [1944] KB 160, it is a well-established principle, and, once one concludes that it has not been abrogated by CPR rule 19.8, it was the judge's duty to follow it, as it is the duty of this court, at least in the absence of any powerful contrary reason. The need for consistency, clarity and adherence to the established principles is much greater than the avoidance of a technical rule, particularly one which has a discernible purpose, namely to ensure that an action is brought by an appropriate claimant."

52. One can elaborate further on what Lord Neuberger said by recognising that, contrary to what is sometimes thought, the common law rule can be defended at least as a general rule. This is because requiring the appropriate person (ie the administrator) to commence proceedings ensures orderly proceedings, avoids duplication, and means that the estate is represented by the most appropriate person.

53. As regards a fresh action being validly commenced by the appointed administrator, the Court of Appeal recognised that this is probably what would now happen. If so, the court recognised that, to save needless expense, appropriate directions should be given for the claim to move rapidly to trial without requiring a timely repeat of the steps already taken.

54. It is worth adding that, with respect, there was needless confusion in *Millburn-Snell* as to the obiter dicta in *Haq v Singh* about CPR rule 17.4(4) referred to in para 47 above. I have explained that Arden LJ's comments on CPR rule 17.4(4) must be read in their context. It was not being suggested that *Ingall* had been swept away. On the other hand, it is clear, and this is what Arden LJ was emphasising, that section 35(7) of the Limitation Act 1980 and CPR rule 17.4(4) have reformed *Ingall* to the extent set out in the rule (ie where a limitation period has expired). Rimer LJ cited with apparent approval a passage from *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate*, at para 5-14 note 89, which appeared to cast doubt on whether CPR rule 17.4(4) has made any change to the law laid down in *Ingall*. In that passage, the authors argue that "it would be an extraordinary result if proceedings could be saved by amendment where a limitation period has expired, but not where such a period had not expired." But it is indisputable (as I have explained at paras 46 - 48 above) that CPR rule 17.4(4) has produced that result. It represents a legislative reform of the common law so as to remove the most drastic unfortunate consequence of *Ingall.* It may be regarded as the implementation of a specific policy that cuts across the principled rationality of the common law. However, and this may be said to have been recognised in *Millburn-Snell*, there is no imperative to treat *Ingall* as having been removed altogether because, in contrast to where a limitation period has expired, the claimant with the new capacity is free to start proceedings afresh.

55. *Millburn-Snell* has subsequently been applied, albeit with very little discussion, by the Court of Appeal in *Hussain v Bank of England Plc* [2012] EWCA Civ 264, para 39; and at first instance in, for example, *Kimathi v Foreign Commonwealth Office (No 2)* [2016] EWHC 3005 (QB); [2017] 1 WLR 1081, paras 6, 17-19. In the latter case, Stewart J rejected the view, that had been accepted by Peter Smith J in *Meerza v Al Baho* [2015] EWHC 3154 (Ch), para 46, that the courts had a discretion under CPR Part 3 (dealing with the courts' case management powers) to apply the overriding objective to overcome the nullity of a claim, by allowing an amendment as to the capacity of a

claimant (who had only subsequently been granted letters of administration) where it was just to do so (eg where it would cause no prejudice that could not be dealt with by a costs order). As Stewart J said at para 19:

> "In my judgment, there is no such discretion where the claim is a nullity, as the *Millburn-Snell* case and the more historic decisions make clear it is. If the *Meerza* case is not distinguishable I find myself constrained to depart from the reasoning and judgment of Peter Smith J."

Stewart J regarded it as an untenable argument that *Millburn-Snell* was decided per incuriam because the Court of Appeal had not considered the application of the overriding objective and CPR Part 3. I agree with Stewart J's analysis.

(6) The acceptance in Trinidad and Tobago of *Ingall* at common law

56. It has been mentioned above that it is common ground between the parties that the common law applicable to this case is the same in Trinidad and Tobago as it is in England and Wales. Mr Beharrylal drew to our attention three cases in Trinidad and Tobago each of which shows the application of *Ingall v Moran* and the latter two of which also refer to *Millburn-Snell*.

57. In *Archbald v Camacho* (1960) 3 WIR 40, in the Trinidad and Tobago Supreme Court, a claim was issued against the defendant in the defendant's personal capacity and as the personal representative of a deceased person. About three months later, the defendant was granted letters of administration in respect of the estate of that deceased person. It was held that, applying *Ingall,* (albeit in the reverse position where the claim was being brought against the defendant without capacity rather than by a claimant without capacity) the claim against the defendant as personal representative of the deceased person was a nullity and should be struck out. That claim was a nullity and could not be cured by relation back. In the words of Hyatali J at pp 43-44:

> "[T]here is a long line of cases which establish that if a plaintiff brings an action in a representative capacity, then the writ is a nullity if the plaintiff did not have that capacity at the date of the issue of the writ. Further, the doctrine of relation back cannot in such a case be invoked to render competent an action which was incompetent when the writ was issued. See for example *Ingall v Moran* ([1944] 1 All ER

> 97; [1944] 1 KB 160’ 113 LJKB 298, 170 LT 57, 60 TLR 120, 88 Sol Jo 68, CA, 2nd Digest Supp) *Hilton v Sutton Steam Laundry* ([1945] 2 All ER 425; [1946] KB 65, 115 LJKB 33, 174 LT 31, CA, 2nd Digest Supp) and *Finnegan v Cementation Co Ltd* ([1953] 1 All ER 1130; [1953] 1 QB 688, 96 Sol Jo 332, CA, 3rd Digest Supp), which are all decisions of the Court of Appeal in England.
>
> The same principles, in my opinion, are applicable where the defendant is sued (see RSC [T], Order 3, rule 4). Ignoring, therefore, the description in the title of the writ, and construing the indorsement, I have come to the conclusion that I must accept as correct the submission of counsel for the defendant that the defendant is sued here first in her personal capacity and then in a representative capacity, which she had not at the date of the issue of the writ. It is clear, in my judgment, that it was incompetent for the plaintiff to sue the defendant in a representative capacity and the fact that the defendant acquired that capacity subsequent to the issue of the writ matters not, because the doctrine of relation back has no application in such circumstances.”

58. In *Abraham v Basdeo* (Civil Appeal No 74 of 2012), in the Court of Appeal of Trinidad and Tobago, the issue turned on the scope of being appointed administrator ad litem (and being granted a grant ad colligenda bona) for the purpose of bringing a claim on behalf of the estate of Lester Rambharose for assault and battery in respect of his death in prison. Mendonca JA in a judgment delivered on 13 November 2015, with which Narine JA and Moosai JA agreed, recorded that it was accepted by the parties that *Ingall v Moran* was good law and also cited as helpful para 41 of the judgment of Lord Neuberger MR in *Millburn-Snell* (set out at para 51 above). However, Mendonca JA distinguished the present issue and facts from those in *Ingall*. Here a specific and limited form of grant of administration had been given. The case turned on the correct interpretation of that limited grant; and it was held that its terms (ie for bringing and maintaining an action in assault and battery) did cover a cause of action in negligence.

59. The third case is *Sankar v Nanan* (Claim No CV2013-04516) in the Trinidad and Tobago High Court. Here the defendants objected to the second and fifth claimants bringing claims as legal representatives (of two deceased people) as they had not been granted letters of administration (and had not been named as executors). Applications were made by the second and fifth claimants under CPR (T&T) rule 21.7(1)-(3) (set out

in para 8 above) to be appointed representatives of the estates of the two deceased. It was held by Rampersad J, in a wide-ranging judgment dated 7 December 2015, that the applications under CPR rule 21.7 could not succeed although, in reaching that conclusion, he appeared to think it necessary to go beyond the plain words of that rule's heading which expressly refer only to proceedings *against* the estate of the deceased party. Applying *Ingall v Moran* and *Millburn-Snell,* the claims were nullities which could not be cured by CPR (T&T) rule 21.7.

(7) CPR (T&T) rule 21.4

60. As has been said in para 12 above, by an order dated 27 February 2012, and after a contested application but without giving any reasons, Rahim J appointed Angela Sealy as the representative of the estate of the deceased. It also appears not to be in dispute that that order was made in purported exercise of a power under CPR (T&T) rule 21.4. That rule has been set out in para 7 above. Mr Beharrylal submits that Rahim J did not have the power under that order to appoint a party to represent the estate where, on an intestacy, no grant of administration had been made to that party. I agree with that submission. CPR (T&T) rule 21.4 is concerned with representative proceedings but it is plainly not concerned to outflank the established role of executors and administrators and the way in which they are appointed. It can apply to proceedings about a deceased person's estate but it is concerned to allow those who might otherwise be unrepresented, because for example they are unborn or cannot readily be ascertained, to have a representative in proceedings relating to that estate. As the heading sets out it is concerned with the "representation of persons who cannot be ascertained etc in proceedings about estates …". Although a heading is far from being conclusive, it can assist in legislative interpretation and this heading does not say that it is concerned with the appointment of a person to represent the estate. It should further be noted that the equivalent to CPR (T&T) rule 21.4 in England and Wales is CPR rule 19.7 and there is no indication that that rule can be used for the appointment of someone to represent the estate of a deceased person (for a discussion of the use of CPR rule 19.7, in the context of disputes as to the meaning of a will, see *Williams, Mortimer and Sunnucks,* para 57-10).

61. Before leaving CPR (T&T) rule 21.4, it should be added that, in the course of further submissions requested by the Board, Mr Beharrylal alleged that the claimant misled Rahim J both in relation to the application on 27 February 2012 and later at trial because she falsely stated (for example, in her witness statement dated 8 November 2012) that she had applied for letters of administration in or around November 2011. Yet during the hearing before the Board, Mr McQuilkin clarified that that application had in fact only been made on 4 May 2012. I place little or no weight on this allegation. The precise facts on this matter have not been fully explored and what the claimant

said in her witness statement was that she had applied for letters of administration over a year earlier "through my attorneys". That may have been true in the sense that her attorneys may have delayed in acting on her request. In any event, I do not consider that this "merits" point has any real significance to the questions it is required to decide.

(8) Res judicata?

62. The defendant did not appeal against the order made on 27 February 2012 appointing Angela Sealy to represent the estate. Jamadar JA commented on this in the Court of Appeal proceedings saying that the appellant had allowed all the costs and time of a full trial to be incurred without having made a procedural appeal against the order made on 27 February 2012. In his judgment, as we have already seen at para 14 above, Jamadar JA said:

> "An order of the court was made accordingly, after argument, there has been no appeal and the matter proceeded on the basis that she was therefore duly constituted to bring this action."

63. Certainly, both Rahim J and the Court of Appeal proceeded on the basis that the order of 27 February 2012 had validated the proceedings. Had no such order been made, Angela Sealy would not have been able to proceed and, prior to the trial before Rahim J on 11 June 2013, she could instead have started proceedings afresh after being granted letters of administration in November 2012.

64. I have therefore considered whether by deciding not to appeal against the interlocutory order made on 27 February 2012, Mohan Jogie may be estopped from challenging the validity of that order applying the general principle of res judicata as set out in *Henderson v Henderson* (1843) Hare 100, and more recently explained in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46; [2014] 1 AC 160 and *Test Claimants in the Franked Investment Income Group Litigation v Revenue and Customs Comrs* [2020] UKSC 47; [2022] AC 1, paras 57-101.

65. In my view, Mohan Jogie's decision not to appeal against the order made on 27 February 2012, while continuing to trial, cannot be said to amount to an abuse of process and there is no issue estoppel. The important point is that Mohan Jogie precisely did not accept that that order validated the proceedings because in para 14(c) of the Defence, dated 4 April 2012, and which followed the grant of that order

(and the consequent 6 March 2012 amendment of the statement of claim) the defendant averred that "The Claimant has no locus to act for the estate of Cynthia Abbott." The consistent position taken by Mohan Jogie in the trial and in the appeals to the Court of Appeal and to this Board has been that the proceedings are a nullity - because they were started when Angela Sealy had not been appointed an administrator - and that the order of 27 February 2012 did not operate to validate them. It is also relevant to note that under section 39(3) of the Supreme Court of Judicature Act (Chap 4:01):

> "The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal."

In these circumstances, the decision of Mohan Jogie not to appeal against the interlocutory order of 27 February 2012, cannot constitute an abuse of process by Mohan Jogie and there is no issue estoppel.

(9) Ratification in the law of agency?

66. In the context of the validity of the proceedings, I have again considered whether any help is to be obtained by considering ratification in the law of agency (I have already considered this possible analogy in the context of the renewal of the lease at paras 33-35 above). This was raised in the course of the hearing and the parties were asked for further written submissions on *Danish Mercantile Co Ltd v Beaumont* [1951] Ch 680 (*"Danish Mercantile"*) which was subsequently approved by the House of Lords in the Scottish case of *Alexander Ward & Co Ltd v Samyang Navigation Co Ltd* [1975] 1 WLR 673. In *Danish Mercantile* the managing director of a company, without the authority of the company, had instructed solicitors to commence a legal action in the name of the company. The liquidator of the company, acting on behalf of the company, subsequently ratified the commencement of the action by the company. It was held by the Court of Appeal that that ratification operated to validate the proceedings that would otherwise have been a nullity for want of authority. It might possibly be argued that, by analogy, once the administrator has been validly appointed, the administrator can ratify, and therefore retrospectively validate, what was unauthorised and a nullity at the time.

67. However, as I have already explained in some detail in relation to the renewal of the lease (see para 34), it is probably more confusing than helpful to draw such an analogy. Angela Sealy was not here purporting to act as an agent for a disclosed principal who could ratify her actions and she was one and the same person albeit

acting in different capacities. In any event, the rules as to ratification and relation back are different. This is well-illustrated by the different rules applicable to the nullity of proceedings. If one were to apply ratification by analogy to relation back it would fundamentally undermine - and would be inconsistent with - the established common law position in relation to administrators as set out in *Ingall* and *Millburn-Snell* (and applied in numerous other cases). Indeed, if ratification by a principal of its agent's acts did here apply by analogy it would have rendered the reform of *Ingall* by section 35(7) of the Limitation Act and CPR rule 17.4(4) unnecessary.

(10) Drawing the threads together

68. Having examined the relevant common law and civil procedure rules, I can summarise the legal position on relation back in respect of the nullity of proceedings in the following points:

(i) Where a person has died intestate, in Trinidad and Tobago, as in England and Wales, the common law position is that proceedings commenced by a claimant on behalf of the estate are a nullity unless brought by an administrator who has been granted letters of administration (subject to, for example, a grant of administration ad litem having been made). Relation back does not apply and, therefore, the subsequent grant of administration does not retrospectively validate the proceedings. This was the common law rule established in *Ingall* although, in the context of the expiry of a limitation period, that decision itself has been removed in England and Wales by legislative reform (in section 35(7) of the Limitation Act 1980 and CPR rule 17.4(4)).

(ii) *Millburn-Snell* shows that, outside the confines of that legislative reform, the common law position remains as it was in *Ingall*. Moreover, that case established that CPR rule 19.8 has not altered the common law position in England and Wales.

(iii) In Trinidad and Tobago there has been no legislative reform of *Ingall* equivalent to section 35(7) of the Limitation Act 1980 and there is no equivalent to CPR rule 17.4(4).

(iv) It would be a radical step for the Board now to depart from *Ingall* and *Millburn-Snell* which represents the well-established common law. Rather, in so far as it is considered that there should be reform of the common law position in Trinidad and Tobago - and I recognise that there are powerful arguments in

favour of reform in Trinidad and Tobago where there has been no reform of *Ingall* even where a limitation period has expired - this would be best achieved through legislation. Certainly, as I have explained at para 52 above, in general, the common law rule can be defended.

69. I therefore conclude that, applying the common law, the proceedings in this case are a nullity: they cannot be saved by relation back. Moreover, as we have seen at paras 62-65, the doctrine of res judicata cannot here assist Angela Sealy. It follows that even the relatively trivial claim for the tort of trespass committed prior to 31 May 2011 fails. And it cannot now be validly commenced by the co-administrators because the limitation period of four years for tort actions has expired.

70. While I have some sympathy for Angela Sealy, it should be noted that the facts of this case are significantly different from those in *Ingall* and the other cases on limitation following it that have been explored in paras 44-45 above. In those cases, there was a "blot upon the administration of the law" because the relevant limitation period had expired prior to the grant of administration (or shortly afterwards) so that the administrator had no (or little) time to commence an action. In contrast in this case, the four-year limitation period for even the first alleged trespass (in January 2011) would not have expired until January 2015 and that was over two years after the grant of administration. It is also very important to bear in mind, in considering the overall position, that, had Angela Sealy succeeded on the renewal of the lease issue, she would even today have been able, as administrator, to start proceedings afresh albeit in relation to a different claim. This is because, as Mr Beharrylal made clear at the hearing before us, the limitation period has not expired for a claim for the recovery of land given that the limitation period for such a claim is 16 years under section 3 of the Real Property Limitation Act. Indeed, so as to avoid wasting costs, if Angela Sealy as administrator had issued fresh proceedings for the recovery of land I might have deemed the existing steps in the present action to have been taken in the new action (somewhat analogously to what was done in *Millburn-Snell*: see para 49(iii) above). But given my (and the Board's) decision on the renewal of the lease, she cannot succeed on a claim for the recovery of land.

71. For completeness, I should add that Mr Beharrylal raised as a separate objection to relation back applying to the proceedings that Osden Abbott, who was the co-administrator appointed with Angela Sealy, did not join in bringing the action and took no part in the trial (or in the appeal to the Court of Appeal or the Privy Council). But as I have made clear, the general rule is that the act of one joint administrator is treated as the act of all of them and is binding on them: see para 37 above. And although CPR (T&T) rule 71.2 indicates that, in an administrative claim, an administrator who is not a claimant must be joined as a defendant to the claim, the general rule in CPR (T&T) rule

19.3 is that non-joinder of a party does not mean that the claim should fail. I therefore do not regard the failure to join Osden Abbott as either claimant or defendant as a further separate reason for treating the proceedings as null and void.

7. The judgment of Lord Leggatt

72. Since writing a draft of this judgment, I have read the judgment of Lord Leggatt. It would appear that the only significant difference between us concerns the renewal of the lease. As I have made clear in paras 24-26 above, I am content to accept that what I have there termed the "wider view" of the relation back doctrine is correct whereas Lord Leggatt's reasoning is that that wider view is wrong (so that the reasoning in *Mills v Anderson* is wrong) and that what I have termed the "narrower view" is correct. But we both accept (for Lord Leggatt this is an alternative reason for his decision on the renewal of the lease) that the renewal of the lease could not be validated by relation back because this would undermine the landlord's vested proprietary rights.

8. Overall conclusion

73. My overall conclusion is that the appeal should be allowed and Rahim J's order set aside in its entirety. To summarise, my reasons are as follows:

74. (i) Angela Sealy's main claim for trespass after the expiry of the lease on 31 May 2011 fails for two reasons: (a) although I am content to accept that what I have termed the wider view of the relation back doctrine is correct – so that, for example, relation back can apply to validate retrospectively the making or renewal of a contract by the administrator before the grant of administration – relation back cannot here validate Angela Sealy's renewal of the lease on 11 January 2011 because that would undermine the landlord's vested proprietary rights thereby causing unacceptable uncertainty for the landlord; (b) relation back cannot validate proceedings that were invalid when commenced.

75. (ii) Angela Sealy's relatively trivial claim for trespass committed prior to the expiry of the lease on 31 May 2011 also fails for the second of those reasons (ie relation back cannot validate proceedings that were invalid when commenced).

LADY ARDEN:

76. I propose to examine the issues in this case through the lens of property law. I prefer to analyse the issues in this appeal in that way rather than by asking at the first stage whether the trespass action brought by Angela Sealy as intending administrator was a nullity. On the approach I take, one must first examine the effect, in property law, of the notice given in January 2011. From my perspective this leads to a quicker and simpler analysis because, unless the option was validly exercised, the further questions about proceedings prior to the grant of letters of administration largely disappear. Mrs Abbott had a proprietary interest in the property let to her: an option to renew confers such an interest. If she had timeously exercised the option before she passed away, there would be no doubt that she held a proprietary interest in the land which she could pass on to her children. The landlord could not claim that at the end of her statutory lease he had acquired the legal estate free of her option. He knew she had that interest, which would not cease because of her death and the landlord could not claim to be free of it because he would have notice of it. Is the position different because Mrs Abbott did not complete the exercise of her option before her death? The option was exercised by Angela Sealy who was proposing to become the administrator and did subsequently become one of them.

77. In this judgment, except where there are specific laws or rules of Trinidad and Tobago, I take the law of Trinidad and Tobago to be the same as English law. I will use the term "administrator" to include an "administratrix". When I refer to a notice, then unless otherwise stated it is to a notice to extend the statutory lease of 8, Bhagoutie Trace granted to Mrs Abbott.

78. So, I turn to answer the question I have posed in the penultimate sentence of para 74. In default of exercise of the statutory option given to Mrs Abbott as tenant of 8 Bhagoutie Trace, could Angela Sealy as intending administrator serve a valid notice of exercise in January 2011 before the grant of letters of administration?

79. As Lord Burrows has explained, under English and Welsh law the administrator, in general, obtains title to the assets in the deceased's estate only as from the date of the grant of letters of administration but with effect then from the date of death ("the general rule"). No-one has suggested that Trinidad and Tobago has a different rule. In English and Welsh law, this rule is because prior to the grant of letters of administration the estate was vested by law, originally in the Ordinary (the bishop). Clause 27 of Magna Carta required intestates' estates to be administered by the church. Subsequently the role was given to a senior judge, latterly the President of the Probate, Divorce and Admiralty Division, and then the Public Trustee. Hence, unless pre-grant acts could be done by operation of law, administration could only take place if authorised or ratified by persons appointed by them. Today the appointment is done by the grant of letters of administration.

80. In this case, Angela Sealy acted as intending administrator of her late mother's estate gave the notice. As I shall explain below, even an intending administrator has to have authority at some point to perform acts on behalf of the intestate's estate prior to the grant of letters of administration.

81. There is an important common law (viz non-statutory) exception ("the common law exception") to the general rule. It is first identified in para 5-16 of *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate ("Williams")*:

> "The general proposition that letters of administration do not relate back to the date of death is subject to a number of exceptions, or apparent exceptions, which apply by statute or at common law where this is for the benefit of the estate. The test is objective, that is to say, the grant will 'relate back' only if this actually benefits the estate and not merely because the expected administrator thinks it will benefit the estate. Although there is no authority on the question it is thought that the test of 'benefit' must be as at the date of the act in question regardless of supervening events." (Footnotes omitted)

82. Para 5-16 is supported by a recorded observation of Parke B in argument in *Foster v Bates* 152 ER 1180 (1843):

> "Parke, B. All the cases are collected in a recent case in the Common Pleas, *Tharpe* v. *Stallwood* (12 Law J., Rep. (N. S.) C. P., 241), where it was held that an administrator might maintain trespass for an injury done to the goods of his intestate after the death of the intestate, *and before the grant of letters of administration.* That arises from the *necessity of the thing*, for, unless such a right existed, the goods might be lost." (page 1181, emphasis added)"

83. The observations which Parke B makes reinforce the point that the common law exception is needed for the protection of the estate.

84. *Williams* goes on explain the common law exception in more detail at paras 5.18-19, which I will set out in full:

“5-18 Cases may, however, be found, where the letters of administration have been held to relate back to the death of the intestate, *so as to give a validity to acts done before the letters were obtained*. Thus, if a man takes the goods of the intestate as executor de son tort, and sells them, and afterwards obtains letters of administration, it seems the sale is good by relation and the wrong is purged. An administrator can recover in trespass or for wrongful interference with goods against a wrongdoer who has seized or converted goods before the grant. The reason for this is that otherwise there would be no remedy for this wrongdoing. Further, it has been held that where the administrator might sue in respect of a conversion that occurred between the death of the intestate and the grant of administration, he might waive the tort and recover as on contract. Thus, where money belonging to the intestate at the time of his death, or due to him and paid in after his death, or proceeding from the sale of his effects after his death, had, before the grant of administration, been applied by a stranger to the payment of the intestate’s debts and funeral expenses, the administrator could recover it from such stranger as money had and received to his use as administrator.

5-19 It would also seem that whenever anyone acting on behalf of the intestate’s estate and for its benefit, and not on his own account, makes a contract with another before any grant of administration, the administration will have relation back, so that the benefit of the contract is not lost and the administrator may sue upon it, as made with himself. Similarly, if during the time when there is no personal representative, services have been rendered which not only were for the benefit of the estate, but also were rendered under a contract with someone who subsequently, by becoming administrator, became authorised to bind the estate, and who ratified the contract, the estate of the deceased is liable for such services. It seems also that the grant of administration vests leasehold property in the administrator by relation, so as to enable him to bring actions for all matters affecting that property after the death of the intestate, and so to render him liable to account for the rents and profits of it from the death of the intestate.

> Such relation back exists only in those cases where the act done is for the benefit of the estate. Accordingly, where the widow of an intestate had remained in possession of her husband's property for some time after his decease, and the intestate's son had not interfered in any way with the property, which was seized under a writ of fi. fa. issued against the widow, and the son afterwards took out administration, it was held that there was no evidence from which the administrator's consent to the widow's taking the property could be implied, and by Parke B. that even if there had been, the estate was not bound by it, as the act to which the consent was given did not benefit the estate." (emphasis added)

85. Para 5-18 appears to be dealing with cases where the administrator wishes to sue to enforce claims on behalf of the estate which arose in the period between the deceased's passing and the grants of letters of administration. Para 5.19 lists various situations in which the administrator has become entitled or bound by a contract made in the same period. All these circumstances involve relation back and, in some situations, ratification of a stranger's acts.

86. Many cases are cited in the footnotes to paras 5-18 and 5-19. It is sufficient for my purposes to cite an extract from *Hill v Curtis* (1865-6) LR 1 Eq 90. This case reviews many cases where the common law exception applied and shows how it operated:

> "In *Kenrick v. Burges* , the Court agreed that if one enters as executor, of his own wrong, and sells goods and then obtains administration, the sale is good by relation—the wrong is purged; so that, where a person sells a lease and afterwards obtains administration, the title goes back by relation. The only test is, whether or not the wrong has been purged… The case of *Foster v. Bates* , which is a very strong instance, shews that, if a person, without instructions, acting on behalf of the representative, whoever he may be, enters into a contract for the benefit of an intestate's estate, and that contract is afterwards ratified by the administrator, the ratification relates back, and is equivalent to a prior authority. Thus, in the absence of fraud, I have no doubt that the administratrix in this case might adopt the acts of the

agent, and that her subsequent rightful appointment would give legal validity to the agency." (pages 100-101)

87. I have read both the judgment of Lord Burrows and that of Lord Leggatt. For the reasons which he develops, Lord Leggatt concludes that that Angela Sealy could not in any circumstances have given a valid notice on behalf of her mother's estate before the grant of letters of administration. He holds that "there is no principle of law whereby an act done purportedly as a representative of someone who dies intestate by a person who is not an administrator is made valid, or is capable of being made valid, retrospectively if that person (or anyone else) subsequently obtains a grant of administration. It makes no difference in this regard whether or not the act, if valid, would be beneficial for the estate, nor whether the administrator purports to ratify the act. Any such principle which enabled the act to be validated retrospectively would be unjustified and inconsistent with the reasoning in *Ingall v Moran* and the other cases in that line of authority." (para 157 of Lord Leggatt's judgment). In my judgment the "principle that a person has no power to do anything on behalf of the estate before obtaining a grant of administration" applies only where the act is a nullity and therefore incapable of ratification or the common law exception does not for some other reason apply. I venture to think that it would be another blot on the law if the law were otherwise.

88. Lord Burrows calls Lord Leggatt's view "the narrower view". Lord Leggatt accepts that the administrator can after grant sue in respect of wrongs committed to the estate between death and grant. The view of the law which I consider to be correct is what Lord Burrows calls the "wider view". Lord Burrows is content to accept that that wider view is correct. I prefer to say that the wider view is clearly correct and that, with respect, Lord Leggatt's approach, which takes the narrower view, is incorrect. The administrator's power to sue in respect of wrongs committed between death and grant is a consequence of the general rule and an aspect of the administrator's power and duty to collect in the assets of the deceased. But it is the substance and not the label that matters.

89. Lord Leggatt's conclusion is derived from his study of *Ingall v Moran* in which the Court of Appeal, relying on ancient authorities, held that an action started by a person not then appointed an administrator was a nullity. His approach is that this must apply to all acts of such persons and that the wider common law exception therefore does not exist because until letters of administration are granted that person was not competent to act. Of course, the doctrine of relation back does not apply to a registered company yet to be formed, nor can such a company ratify a pre-incorporation contract (*Kelner v Baxter* (1867) LR 2 CP 174). However, this is because the court cannot enlarge a registered company's powers, which are conferred by or

pursuant to statute. In addition, in any event it is not, in my judgment, a universal disqualification on ratification (and hence relation back). Thus, in the case cited, Willes J was careful to distinguish the position of administrators who could have title by relation back:

> "Ratification can only be by a person ascertained at the time of the act done,—by a person in existence either actually or in contemplation of law; as in the case of assignees of bankrupts and administrators, whose title, for the protection of the estate, vests by relation." (p 184)

See also *Foster v Bates* at p 1182. So, the court will treat an administrator as having been in existence at the time of the act in question even if he had not then been granted letters of administration. In any event, a company can adopt a pre-incorporation contract on its formation, so an administrator would be able to do that also. So far as actions are concerned, *Williams* indicates that there may be further possibilities for bringing actions prior to grant: see the final sentence of para 5.14, set out in para 91 below. The administrator may wish to adopt such actions and become dominus litis.

90. The wider common law exception is supported by long authority. *Williams* was originally written by Edward Vaughan Williams. It is a highly-regarded text which has performed an invaluable service to the professions over many years. The earliest edition which I have been able to consult is the second edition (1838) and it supports the common law exception:

> "Yet cases may certainly be found, where the letters of administration have been held to have a relation to the death of the intestate, so as to give a validity to acts done before the letters were obtained. Thus if a man take the goods of the intestate as executor de son tort, and sells them, and afterwards obtains letters of administration, it seems the sale is good." (page 265, footnote with case references omitted)

91. It is difficult to believe that such a work could have been in error for over 180 years without one of the distinguished editors noticing it.

92. The true position is that the common law exception applies only where ratification and relation back are possible. Such matters are not possible where the act

done before the letters of grant (such as ultra vires act) was a nullity. *Williams* refers to this possibility at para 5-14 when he states that a person cannot even by relation back commence valid proceedings before the grant of letters of administration:

> "By reason of the general rule referred to above, a person has no right even to commence proceedings as an administrator before letters of administration have issued for, until such time, he has no right of action. Under existing case law, the subsequent issue of letters of administration will not assist, for the grant does not for this purpose relate back. …"

93. *Williams* continues in the same paragraph:

> " On the basis of these authorities, it has been held that proceedings brought by a person supposedly as administrator, but before obtaining a grant, are a nullity which cannot be validated by a later grant of administration… It has been suggested that an exception to the above principle may exist where it is necessary for the person who is entitled to the grant of letters of administration to take possession of the deceased's personal property to safeguard the estate; he has an immediate right to possession enforceable by action, but this has been considered and disapproved (and found to be obiter), albeit in a decision of a Chancery Master. In certain cases, however, for example to claim an account from an executor de son tort or by derivative action, it may be possible for a person interested in the estate to issue a claim before grant seeking to safeguard the estate, in his capacity as a beneficiary."

94. The courts take the view that an action started by a person acting on behalf of an intending administrator is a nullity and incapable of being ratified: See *Ingall v Moran* [1944] KB 160 . That is why the commencement of proceedings could not be saved in *Ingall v Moran* but could be upheld in *Danish Mercantile Co Ltd v Beaumont* [1951] Ch 680 (see para 66 of Lord Burrows' judgment). Lord Leggatt takes the same view on this. But it is important to note that in *Ingall v Moran* there was no discussion whether the common law exception could have applied because the action had become statute-barred. So, there is no discussion of the common law exception. It appears that there is a common law rule that an *action* commenced without legal capacity to sue is a nullity. On that basis the common law exception could not have

applied because ratification and relation back would have been unavailable. Hence *Ingall v Moran* has no effect on the common law exception in other circumstances and does not undermine it. That is also the way that *Williams* approaches the matter.

95. It would in my judgment be a great loss to the practical administration of the estates of intestates if the common law exception, as I have explained it, did not exist. I observe that Lord Leggatt holds that no person can validly act on behalf of an intestate's estate before the grant of letters of administration. If this were the law, it could sterilise the intestate's assets for protracted periods, particularly if there was a dispute as to who should be the administrator or that person is domiciled abroad or uncontactable. A delay may cause substantial prejudice to the estate unless some emergency action can be taken.

96. In the circumstances it is unnecessary for me to address in detail the difference of view between Lord Leggatt and Lord Burrows on *Bodger v Arch* (1854) 10 Exch 333 156 ER 472. The facts of this case show, however, how important it can be for a person to have some authority to act on behalf of the estate. Shortly after the deceased mother's death, but prior to the grant of letters of administration, the plaintiff as intending administrator made an agreement with the defendant for financial provision for her infant child out of the deceased's estate. If the child needed financial provision, it is difficult to think that the matter was not urgent. Parke B refers to relation back but not to any need for ratification. The agreement in that case could potentially benefit the estate by settling the deceased's obligations to the infant beneficiary.

97. Ratification in agency is different from relation back. Ratification originates in the act of the principal whereas relation back originates in the grant of letters of administration by the court. So, relation back occurs by operation of law, sometimes requiring an act by the administrator (see paras 5-18 to 5-19 of *Williams* above). Ratification goes back in time to the act of the agent. In the case of the administrator, on grant of the letters of administration if not before, the title of the administrator relates back to the date of the death of the deceased. I accept that sometimes both relation back and ratification can be engaged together as where a person who acts as administrator before grant authorises the acts of another: see for example *In re Watson* (1886) 18 QBD 116 (affd on other grounds (1887) 19 QBD 234), which is described by Lord Leggatt. However, the acts in question must in that case still be for the benefit of the estate, and it does not follow that the incidents of ratification must necessarily apply to relation back. That in my judgment is why Lord Esher MR refers and refers only to ratification.

98. As I have explained, Mrs Abbott had a proprietary interest in the land before her death because of the option in her statutory lease. That interest clearly persisted on

exercising the option. But she did not exercise it herself. The intending administrator did so but did not apply for letters of administration until November 2011. It was a term of the property right that it should be exercised, meaning validly exercised, by written notice by 31 May 2011 (see section 4(3) of the Land Tenants (Security of Tenure) Act, section out in para 9 of Lord Burrows' judgment). The conditions in an option must be strictly complied with: *Hare v Nicholl* [1966] 2 QB 130. When Angela Sealy exercised the option, she could not be described as "entitled to possession under a contract of tenancy" for the purposes the definition of "tenant" in section 2 of the that Act. Lord Leggatt agrees with this point. The material time is January 2011 and at that point the assets of Mrs Abbott were vested in the institution which, under the law of Trinidad and Tobago, holds the assets pending the grant of letters of administration, which was not Angela Sealy. That remained the position immediately before the option expired, which was the material time. Accordingly, the timely exercise of the option could not be made valid by anything that Angela Sealy did after 31 May 2011.

99. This appeal is on all fours with *Dibbins v Dibbins* [1896] 2 Ch 348. The facts were as follows. The surviving partner of a trading partnership had a time-limited option, on the death of his former partner, to require the purchase of his share, but the problem was that the surviving partner lacked capacity. His solicitor acting without instructions gave notice to exercise this right on the very last day on which it was exercisable. After the notice was given, a court made an order in lunacy instructing the solicitor to serve a notice, but that notice was of course out of time. The issue was not therefore about powers to act before the grant of letters of administration but about the effect of ratification. Counsel argued that the ratification was valid because of the decision in *Bolton v Lambert* but Chitty J declined to apply that case because it would alter property rights in his case. So, he held that the service of the notice pursuant to the later order could not effectively ratify the original notice because under the terms of the parties' agreement the notice had to be given within the time stipulated by the articles of partnership. Otherwise:

> "the result would be that an option, which must be finally exercised within a limited time, would be well exercised after that time."(p 351)

100. As para 5.15 of *Williams* states, in relation to a case relied on in *Dibbins* about an intestacy (*Holland v King* (1848) 6 C.B. 727*):*

> "…a notice given by the administrator of the deceased partner within the three months of his death, but before taking out letters of administration, was not an effectual notice within the meaning of the agreement, because the

> letters of administration had no relation back to the act of giving notice, so as to clothe him with the character of administrator at that time."

101. *Fred Long and Son Ltd v Burgess* [1950] 1 KB 115, 127 is another case about service of a notice but in this case it was a notice to quit and there was no point about time or the terms of an option, as in *Dibbins v Dibbins*, only in relation to its effect. It is authority for the proposition that relation back has limits. It cannot wipe out the effect of something that occurred after the death terminating a particular right. Prior to the appointment of administrators, notice to quit was served terminating a tenancy to which the deceased had been entitled. The Court of Appeal rejected the argument that relation back prevented the notice to quit having this effect. As Asquith LJ observed, relation back "cannot breathe new life into a corpse" (page 121). So, too, here, as the option had ceased to exist by effluxion of time before the grant, it could not be revived by relation back.

102. These cases, then, are further examples of the acts of the person without authority being nullities and so the common law exception not applying to them.

103. Another way of putting the point in this case that the statutory option was not exercised as it was required to be exercised is that the landlord obtained an accrued right to 8 Bhagoutie Trace as soon as 31 May 2011 without the statutory option being exercised and that to allow ratification now would be contrary to principle. That is because it would deprive him of his accrued rights. But putting the matter this way obscures the link with *Ingall v Moran*. In my judgment, that link underscores the point that *Ingall v Moran* was a qualification to the common law exception not a principle which destroyed it.

104. It is unreal and impractical to think that steps cannot be taken to protect the estate pending an application for letters of administration. That might mean that there is some uncertainty to creditors, but they have a right of access to court for any such matter and as this case shows the proposing administrator must apply for letters of administration within a reasonable time. The balance which the law has struck between enabling an intestate estate to receive a measure of protection during the period of an application for letters of administration and property rights is by giving a small window of opportunity to someone to act to benefit the estate via the common law exception for protective steps to be taken. Holders of property rights cannot seriously complain that the law has been unfair to them. This is not a *Long v Burgess* or *Ingall v Moran* situation.

105. So, in my judgment the Court of Appeal of Trinidad and Tobago were entirely right to consider the matter from the point of view of the common law exception. Unfortunately, the common law exception was not available on the facts of this case. Lord Burrows is content to accept that the wider common law exception exists (para 24). As I have explained, I would go further and hold that it clearly does exist. I would also prefer to start the analysis of the case with considering the effect of Angela Sealy's acts on the option. It was a time-limited property right whose expiry prevented the common law exception from applying rather than solely a case of excessive delay. I also agree with para 36 of Lord Burrows' judgment (sufficient for one only of administrators to act) and 37 (rejecting an argument that Ms Sealy was not acting for the benefit of the estate).

106. I also agree with paras 46 and 53 of the judgment of Lord Burrows. As explained above, *Ingall v Moran* decides that a person may not begin proceedings on behalf of the estate of a person who died intestate unless he has first obtained a grant of letters of administration. Its effect is harsh as it may well be that the defect is not appreciated until after the statute of limitations has expired. It is then too late for the administrator to start new proceedings which are properly constituted. The English CPR has since made changes. In *Haq v Singh* I observed that the effect of the new CPR rule 17, allowing amendment to a party's capacity after the expiry of the limitation period, was to overcome the effect of *Ingall v Moran*.

107. I agree with Lord Burrows' analysis of my observations in *Haq v Singh*. It would not have been open to the Court of Appeal in England and Wales in that case to have overruled any part of the ratio in *Ingall v Moran*, and my use of the word "effect" twice makes that clear. That effect of that decision was, however, overruled in practice by the new CPR rule 17(4). I was bound by *Ingall v Moran*. But all roads lead to Rome, and with those qualifications I agree with Lord Burrows' judgment. I too would allow this appeal.

Conclusion

108. For the reasons given in this judgment, I would allow this appeal. There is a common law exception which would enable a notice to be given under certain circumstances prior to the grant of letters of administration but the statutory option vested in Mrs Abbott's estate was time-limited and the actions of the administrator on appointment did not comply with that limit. The proceedings commenced prior the grant of letters of administration were void because of a qualification to the common law exception concerning the commencement of proceedings.

LORD LEGGATT (with whom Lord Stephens agrees):

109. For the following reasons, I agree with Lord Burrows that the appeal should be allowed.

1. The Land Tenants Act

110. The Land Tenants (Security of Tenure) Act Chapter 59:54 was enacted in 1981 to give security of tenure to tenants who were occupying small houses, known as chattel houses, which they had erected on rented land at their own expense with the consent or acquiescence of the landlord. The background to the Act is described in *Gopaul v Baksh* [2012] UKPC 1, paras 2-7. The Act was a one-off measure which applied to tenancies of land on which a chattel house had been erected (or was in the process of being erected) on 1 June 1981. It created a statutory lease of the land for 30 years commencing on that date, with an option to renew the lease (once only) for a further period of 30 years. To exercise this option, the tenant was required by section 4(3) of the Act to serve on the landlord a written notice of renewal on or before the original 30-year term of the lease expired, that is to say, on or before 31 May 2011. The Act also gave the tenant an option to purchase the land at any time during the period of the lease at a price not exceeding 50% of its open market value. As confirmed in *Hector v Keith*, 8 March 2013, Civil Appeal No 6 of 2010, paras 16-19, the leasehold interest of a statutory tenant is capable of being assigned during the tenant's lifetime or transmitted on the death of the tenant.

2. The facts

111. This appeal concerns a plot of land in north-west Trinidad to which the Act applied so that Cynthia Abbott, the mother of the respondent, Angela Sealy, acquired a statutory lease for 30 years when the Act came into effect on 1 June 1981. The appellant, Mohan Jogie, is the son of the original landlord; he acquired the title to the land from his father, subject to the lease, in 2006.

112. Ms Abbott died intestate on 21 December 2006 without having served a notice to renew the lease for a further term before she died. In November 2008 the house on the land was partially destroyed by fire; after this the land became overgrown and the part of the house that remained began to be visited by vagrants.

113. On 12 January 2011, Angela Sealy, who is one of Ms Abbott's four surviving children, served a written notice to renew the lease on Mr Jogie. The notice described

Ms Sealy as "the intended legal personal representative of the estate of Cynthia Abbott".

114. In March 2011 Mr Jogie began clearing the land and in January 2012 he began redeveloping it. He did not accept that the renewal notice served by Ms Sealy was effective to renew the lease and maintains that the lease accordingly expired on 31 May 2011.

3. These proceedings

115. On 1 February 2012 Ms Sealy commenced this action, describing herself in the claim form as "representative of the estate of Cynthia Abbott" and seeking an injunction to prevent Mr Jogie from entering on the land or obstructing her access to it. She also claimed damages for trespass. On 27 February 2012, Rahim J made an order appointing Ms Sealy as the representative of Ms Abbott's estate. I will return to this order, which was apparently made under rule 21.4 of the Trinidad and Tobago Civil Proceedings Rules (CPR).

116. In his defence dated 4 April 2012, Mr Jogie averred that, in circumstances where no letters of administration had been granted, Ms Sealy had "no locus to act for the estate of Cynthia Abbott". Perhaps it was this which prompted Ms Sealy's advisers to apply for a grant of administration on 4 May 2012. Letters of administration were granted to her jointly with one of her brothers on 2 November 2012.

117. At the trial in 2013 it was argued on behalf of Ms Sealy that the grant of administration "related back" to her mother's death and thereby validated the notice to renew the lease. The trial judge, Rahim J, did not think that the arguments about relation back were applicable because he concluded that Ms Sealy, as a beneficiary of her mother's estate, came within the definition of a "tenant" in the Act when the notice was served. She was therefore a proper person to serve the notice to renew the lease. It followed that the lease had been renewed for a further period of 30 years. The judge granted the injunction sought and awarded nominal damages for trespass in a sum of TT $3,000.

118. Mr Jogie appealed on the ground that the judge was wrong to hold that Ms Sealy was a "tenant" at the time when the renewal notice was served. The Court of Appeal accepted this argument which has, rightly, not been pursued before the Board. The term "tenant" is defined in section 2 of the Act as "any person entitled in possession to land under a contract of tenancy … whether the interest of such person

was acquired by original agreement or by assignment or by operation of law or otherwise." It is clear that, at the time when the notice was served, Ms Sealy was not entitled to possession of the land as an administrator of her mother's estate, as she not yet obtained a grant of administration. Nor did the fact that she fell within the class of persons who would be entitled to have Ms Abbott's residuary estate distributed to them in any administration make her a party to a contract of tenancy or give her any current right to possession of the land under such a contract.

119. At the hearing of the appeal, however, the Court of Appeal raised of its own motion the issue of relation back. Jamadar JA (with whom Bereaux JA and Jones JA agreed) gave an extempore judgment holding that the grant of administration to Ms Sealy, when made, related back to the date of Ms Abbott's death and validated the notice to renew the lease. Mr Jogie's appeal was therefore dismissed.

120. On this further appeal to the Board, Mr Jogie contends that the Court of Appeal should not have introduced relation back as an issue in the absence of any counter-notice from Ms Sealy raising that issue and, furthermore, that the Court of Appeal was wrong to hold that the doctrine of relation back operated to validate the renewal notice. Although not raised as a ground of appeal either in Mr Jogie's notice of appeal to the Court of Appeal or in his notice of appeal to the Board, counsel for Mr Jogie have also submitted that the entire proceedings are a nullity because Ms Sealy had no right of action vested in her when the claim form was issued.

4. Nullity of proceedings

121. Because this point potentially affects the validity of the entire proceedings, it is logical to consider the "nullity" point first. It has long been settled law that, in contrast with the position of an executor appointed under a will, a person who obtains a grant of administration from the court has no title to the property of the deceased and no power to administer it before the grant is made. This is because the title and powers of administrators derive solely from their appointment by the court. Until an administrator is appointed, the deceased's estate vests in Trinidad and Tobago in the Administrator General. (In the United Kingdom it vests in the Public Trustee; before 1995, it vested in the President of the Probate, Divorce and Admiralty Division of the High Court.)

122. In *Ingall v Moran* [1944] KB 160 the English Court of Appeal held that, for this reason, an action begun by a father suing in a representative capacity as administrator of his son's estate before the father had obtained a grant of administration was a nullity. It was a nullity because when the writ was issued the father was not competent

to sue in that capacity. By the time the grant was obtained, the limitation period had expired, so that no action could afterwards be brought. The court rejected the argument that the proceedings were valid because the grant of administration related back to the son's death. Goddard LJ said, at p 172:

> "Nor is it necessary to consider the many cases which show that once letters are granted the title of the administrator relates back to the death. They have no application to this question. All they show is that, once letters have been obtained, the title relates back so that the administrator may sue in respect of matters which have arisen between the date of the death and the date of the grant, just as he may sue in respect of a cause of action that had accrued to the intestate before his death, provided the cause of action survives. The result is that this action was, and always remained, incompetent, and judgment ought to have been entered for the defendant."

123. *Ingall v Moran* has been followed on numerous occasions in England and Wales: see eg *Hilton v Sutton Steam Laundry* [1946] KB 65; *Burns v Campbell* [1952] 1 KB 15; *Finnegan v Cementation Co Ltd* [1953] 1 QB 688; and *Millburn-Snell v Evans* [2011] EWCA Civ 577; [2012] 1 WLR 41 (all further decisions of the Court of Appeal). This line of cases has been accepted as authoritative in Trinidad and Tobago: see *Archbald v Camacho* (1960) 3 WIR 40; *Austin v Hart* [1983] 2 AC 640, 647; *Abraham v Basdeo*, 13 November 2015, Civil Appeal No 74 of 2012; *Sankar v Nanan*, 7 December 2015, Claim No CV2013-04516, para 27.

124. These cases and the principle which they illustrate are directly in point here. As Ms Sealy had not yet been appointed as an administrator when this action was begun, she had no power at that time to act as her mother's personal representative. Any act done by her, including the commencement of proceedings, which involved a purported exercise of such a power was therefore a nullity. When she afterwards obtained a grant of administration, she became her mother's personal representative and in that capacity acquired title to her mother's property which "related back" to the date of death. Ms Sealy then became able to commence proceedings in her capacity as an administrator in respect of any cause of action which had accrued to the estate as a result of matters that occurred before the grant. Her appointment did not and could not, however, retrospectively validate an act - the commencement of the proceedings – supposedly done as her mother's personal representative but which was a nullity because Ms Sealy had no power to act in that capacity when the act was done.

5. Contrast with ratification

125. It may be noted that the position of an administrator who begins proceedings before obtaining a grant of administration differs from that of a person who begins proceedings purportedly as agent for someone else but without that other person's authority. It is well established that in the latter situation the action is not a nullity, in so far as the issue of the claim form and other steps taken in the action without authority can subsequently be ratified by the principal: see eg *Danish Mercantile Co Ltd v Beaumont* [1951] Ch 680; *Alexander Ward & Co Ltd v Samyang Navigation Co Ltd* [1975] 1 WLR 673; *Adams v Ford* [2012] 1 WLR 3211. There are limits to when ratification is possible. But when it is, and the principal ratifies an unauthorised act, the effect is retrospectively to make the act valid as if it had been originally authorised by the principal. In that way the effect of ratification can be said to relate back to the time when the act was done.

126. The reason why ratification was not possible in *Ingall v Moran* [1944] KB 160 and the later similar cases cited at para 121 above is that the claimants in those cases were not purporting to sue as an agent for someone else. Although it might be said, using language loosely, that the claimants were suing "on behalf of the estate", the estate of a dead person is not a legal entity. The person with title to sue is the person in whom the property and rights of action of the deceased are vested at the relevant time. In *Ingall v Moran* the father did not purport to bring the action on behalf of the person in whom his son's cause of action was vested when the action was begun (who, as indicated at para 119 above, was the President of the Probate, Divorce and Admiralty Division). Rather, he brought the action as administrator of his son's estate when he had not yet been appointed as administrator. In such a case the claimant is not purporting to bring proceedings as agent of someone else who has title to sue. He is simply asserting a title to sue which he does not have. The doctrine of ratification does not apply to such a case.

6. CPR Rule 21.4

127. Instead of taking steps to obtain a grant of administration, Ms Sealy's legal advisers appear to have thought it sufficient to apply for an order under CPR rule 21.4 appointing Ms Sealy to represent Ms Abbott's estate. In that they were mistaken. The order made under that rule could not cure Ms Sealy's lack of title to sue.

128. CPR rule 21.4 provides that, in proceedings about (among other things) the estate of someone who is dead, the court may appoint a person to represent anyone who is or may be interested in or affected by the proceedings where the person or

persons represented cannot be ascertained, or cannot be found, or where "it is expedient to do so for any other reason". The present proceedings are not proceedings about the estate of Ms Abbott; nor are they proceedings in which someone who has an actual or potential interest in her property could not be ascertained or could not be found or for some other reason needed to have a person appointed to represent them. In so far as Ms Sealy had a future interest in her mother's property, she could assert that interest herself. What she could not do without obtaining a grant of representation was to bring an action for the benefit of Ms Abbott's estate. An order made under CPR rule 21.4 could not confer the title to do that.

7. The consequences of the lack of title to sue in this case

129. The facts of this case differ, however, from those of *Ingall v Moran* and the subsequent decisions of the English Court of Appeal cited at para 121 above in that Ms Sealy obtained a grant of administration on 2 November 2012, before the trial took place in July 2013 and within the time limit for bringing proceedings. In *Ingall v Moran* and most of the cases which have followed it, the limitation period had expired before a grant of administration was obtained. By the time the claimant acquired a right of action, it was therefore too late to bring a claim. An exception is *Millburn-Snell*; but in that case the claimants had still not obtained a grant of administration and therefore had no title to sue when the defendant applied to strike out the claim five days before the trial was due to start. By the time of the appeal, one of the claimants had obtained a grant; and directions were given by the Court of Appeal that, if a new claim was commenced within two months, all steps taken in the old claim and the costs of those steps should be deemed to be steps taken and costs incurred in the new claim, with the claimants to pay any costs wasted by reason of the fact that the first claim was a nullity.

130. Given that in the present case Ms Sealy was (and was known to be) an administrator with title to sue at the time of the trial and that the limitation period had not expired, the objection that the grant of administration was obtained after the action was commenced is a purely technical one.

131. In England and Wales it is now accepted practice to allow a claim which has arisen after the issue of proceedings to be added or substituted by amendment where there is no time bar and it is just to do so: see *Maridive and Oil Services v CAN Insurance Co (Europe) Ltd* [2002] EWCA Civ 369; [2002] CLC 972. There is no reason why it should make any difference in this regard whether the new claim involves the addition (or substitution) of a new party, a new cause of action or a new capacity in which a party is suing or being sued. Whether or not this would be permissible under the Trinidad and Tobago CPR, the problem can be overcome where no limitation

defence has arisen by issuing a new claim form and asking the court to direct that all steps taken in the original action should be deemed to have been taken in the new action, so as to avoid unnecessary costs and delay. As mentioned, directions of this kind were given in *Millburn-Snell* to enable the claimants to fix a new trial date if they chose.

132. In this case the proceedings could easily have been regularised in this way after Ms Sealy had obtained a grant of administration. A new claim form could have been issued and a direction sought that all steps taken in the proceedings should be deemed to have been taken in the new action. Had this been done before or at the trial, Mr Jogie would in my view have had no proper basis for objecting to it, as such a direction would not have deprived him of any time bar defence or otherwise caused him any prejudice. Ms Sealy's legal advisers did not take any such step, however, and, since then, the time limit for bringing a claim in tort has expired.

8. The limitation period

133. In England and Wales section 35(7) of the Limitation Act 1980 and CPR rule 17.4(4) now enable a claim form to be amended after the expiry of the limitation period to allow a party to claim relief in a new capacity, even though the party had no title to sue in that capacity when the action was commenced. This would enable a claimant in the position of the father in *Ingall v Moran*, after obtaining a grant of administration, to amend the claim form and continue the proceedings as administrator, even though the limitation period had expired before the grant was obtained: see *Haq v Singh* [2001] EWCA Civ 957; [2001] 1 WLR 1594, para 22; *Roberts v Gill & Co* [2010] UKSC 22; [2011] 1 AC 240, para 34 (Lord Collins of Mapesbury) and paras 97-98 (Lord Walker of Gestingthorpe). No similar change has as yet been made, however, to the law of Trinidad and Tobago.

134. Nevertheless, although it would now be too late for Ms Sealy to commence a new action making a claim in tort for acts of trespass which occurred more than four years before the action was commenced, the limitation period for bringing a claim to recover land has still not expired. Under section 3 of the Real Property Limitation Act Chapter 56:03, the limitation period for such a claim is 16 years from the date when the right of entry arose. If the notice to renew the lease served by Ms Sealy was valid, that right arose on 1 June 2011 when the further term of 30 years commenced. On this basis the limitation period for bringing a claim to recover possession of the land will not expire until 2027.

135. Mr Jogie did not appeal from the judgment of the High Court on the ground that the claim was a nullity but solely on the ground that the judge had been wrong to find that Ms Sealy was a "tenant" when the renewal notice was served. The objection that the proceedings were a nullity was raised in oral argument at the hearing in the Court of Appeal and was rejected by the Court of Appeal on the basis that it was too late to raise it. It was not raised as a ground of appeal or as an issue in the statement of facts and issues on this appeal to the Board.

136. In these circumstances, if the renewal notice was valid, it would be contrary to the overriding objective of dealing with cases justly to allow the claim to have acquired a valid tenancy to be defeated merely because the grant of administration was obtained after the claim form was issued and the claim has not since been put on a proper procedural footing. In relation to the claim to recover the land, that could still be done now by giving Ms Sealy permission to issue a new claim form and directing that all steps taken in the proceedings, up to and including the hearing before the Board, should be deemed to have been taken in the new action. Such an order would not deprive Mr Jogie of a limitation defence; nor is it suggested that Mr Jogie has suffered any other prejudice by reason of the fact that the proceedings were begun before the grant was obtained.

9. Invalidity of the renewal notice

137. As it is, however, the defect in the claim does not consist solely in the fact that the grant of administration was obtained after the proceedings were commenced. It lies in the fact that Ms Sealy was not an administrator and therefore had no power to act as her mother's personal representative when the notice to renew the lease was served. The renewal notice, and not just the claim form, was therefore an incurable nullity which no subsequent grant of administration could legitimise with retrospective effect.

138. The reasoning in *Ingall v Moran* applies just as much to the issue of a legal notice or any other act done by someone who has not been appointed as an administrator as it does to the issue of proceedings. If the person who does the act has no legal power to represent the deceased when the act is done, the act cannot have any legal effect - other than as an exercise of any power which the actor has in her own right. Because Ms Sealy was not herself a tenant of the land and her mother's interest under the lease was not vested in her, she did not have the right of renewal conferred on the tenant by section 4(3) the Act when she served a renewal notice on Mr Jogie on 12 January 2011. The service of this notice therefore could not and did not have the effect of renewing the lease.

10. Relation back

139. The decision of the Court of Appeal that the subsequent grant of administration on 2 November 2012 rendered the renewal notice effective was based on its understanding of the principle of "relation back". The Court of Appeal was undoubtedly entitled to raise this issue of its own motion. Had prior notice been given, counsel for Mr Jogie might have been better prepared to deal with it and authorities such as *Ingall v Moran* might have been cited to the court which would have avoided a wrong conclusion. But I do not consider that the way in which the issue was raised gives rise to an independent ground of appeal, as any error of law that was made can be corrected on this appeal to the Board.

140. The Court of Appeal's understanding of the principle of "relation back" was based on *Mills v Anderson* [1984] QB 704. In that case the claimant sued as the administrator of his son's estate claiming damages for his son's death in a road accident allegedly caused by the defendant's negligence. The father had agreed a settlement of claim before he obtained a grant of administration. It then became clear, as a result of the decision of the Court of Appeal and subsequently the House of Lords in *Gammell v Wilson* [1982] AC 27 (holding that a court may award damages for the deceased's loss of earnings during the lost years), that a far greater sum in damages could in principle be claimed than the amount for which the father had agreed to settle the claim. On a preliminary issue to determine whether the father, as administrator, was bound by the settlement, B A Hytner QC, sitting as a deputy High Court Judge, held that he was not.

141. That decision was plainly correct. The conclusion that there had been no binding settlement of the claim was a straightforward application of the principle that a person has no power to do anything as an administrator before obtaining a grant of administration. Nor was there anything new in such a decision. It was held over 400 years ago in *Middleton's Case* (1603) 5 Co 28b; 77 ER 93 that, whereas an executor before probate may release a right of action, "if A releases and afterwards takes administration, it should not bar him, for the right of the action was not in him at the time of the release."

11. Acts done for the benefit of the estate

142. In *Mills v Anderson* the deputy judge nevertheless thought that the position would have been different if the settlement had (objectively) been beneficial to the estate. That view was based on a statement in the leading textbook that cases may be found where the letters of administration have been held to relate back to the death

of the intestate "so as to give a validity to acts done before the letters were obtained", albeit only "where the act done is for the benefit of the estate". This statement is repeated in the current edition of the book, with *Mills v Anderson* now cited as authority for it: see *Williams, Mortimer & Sunnucks on Executors, Administrators and Probate*, 21st ed (2018), para 5-16. It is, however, directly contrary to the conclusion reached in *Ingall v Moran* and in my opinion is not a correct statement of the common law.

143. As Goddard LJ explained in the passage from his judgment in *Ingall v Moran* quoted at para 120 above, the sense in which a grant of administration "relates back" to the death is that title to the property of the deceased is treated as having vested in the administrator at the time of the death. The administrator therefore has title to sue in respect of matters which have arisen between the date of the death and the date of the grant (in the same way as the administrator can sue in respect of matters that arose before the death). As appears from the review of earlier authorities by the judges of the Court of Common Pleas in *Tharpe v Stallwood* (1843) 5 Man & G 760; 134 ER 766, this has been the law in England since mediaeval times. The principle was adopted by Fitzherbert in his Abridgement, first published in 1514. It was also adopted in Rolle's Abridgement and authoritatively stated by him when he was Chief Justice. Thus, according to the report of *Long and Hebb* (1652) Style 341; 82 ER 760:

> "In a tryal between Long and Hebb and others, it was said by Roll Chief Justice, that letters of administration do relate to the time of the death of the intestate, and not to the time of granting of them, and therefore an administrator may bring an action of trespass or a trover and conversion for goods of the intestate taken by one before the letters granted unto him, otherwise there would be no remedy for this wrong done."

144. When *Mills v Anderson* was decided, the authority cited in *Williams* for the proposition that a grant of administration gives validity to an act done before the grant if the act was for the benefit of the estate was *Morgan v Thomas* (1853) 8 Exch 302; 155 ER 1362. Although a statement to this effect was made, however, in one of the four judgments given in that case, it was obiter and unnecessary for the decision.

145. The facts of *Morgan v Thomas* were that a creditor executed a judgment entered against a widow by seizing the furniture that belonged to her deceased husband. Their son afterwards obtained a grant of administration and sued as administrator for conversion of the goods. The creditor argued in his defence that the son had assented to his mother having the furniture in satisfaction of her statutory

entitlement to a share of her husband's estate so that the goods when seized were hers. That argument failed on the grounds (a) that there was no basis for finding that the son had assented to his mother acquiring ownership of the goods and (b) that, as he had no power to act for the estate, nothing that the son did at the relevant time could in any event bind the estate. *Morgan v Thomas* is therefore another straightforward illustration of the principle that the estate is not bound by an act done by someone who afterwards becomes an administrator but is not an administrator when the act is done.

146. The proposition stated in *Williams* was evidently based on a dictum of Parke B who said, at p 307:

> "An act done by a party who afterwards becomes administrator, to the prejudice of the estate, is not made good by the subsequent administration. It is only in those cases where the act is for the benefit of the estate that the relation back exists, by virtue of which relation the administrator is enabled to recover against such persons as have interfered with the estate, and thereby to prevent it from being prejudiced and despoiled."

147. The genesis of this statement would appear to be Parke B's own previous judgment in *Foster v Bates* (1843) 12 M & W 226; 152 ER 1180.

148. In *Foster v Bates* a person had sent goods to an agent to sell shortly before he died intestate. The agent sold and delivered the goods to the defendants before an administrator was appointed. The administrator then sued for the price. It was held by the Court of Exchequer Chamber that the action could be maintained. Giving the judgment of the court, Parke B said, at p 233:

> "The relation [back] being established for the benefit of the intestate's estate, against a wrongdoer, we do not see why it should not be equally available to enable the administrator to obtain the benefit of a contract intermediately made by suing the contracting party; and cases might be put in which the right to sue on the contract would be more beneficial to the estate than the right to recover the value of the goods themselves. In the present case, there is no occasion to have recourse to the doctrine, that one may waive a tort and recover on a contract; for here the sale was made by a

> person who intended to act as agent for the person, whoever he might happen to be, who legally represented the intestate's estate; and it was ratified by the plaintiff, after he became administrator: and, when one means to act as agent for another, a subsequent ratification by the other is always equivalent to a prior command; nor is it any objection that the intended principal was unknown, at the time, to the person who intended to be the agent …"

149. Two points may be made about this passage. First, it can be seen that the actual decision was based on orthodox principles of agency. The contract of sale had been made by a person who meant to act as agent for whoever had title to goods which had belonged to the deceased. When the plaintiff obtained a grant of administration, he acquired title which related back to the time of death (and therefore to the time of the sale); so he could ratify the act of the agent in making the contract of sale. The question whether an administrator can sue on a contract made as a principal by someone who had no power to bind the deceased's estate did not arise for decision.

150. Second, the method by which Parke B envisaged that an administrator might obtain the benefit of such a contract was by having recourse to "the doctrine that one may waive a tort and recover on a contract." In 1843 the law of restitution was not well developed and what is now seen as a restitutionary remedy for a tort (reversing the defendant's wrongful enrichment) was rationalised in terms of waiving the right to sue in tort and electing instead to recover on a (fictitious) contract. The history of the doctrine of "waiver of tort" is recounted in the speeches of Viscount Simon and Lord Atkin in *United Australia Ltd v Barclays Bank Ltd* [1941] AC 1. The fact that the claim was not in reality founded on a contract was recognised from very early on. For example, in *Lamine v Dorrell* (1705) 2 Ld Raym 1216; 92 ER 303, an administrator sued in assumpsit to recover proceeds of sale of some debentures which formed part of the deceased's estate and had been sold by the defendant, who had pretended to have the right to sell them. Powell J said:

> "It is clear the plaintiff might have maintained detinue or trover for the debentures; but when the act that is done is in its nature tortious, it is hard to turn that into a contract, and against the reason of assumpsits. But the plaintiff may dispense with the wrong, and suppose the sale made by his consent, and bring an action for the money they were sold for, as money received to his use. It has been carried thus far already."

151. Properly analysed, therefore, a claim of this nature does not involve treating as enforceable by an administrator a contract made by a person who, when the contract was made, had no power to act as a representative of the estate. It involves electing to pursue a restitutionary remedy for the conversion of goods by their wrongful sale. The only relation back is the relation back of title to the property of the deceased which enables an administrator to sue for a wrong done before the grant of administration.

12. Acknowledgment of debts

152. In *Mills v Anderson* the deputy judge also quoted, at p 710, the following statement from what is now para 5-19 of *Williams*:

> "It would also seem that whenever anyone acting on behalf of the intestate's estate and for its benefit, and not on his own account, makes a contract with another before any grant of administration, the administration will have relation back, so that the benefit of the contract is not lost and the administrator may sue upon it, as made with himself."

This statement is said to be supported by *Bodger v Arch* (1854) 10 Exch 333.

153. Again, however, I do not consider that this statement is justified by the authority cited for it. In *Bodger v Arch* the claimant (B) as administrator of his wife's estate sued A on a promissory note which A had issued to B's wife before her marriage. The question was whether a part payment of the sum outstanding under the note made by A to B after his wife's death but before B became an administrator prevented the claim from being time-barred in accordance with the doctrine that an acknowledgement or part payment of a debt before the limitation period has expired starts time running again. The Court of Queen's Bench held that the payment did indeed have that effect and prevented the claim from being time-barred. Parke B, who again gave the judgment of the court, as well as referring to *Foster v Bates*, relied on *Clark v Hooper* (1834) 10 Bing 480; 131 ER 981, as being a precedent on materially identical facts.

154. *Clark v Hooper* was subsequently considered by the Court of Appeal in *Stamford Spalding & Boston Banking Co v Smith* [1892] 1 QB 765, where the question arose whether an acknowledgement or part payment of a debt made to someone other than the creditor could prevent a claim from being barred by the statute of limitations. The Court of Appeal held that it could not. Lord Herschell said, at pp 768 - 769:

> "[I]t was argued that if an acknowledgment is in fact made, it is immaterial to whom it is made. Such appears to have been considered the law at one time, and there are certainly some dicta to that effect; but that is not the law now. … The case specially relied on by the plaintiffs was *Clark v Hooper*, where a payment had been made to a person as administratrix, who had not in fact taken out administration in the proper diocese. There were, doubtless, in that case dicta … that the payment had the same effect as an acknowledgment to a third person, which seems to have been thought by those judges sufficient. But I do not think that at the present time the decision can be supported on that ground."

Lord Herschell went on to say, at pp 769-770:

> "There may be an exception to the rule in the case of a payment to a person filling a representative capacity, or who was believed to fill that capacity; in such a case the payment might enure for the benefit of the persons for whose benefit it was believed to be made. This would support the decision in *Clark v Hooper*. The payment there was made to the administratrix in her representative capacity, with the intention that it should enure for the benefit of the estate of the intestate, and when a proper administration was taken out the administratrix would be able to take advantage of the payment. Unless *Clark v Hooper* can be supported on that ground, I do not think it can be supported consistently with other decisions. At the time when the payment was made there was no other representative of the estate, there was no other person to whom the payment could have been made, and the intention of the debtor was to make the payment to the estate, not to the individual who received it. However, in my opinion there is now no question that a payment or acknowledgment must be made to the creditor or his agent."

155. What was said by Lord Herschell about *Clark v Hooper* is equally applicable to *Bodger v Arch*. If the decision can be supported at all, it can only be on the ground that, as an exception to the general rule, a part payment of a debt owed to the estate of a dead person, if made by the debtor to someone believed to represent the estate and with the intention of benefiting the estate, was sufficient at common law to take the

case outside the statute of limitations, even though the payee had not in fact at the relevant time obtained a grant of administration. Such an exception, if it existed, would not require treating a grant of administration as giving retrospective legal effect to an act which the individual who later obtained the grant lacked the capacity to do when the act was done.

13. Ratification again

156. In *Re Watson. Ex parte Phillips* (1886) 18 QBD 116 a solicitor did work for the benefit of the estate on the instructions of Easton, a relative of the deceased, before any administrator had been appointed. Phillips afterwards obtained a grant of administration and denied that the estate was liable to pay the solicitor's charges. A claim by the solicitor failed on the ground that he could not show that he had contracted with anyone who had the power to bind the estate. His appeal to the Court of Appeal was dismissed: see (1887) 19 QBD 234.

157. In the High Court Wills J suggested (obiter), at p 119, that:

> "It seems to be a principle of law that where work is done on the credit of the estate by the order of one who afterwards obtains administration and ratifies the contract, the estate is bound if the work done is for the benefit of the estate."

Wills J continued:

> "The essential conditions are that there should be a contract with some person professing to act for the estate, that the contract should be for the benefit of the estate, and that the person in question should afterwards become administrator and should after being so appointed have ratified the contract. Under those circumstances the case comes within the principle of law that a subsequent ratification of a contract by a person with authority to ratify it relates back to and supports the contract."

Wills J did not cite any authority for this principle, but the law report shows that *Foster v Bates* was cited by counsel in argument.

158. In the Court of Appeal Lord Esher MR, at p 235, doubted whether Phillips, after he became administrator, "could have ratified a prior contract made with himself". It seems to me that this doubt was well founded. I cannot see a justification for extending the doctrine of ratification in such a way. Ratification is a controversial doctrine in the law of agency but provides a convenient way of enabling a principal to overcome defects or doubts about the agent's authority. As stated in the US Restatement (Second) of Agency, §82 comment d, quoted in *Bowstead & Reynolds on Agency*, 22nd edn (2020), para 2-048: "[Ratification] operates normally to cure minor defects in an agent's authority, minimising technical defences and preventing unnecessary lawsuits". The same could not be said of a doctrine which allowed a person to give retrospective legal effect to his own earlier act in a situation where the act had no legal effect when it was done. Such a doctrine would cause injustice to third parties. If, for example, someone who enters into a contract purportedly as an administrator without first obtaining a grant of administration could afterwards on obtaining a grant choose to ratify the contract (or not), the other party would be in his power as to whether or not the contract was binding. This would potentially place a person who has purported to exercise a power which he does not have in a better position that someone who actually is an administrator when he contracts as such.

159. It would also be unfair if, on the alternative approach suggested in *Williams* and accepted (obiter) in *Mills v Anderson*, the question whether the contract was binding depended, not on whether the person who becomes an administrator chooses to ratify the contract, but on whether the contract is objectively beneficial to the estate. I can see no reason in justice why the defendant in *Mills v Anderson* should, on the one hand, have been unable to enforce the settlement agreement when the law changed so as to make the agreement prejudicial to the claimant, yet on the other hand should be bound by the agreement if the law had changed so as to make it prejudicial to him. Such a one-sided approach would again have the perverse consequence of placing a person who purports to contract as a representative of the estate when he has no legal power to do so in a better position that someone who is a lawfully appointed administrator of the estate.

160. Lady Arden suggests that it would be "a great loss to the practical administration of the estates of intestates" and a "blot on the law" if there is no "common law exception" to the proposition that an act done by someone who purports to represent the estate of an intestate without having any legal power to do so is a nullity. I do not share that view. If urgent action is needed to protect the estate before a grant of administration is obtained, there are legal procedures available such as applying for the appointment of a receiver pending the grant. In any case it is not suggested in *Williams* or any of the authorities cited in that work that the "common law exception", if it exists, is limited to cases of urgency. In *Bodger v Arch*, which is the only case cited in which what Lord Burrows has referred to as the "wider view" of

relation back was arguably applied, the plaintiff did not take out letters of administration until 19 years after his wife had died. In the present case some 5 ½ years elapsed after Cynthia Abbott died before Ms Sealy applied for a grant. I can see no practical or principled justification for giving the estate the benefit - but not the burden - in such cases of acts done by someone who falsely claims to have the legal power to represent the estate, or who openly admits that they have no such power, merely because at some later date this individual is appointed as an administrator. Any advantages of practical convenience are outweighed by the uncertainty and unfairness that such an exception would cause to third parties.

14. Conclusion on relation back

161. I conclude that there is no principle of law whereby an act done purportedly as a representative of someone who dies intestate by a person who is not an administrator is made valid, or is capable of being made valid, retrospectively if that person (or anyone else) subsequently obtains a grant of administration. It makes no difference in this regard whether or not the act, if valid, would be beneficial for the estate, nor whether the administrator purports to ratify the act. Any such principle which enabled the act to be validated retrospectively would be unjustified and inconsistent with the reasoning in *Ingall v Moran* and the other cases in that line of authority. Nor does there appear to be any case in which it has been decided that, on the facts, an act done by a person who was not an administrator became valid retrospectively after a grant of administration was obtained. None of the cases discussed above is, on a proper analysis, authority for such a result.

162. As Goddard LJ said in *Ingall v Moran* in the passage quoted at para 121 above, all that the cases show is that, once a grant has been obtained, the title of the administrator to the property of the deceased relates back to the death. This enables the administrator to sue on a cause of action which arose between the date of the death and the date of the grant, as well as on a cause of action which arose before the death, provided the cause of action survives. But it does not convert a past act which had no legal effect because the actor had no power to do the act into an act which was, after all, valid and legally effective.

15. The renewal notice in this case

163. It follows that the notice to renew the tenancy served by Angela Sealy on 12 January 2011 never became, and was incapable of becoming, a valid notice. The notice was invalid when given because Ms Sealy at that time had no right to possession of the land and was not a “tenant” within the meaning of the legislation. The notice was

signed by her as "the intended personal representative" of Cynthia Abbott. Its invalidity was therefore patent on its face, as an intention to become a personal representative obviously does not give someone the power to act as a personal representative. The landlord was therefore entitled to disregard it. The fact that some 22 months later Ms Sealy did actually become an administrator of her mother's estate could not transmute her invalid notice retrospectively into a valid one.

164. There is a further reason why such subsequent validation of the notice was legally impossible. Even where the principle of relation back would otherwise apply, it cannot be invoked so as to invalidate property rights which have been lawfully acquired before the grant of administration. To allow this would be inconsistent with the need for legal certainty which is particularly important in property transactions.

165. Authority for this proposition is to be found in the decision of the Court of Appeal in *Fred Long & Son Ltd v Burgess* [1950] 1 KB 115. In that case a landlord after the tenant had died intestate and before an administrator had been appointed served a notice to quit on the President of the Probate, Divorce and Admiralty Division of the High Court (in whom the property of the deceased, including her tenancy, had vested). The tenant's son, having obtained a grant of administration, argued that the grant related back to the death, with the result that the notice to quit was ineffective because the son was retrospectively to be treated as the person in whom the tenancy was vested when the notice was served. The Court of Appeal rejected this argument. Bucknill LJ said, at p 120:

> "At any date subsequent to the death of the intestate, a grant of administration may be made. There is no time limit in this matter. If a grant made years after the death is to make invalid the notice to quit validly given to the President, confusion and uncertainty will prevail and injustice may be done to those who have acted on the assumption that the notice to quit given to the President had full legal effect."

Similarly, Asquith LJ, at p 123, accepted that:

> "the principle of 'relation back' cannot be applied so as to invalidate interests lawfully acquired in the interval [between the death and the grant]; and that to apply it in circumstances such as those of the present case leaves the landlord, it may be for years, in a position of intolerable

> doubt as to his rights; for instance, whether or not he can safely re-enter and deal with the property."

166. The present case can be seen as the reverse of the situation in the *Fred Long* case in that, rather than turning a valid notice into an invalid one, applying a doctrine of "relation back" would involve turning an invalid notice into a valid one. But the disruption to vested property rights and to legal certainty would be just as great. Allowing relation back would mean that, on the facts of the present case, after the expiry of the original term of the lease on 31 May 2011, Mr Jogie would have had to wait, for an indefinite or indeterminate period of time, to find out whether or not Ms Sealy would obtain a grant of administration and retrospectively cause the lease to have been renewed.

167. Suppose that, for example, in the months after 31 May 2011 neighbours were complaining about the state of the land or a public authority required action to be taken in relation the land. Mr Jogie would then have faced a dilemma. If he did nothing, he might face legal proceedings, such as a claim in nuisance, or penalties, to which he would have no defence unless Ms Sealy later decided to apply for and was granted letters of administration. Yet if, on the other hand, he entered on the land to clean it up, and some time later the renewal notice was retrospectively rendered valid, he could find himself being sued for trespass. This is not a hypothetical example, as it describes the situation which, at any rate on Mr Jogie's account, actually arose in this case. Many other examples could be given of the injustice which could occur if the doctrine of relation back were applicable in a case such as this.

16. Conclusion on the appeal

168. In summary, the notice served on 12 January 2011 did not have and was incapable of having the effect of extending the lease for a further term. The lease therefore expired on 31 May 2011 when the original term of 30 years came to an end. It follows that, even if the proceedings had been properly constituted, the claim for an injunction to restrain Mr Jogie from entering on the land and denying access to Ms Sealy could not succeed. The same applies to the claim for damages for trespass in so far as it was based on entry on the land by Mr Jogie after 31 May 2011. It would not in these circumstances be appropriate to allow a new claim to be issued to overcome the nullity of the existing proceedings, as such a claim would be bound to fail. In agreement with Lord Burrows, therefore, I would allow the appeal and set aside the judge's order in its entirety.