[2026] UKPC 32
Privy Council Appeal No 0040 of 2025

JUDGMENT

Francis (Appellant) *v* Attorney General of St Helena for and on behalf of the Crown (Respondent) (St Helena)

From the Court of Appeal of St Helena

before

Lord Reed
Lord Burrows
Lady Rose
Lord Snowden
Sir Anthony Smellie

JUDGMENT GIVEN ON
16 September 2026

Heard on 16 July 2026

Appellant
Joshua Hitchens
Walter Scott
(Instructed by Public Solicitor's Office)

Respondent
Mohammud Jaamae Hafeez-Baig
Aldhelm Garner
(Instructed by Attorney General's Chambers)

LORD REED:

1. Introduction

1. “This is an appeal concerning the former dairy of Napoleon Bonaparte, an 1833 statute governing the affairs of the East India Company, and the system of land registration in one of the most remote inhabited islands on earth”. These are the enticing words with which the appellant opens his written case in this appeal to the Board from St Helena. Put more prosaically, the issue in the appeal is whether Crown land in St Helena can be acquired by prescription.

2. The background

2. In July 2023 the appellant, Mr Francis, made an application to the Registrar of Lands under section 139 of the Registered Land Ordinance 1980 (“the Ordinance”) for the Land Register to be rectified on the ground that he had acquired an interest in land by prescription. He founded his ownership of the land on section 135 of the Ordinance, which provides that ownership of land “may be acquired by peaceable, open and uninterrupted possession for a period of 15 years without the permission of any person lawfully entitled to such possession”, and that anyone who claims to have acquired ownership by this means can apply to be registered as the owner of the land. The land in question was registered as Crown land. The Crown was notified of the application, and objected on the ground that Crown land could not be acquired by prescription.

3. In February 2024 the Registrar stated a case for the opinion of the Supreme Court, under section 146 of the Ordinance, on the question: can Crown land be acquired by prescription? The question was raised as a preliminary issue, before any other aspects of the application were considered. In the stated case, the Registrar observed that the question had never before been argued. Previously, the Crown had accepted that such an acquisition was possible, and on occasion had agreed that Crown land had been acquired in that way.

4. Before the Supreme Court (Chief Justice Rupert Jones), it was submitted on behalf of the Crown that section 31 of the Constitution made it impossible for anyone other than the Governor to dispose of Crown land. Section 31 provides:

> “**Powers to dispose of land**
>
> Subject to this Constitution and any other law, the Governor or any person duly authorised by him or her in writing under his

> or her hand may, in Her Majesty's name and on Her Majesty's behalf, make and execute grants and other dispositions of any land or other immovable property in St Helena that is vested in Her Majesty in right of the Government of St Helena."

The provisions of the Ordinance relating to prescription were subordinate to that constitutional provision and their effect was correspondingly limited.

5. Reliance was also placed on section 159 of the Ordinance, which provides:

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

The land in question was, it was submitted, vested in the Crown by another written law, namely section 112 of the Saint Helena Act 1833 ("the 1833 Act": originally known as the Government of India Act 1833, but retitled, following the repeal of all its provisions other than section 112, by the Statute Law Revision Act 1948).

6. Section 112 provides:

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

Accordingly, it was submitted, since the Crown's right to the land was conferred on the Crown by a written law other than the Ordinance, section 159 meant that it was not affected by the provisions of the Ordinance enabling land to be acquired by prescription.

7. In his judgment, the Chief Justice found that there was no legal bar to Crown land being acquired by prescription, and answered the question stated by the Registrar in the affirmative: *Francis v Attorney General of St Helena* [2024] SHSC 6. In his opinion, there was nothing in section 31 of the Constitution or section 112 of the 1833 Act which

expressly or impliedly prohibited the acquisition of Crown land by prescription. The acquisition of title to land by prescription did not involve the execution of a grant or other disposition of the land, but was a transfer of ownership by operation of law. It therefore fell outside the scope of section 31 of the Constitution. As for section 112 of the 1833 Act, it provided the basis on which St Helena, including its land and some properties, originally became vested in the Crown of the United Kingdom. It was not concerned with subsequent transfers of ownership. Since it did not give the Crown a right or interest which was inconsistent with the subsequent acquisition of the land by prescription, it fell outside the scope of the savings provision for Crown rights in section 159 of the Ordinance. Furthermore, if it had been intended to exclude Crown land from prescription, such an important matter would not have been dealt with in an obscure and unclear savings provision. Express words would have been used, as in similar legislation in some other British Overseas Territories, such as Turks and Caicos and Anguilla.

8. The Attorney General appealed to the Court of Appeal on two grounds: first, that section 31 of the Constitution did not permit the acquisition of Crown land by prescription, and secondly, that section 159 of the Ordinance precluded the application of prescription to Crown land.

9. The Court of Appeal (Saunders, Drummond and Mayo JJA) allowed the appeal: *Attorney General of St Helena v Francis* [2024] SHCA 5. The court rejected the Attorney General's first ground of appeal and found that section 31 of the Constitution did not prevent the acquisition of Crown land by prescription. However, it upheld the second ground of appeal, holding that, by reason of section 159 of the Ordinance, the interest in land which was conferred on the Crown by section 112 of the 1833 Act could not be affected by the prescription provisions of the Ordinance. Accordingly, it answered the question posed by the Registrar in the negative.

10. In its judgment, the Court of Appeal noted that it was argued on behalf of Mr Francis that no interest in land which could be affected by the provisions of the Ordinance concerning prescription had been granted by section 112 of the 1833 Act. The court commented at para 40 that the submission would appear to be contrary to the way the hearing had been conducted in front of the Chief Justice. It noted the submission made on behalf of Mr Francis that the effect of section 112 was not to grant any interest in land, but to provide the basis for the Crown's sovereignty over St Helena. In support of that submission, it was pointed out that at the time when the 1833 Act was passed there was private ownership of land in St Helena, which was not affected by section 112. The court accepted that the point about private ownership might be correct, but said at para 48 that it did not follow that section 112 did not grant an interest in land to the Crown. That it did so was indicated by the way it specified individual properties which vested in the Crown.

11. The court said at para 57 that it did not consider that the interest in Crown land acquired by the operation of section 112 could be affected by the operation of the

prescription provisions of the Ordinance. It explained that it had expressed its answer in that way to allow for the concession made on behalf of the Crown that section 159 of the Ordinance might not apply to land acquired by the Crown by purchase, as the Crown's interest in such land was not "conferred on the Crown … by any other written law". The court expressed its conclusion as follows, at para 58:

> "It follows that in our view, accepting the proposition that the Crown did acquire an interest in land by virtue of the 1833 Act, which was how the matter was argued in front of the Chief Justice, the answer to the posed question is 'no'. Allowing land vested in the Crown under section 112, to be acquired by prescription under section 135 [of the Ordinance], would affect the interests conferred on the Crown by other written law, and is prohibited under section 159."

12. It appears, therefore, that the Court of Appeal did not intend to reach any decision as to the effect of section 112 of the 1833 Act, or to decide whether title to the land in question in the proceedings was vested in the Crown by virtue of section 112 of the 1833 Act, but proceeded on the assumption that section 112 conferred an interest in land on the Crown. In effect, its answer was: assuming that section 112 confers an interest in land on the Crown, that interest is not affected by the prescription provisions of the Ordinance, by reason of the savings provision in section 159.

3. The present appeal

13. The Court of Appeal granted permission to Mr Francis to appeal to the Board on three grounds:

(1) The Court of Appeal was wrong to conclude that section 159 of the Ordinance prevents prescription of Crown land acquired by statute.

(2) The Court of Appeal was wrong to conclude that the disputed land was transferred to the Crown's ownership through the operation of section 112 of the Saint Helena Act 1833.

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

14. At the hearing of the appeal before the Board, it was accepted that the Court of Appeal had not, in fact, reached a conclusion on the question whether the Crown held title to the land in question by virtue of section 112 of the 1833 Act or whether, as the appellant maintained, that section was concerned only with conferring sovereignty over the island on the Crown. That question, if relevant, remained to be determined. It was accepted on behalf of the Crown that there was a question about the proper interpretation of section 112 and, depending on the answer to that question, there might also be a question as to whether the relevant land fell within its scope. It was also accepted by both parties that, whether or not the Court of Appeal had been entitled to have regard to the record of the legislative proceedings concerning the passage of the Ordinance—a question on which it is unnecessary for the Board to express any opinion—there was nothing in the record that was of material assistance. Only the first ground of appeal need therefore be addressed.

15. Before considering the parties' contentions, it is convenient to set out the material legislative provisions, in addition to section 31 of the Constitution and section 112 of the 1833 Act, set out respectively at paras 4 and 6 above.

4. The material legislation

16. The Ordinance establishes a system of land registration and transfer on the Torrens model: that is to say, a system based on a public register of land holdings created and maintained by a government agency, which serves as conclusive evidence of the title of the person recorded on the register as the proprietor, and of all other recorded interests. The accuracy of the register is guaranteed, and compensation is paid to anyone whose rights are adversely affected by an administrative error. The principal benefit of such a system is to enhance certainty of title to land and greatly to simplify dealings involving land. In broad terms, once such a system is established, it is no longer necessary for persons purchasing or lending on the security of land to search through historical documents recording past transactions in order to verify the ownership of the land or the incumbrances on the title: an exercise which can be protracted and costly, and is never entirely free of the risk of latent legal problems. Instead, after registration of the land, the previous title deeds become irrelevant. All the necessary information regarding ownership and incumbrances is on the register. The consequence is that transactions can be concluded in reliance on searches of the register and certificates issued by the registrar.

17. These aspects of the Torrens system are reflected in the Ordinance. Part II provides for the organisation and administration of a Land Register for St Helena. Section 9(1) provides that the Register is to comprise a register in respect of every parcel of land and a register in respect of each lease required by the Ordinance to be registered. Section 9(2) provides that each register must show whether the land is private land or Crown land and must be divided into three sections: the property section, containing a brief description of the land or lease and a reference to the Registry Map and filed plan; the proprietorship section, containing the name and address of the proprietor (except in the case of land

described as Crown land) and a note of any inhibition, caution or restriction affecting the proprietor's right of disposition; and the incumbrances section, containing a note of every incumbrance and every right adversely affecting the land or lease. Section 9(3) provides that no entry is required in the proprietorship section of land which is described as Crown land. Other provisions of Part II explain how the Register is to be compiled and maintained.

18. Part III is concerned with the effect of registration. Under section 23(1), the registration of any person as the proprietor with absolute title of a parcel vests in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant to it, free from all other interests and claims whatsoever, but subject "(a) to the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the Register; and (b) unless the contrary is expressed in the Register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the Register": in other words, overriding interests.

19. Those overriding interests are defined by section 28(1) as including the following:

> "(c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any written law;
>
> …
>
> (e) any unpaid moneys which, without reference to registration under this Ordinance, are expressly declared by any written law to be a charge upon land;
>
> (f) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;
>
> …
>
> (h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law."

20. Part IV is concerned with the issue of land certificates, and the carrying out of searches of the Register. Part V is concerned with dispositions, leases and charges in respect of registered land, and enables such dealings to be conducted in reliance on the Register. In particular, section 38(1) provides:

> "No person dealing or proposing to deal for valuable consideration with a proprietor is required or is in any way concerned—
>
> > (a) to inquire or ascertain the circumstances in or the consideration for which such proprietor or any previous proprietor was registered".

21. Part VII is concerned with transmission on death, bankruptcy, liquidation or compulsory acquisition, and with trusts of registered land. It includes section 121, which provides:

> "If the Crown or any person has become entitled to any land, lease or charge under any written law or by virtue of any decision, judgment, order or procedure under the Land Acquisition Ordinance, 2006, Part 6 of the Immigration Ordinance, 2011 (Landholding by Immigrants), or under any other written law, the Registrar must, on the application of any interested person supported by any evidence the Registrar requires, register the Crown, or the person entitled, as the proprietor."

22. Part IX is concerned with prescription. Section 135 provides:

> "**Acquisition of land by prescription**
>
> 135.(1) The ownership of land may be acquired by peaceable, open and uninterrupted possession for a period of 15 years without the permission of any person lawfully entitled to such possession.
>
> (2) Any person who claims to have acquired the ownership of land by virtue of subsection (1) may apply to the Registrar for registration as proprietor of the land."

It is also relevant to note section 138, which provides:

> "**Acquisition of easements and profits by prescription**
>
> 138. (1) Easements and profits may be acquired without registration by peaceable, open and uninterrupted enjoyment of them for a period of 20 years.
>
> …
>
> (2) A person who claims to have acquired an easement or profit by virtue of subsection (1) may apply to the Registrar for registration of the easement or profit, and the Registrar, on being satisfied as to the claim and subject to any notices, advertisements and conditions the Registrar directs, must register the easement or profit as an incumbrance on the Register of the land affected and, in the case of an easement, in the property register of the land which benefits."

23. Part X is concerned with rectification and compensation. Section 139 makes provision for the rectification of the Register in narrowly defined circumstances, including "if any person has acquired an interest in land by prescription under Part IX": section 139(1)(b). Section 141 provides a right of compensation to persons who suffer damage because of a mistake or omission in the Register, or in a certificate or extract issued by the Registrar.

24. Part XI is concerned with decisions of the Registrar and appeals from such decisions. It includes section 146, under which the present case was stated for the opinion of the court.

25. Part XII is headed "Miscellaneous". It includes sections 159 and 160, which provide:

> "**Savings of rights**
>
> 159. Nothing in this Ordinance affects any of the interests, rights, powers and privileges conferred on the Crown or the Government by any other written law.

Ordinance to bind Crown and Government

> 160. Subject to section 159, this Ordinance binds the Crown and the Government."

26. It is common ground that section 159, as originally enacted, stated that "Nothing in this Ordinance shall prejudice any of the interests, rights, powers and privileges conferred on the Crown or the Government by any other written law". The words "shall prejudice" were replaced with "affects" by the Law Revision Commissioner in the exercise of powers granted by section 6 of the Revised Edition of the Laws Ordinance 1999. Since those powers do not permit substantive amendments, it is agreed that "affects" should be construed as meaning the same as "shall prejudice".

27. It is also relevant to note that, under section 3 of the English Law (Application) Ordinance 2005, the Adopted English Law applies in St Helena "in so far as it is applicable and suitable to local circumstances, and subject to such modifications, adaptations, qualifications and exceptions as local circumstances render necessary". "Adopted English Law' is defined by section 2 as meaning the common law of England, including the rules of equity, and the Acts of Parliament in force in England as at 1 January 2006. By virtue of section 4, the application of the Adopted English Law is subject to any enactment of the Westminster Parliament extending to St Helena, any Order in Council extending to St Helena, and any Ordinance of the Legislative Council of St Helena.

5. The parties' contentions

28. On behalf of Mr Francis, it was submitted that the Ordinance was one of a large number of similar legislative instruments which had been adopted in former British colonies and overseas territories, all modelled on the Kenyan Registered Land Law, enacted in 1963. Where Crown land (or its equivalent) was intended to be excluded from the scope of prescription, express provision was made to that effect. For example, section 135(1) of the Turks and Caicos Islands Registered Land Ordinance was almost identical to section 135(1) of the St Helena Ordinance, but contained the proviso:

> "Provided that no person shall so acquire the ownership of Crown Land."

Section 144 of the Anguilla Registered Land Act contained the same proviso. The corresponding legislation for Malawi excluded "public" land from the scope of prescription: section 134(1) of the Registered Land Act 1967. The legislation in Belize required a longer period of prescription before "national" land could be acquired by prescription: section 138(2) of the Registered Land Act. Similarly in St Helena, if the legislature had intended to exclude Crown land from the scope of prescription, it would have said so. On the contrary, section 160 made it clear that the Ordinance bound the Crown, without any exclusion of prescription.

29. Properly understood, section 159 of the Ordinance was intended to preserve the statutory rights and privileges of the executive. For example, the Forestry Ordinance 1954 gave the Chief Forestry Officer rights to enter into and conduct works on privately held land designated as protected private forest. Section 31 of the Land Acquisition Ordinance 2006 enabled the Governor to direct the temporary occupation and use of any land which was needed for any public purpose. The Airport Development Ordinance 2006 allowed the Governor to regulate the activities of persons within a designated Airport Development Area. Section 3 of the Aviation Ordinance 2015 empowered the Governor to direct that land should be subject to control in the interests of civil aviation. Section 159 preserved interests and rights such as these. It was not intended to protect the Crown's ownership of land conveyed to it by statute. The registration of the Crown's title to such land was addressed by section 121.

30. If section 112 of the 1833 Act transferred ownership of the land in question to the Crown, the result was that, from the moment of the transfer, the Crown's interest was governed by the ordinary principles of the law. The same was true of land conveyed to the Crown under other legislation, such as land forming part of the property of a company which had not been disposed of as at the date of the company's dissolution, which vested in the Crown under section 211 of the Companies Ordinance 2004; or land of which the Attorney General had entered into possession in accordance with the Land Acquisition Ordinance 2006, which vested in the Crown under section 16 of that Ordinance; or real property of a person who died intestate, which vested in the Crown under section 46 of the Administration of Estates Act 1925, read with the English Law (Application) Ordinance 2005. There was no reason why a title to land acquired by the Crown by statute should be treated differently, in relation to prescription, from a title acquired by the Crown in any other way.

31. Furthermore, such differentiation would be unworkable in practice. Given the paucity of records held on St Helena, it would be difficult for the Registrar to establish how the Crown had acquired the title to lands, but essential to do so whenever prescription was in issue. The difficulty was illustrated by the Crown's inability to adduce records relating to its acquisition of the land in question in the proceedings.

32. On behalf of the Crown, it was submitted that section 159 of the Ordinance had the effect of excluding Crown land from the operation of prescription for two reasons. First, the operation of the prescription provisions would prejudice the interests and rights conferred on the Crown by section 112 of the 1833 Act, on the assumption that title to the relevant land was vested in the Crown under that provision. Secondly, the operation of

the prescription provisions would prejudice the powers conferred on the Crown by section 31 of the Constitution.

33. In the Crown's submission, section 112 of the 1833 Act and section 31 of the Constitution were written laws. The title assumed to be conferred on the Crown by section 112, and the power conferred on the Crown by section 31, fell within the scope of the "interests, rights, powers and privileges conferred on the Crown by any other written law", within the meaning of section 159 of the Ordinance. They would be prejudiced by the operation of sections 28(1)(f), 135 and 138 of the Ordinance, since the effect of prescription would be to deprive the Crown of the title conferred by section 112 of the 1833 Act, and to deprive the Governor of the ability to exercise the power conferred by section 31 of the Constitution. It followed that sections 28(1)(f), 135 and 138 were disapplied in their application to Crown land by section 159. That was reasonable, since it was difficult for the Crown to look after its land as closely as a private proprietor, unless it employed teams of officials for that purpose.

34. The argument advanced on behalf of Mr Francis, that section 159 preserved the Crown's rights of entry and powers of control, but did not preserve the Crown's rights of ownership, meant that the greater the interest, the weaker the protection. That could not be right. Nor could any assistance be derived from cognate legislation in other jurisdictions, which were not suggested to possess any provision equivalent to section 112 of the 1833 Act.

35. In response to questions from the Board, counsel for the Crown submitted that other provisions of the Ordinance besides those relating to prescription might also be disapplied by section 159 in relation to Crown land. It was necessary in every case to consider whether the provision of the Ordinance which was in question was more prejudicial to the interests of the Crown than the position would have been in the absence of the Ordinance. So, for example, counsel submitted that section 23(1)(a) and (b), which make a registered title subject to leases, charges and other incumbrances shown in the Register, and to overriding interests, did not normally operate so as to affect the Crown's title to land, since that would be contrary to section 159. However, the Crown's title would be subject to a lease, charge or other incumbrance which it had itself granted, since the lease or charge would bind the Crown even in the absence of the Ordinance. Equally, the Crown's title would in counsel's submission be subject to overriding interests arising at common law, such as the right of light, since those interests were not created by the Ordinance.

36. Finally, in relation to the parties' contentions, it is relevant to record a difference between the parties, which the Board is not required to resolve, as to the history of the land in dispute. On behalf of Mr Francis, it is said that the land is part of the former dairy of Longwood House, Napoleon's residence from 1815 until his death in 1821. It is said that a map held in the National Archives in London indicates that by 1830 the land was

held by the East India Company for commercial purposes, with much of it let out or earmarked for sale. On this basis, it is said that the land would not fall within the scope of section 112 of the 1833 Act, even if that provision vested rights of ownership in certain land in the Crown, since the land was not at that time "fit or used for the service of the government".

37. On the other hand, it is said on behalf of the Crown that it is by no means clear that the foregoing account of the history is correct. According to the Crown, at the time when the 1833 Act was enacted, the land contained New Longwood House, the building constructed between 1818 and 1821 as a residence for Napoleon, with the intention that it would replace Old Longwood House, where Napoleon lived. In the event, Napoleon refused to occupy New Longwood House. According to the Crown, there is evidence that New Longwood House was then used as the residence of Governor Dallas, the last East India Company Governor of St Helena, both before and after the enactment of the 1833 Act. In the submission of the Crown, that constituted use for a governmental rather than a commercial purpose, and therefore fell within the scope of section 112. In support of this account, the Crown relies on two works concerned with the history of St Helena. One of them cites a reference in a report published in 1834 to "The new house at Longwood, at present inhabited by the Governor". The other, published in 1947, states: "In 1832 Dallas moved to Longwood New House".

6. The effect of section 159 of the Ordinance

38. A literal reading of section 159 supports the Crown's contention, even if one rejects, as one must, the argument based on section 31 of the Constitution. As the courts below rightly recognised, section 31 is concerned with the means by which the Crown can dispose of land or other immovable property in St Helena which is vested in it in right of the Government of St Helena. It is not concerned with the extent of the land or other property which is so vested in the Crown. Consequently, the power which it confers on the Governor or any person authorised by him to execute grants and other dispositions of such property is not prejudiced merely because the extent of that property may be reduced, any more than the power is strengthened merely because the extent of that property may be increased. In short, an alteration in the property vested in the Crown does not result in any alteration in the Crown's power to dispose of its land by the means described in section 31.

39. On the other hand, if section 112 of the 1833 Act had the effect of vesting the ownership of land in the Crown, then such ownership undoubtedly falls within a literal construction of section 159, since it is comprised within the ordinary meaning of the words "interests, rights, powers and privileges conferred on the Crown … by any other written law".

40. Nevertheless, there are seven reasons why that literal interpretation of section 159 cannot be correct, and why a purposive interpretation should be preferred.

41. First, the whole point of a system of land registration of the kind established by the Ordinance is to enable transactions relating to land to be conducted in reliance on the Register, which supersedes any earlier records relating to the ownership of the land, and establishes title on the basis of registration. Once the land has been registered, the entry on the Register becomes conclusive evidence of title, subject to overriding interests, as explained in paras 16 and 18–20 above.

42. That legislative purpose would be seriously undermined if the Crown's contentions were to be accepted. It would be essential, in order to decide whether prescription might operate in relation to any particular Crown land, to know whether the Crown had acquired title to the land by virtue of a statutory conveyance, whether under section 112 of the 1833 Act, or under another provision such as one of those mentioned in para 30 above, or by some other means. One would therefore have to investigate the historical records concerning the Crown's title to the land, instead of relying on the Register. Indeed, as explained in para 35 above, the logic of the Crown's argument appears to have the further and even more damaging implication that not only prescription, but also the conclusiveness of the Register, could not be relied on as against the Crown whenever it would prejudice the rights of the Crown acquired under another written law.

43. Secondly, there is no apparent rationale for treating Crown land differently, in relation to the operation of prescription, depending on whether it was vested in the Crown by legislation or acquired by some other means. Counsel for the Crown was unable to suggest any reason why the legislature might have intended to draw such a distinction. The legislature is not readily to be taken to have legislated with the intention of producing such arbitrary effects upon a carefully crafted and comprehensive statutory regime such as that contained in the Ordinance.

44. Thirdly, as well as undermining the objectives of the Ordinance, the need to investigate historical records of title would also be liable to pose severe practical difficulties. In the circumstances of St Helena, it may be very difficult in practice to ascertain how parcels of land which are vested in the Crown were originally acquired. There appears to be a paucity of records, or at least of records which are readily available in St Helena. The potential difficulties are illustrated by the dispute between the parties as to the history of the Crown's interest in the land in question in these proceedings (land, it might be observed, of more than ordinary historical significance), summarised at paras 36–37 above.

45. Fourthly, acceptance that prescription could not operate in relation to Crown land acquired under legislation would also undermine the important policy objectives which are served by the law of prescription. The rules of prescription in relation to land (and, in jurisdictions such as England and Wales, the rules of adverse possession, which serve a similar purpose) fulfil a vital social function by creating legal certainty where the underlying facts may be obscure, and by protecting the reasonable expectations of persons entering into transactions in relation to land. As Lord Hoffmann (with whom the other members of the Appellate Committee agreed) observed in *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335, 349:

> "Any legal system must have rules of prescription which prevent the disturbance of long-established de facto enjoyment."

Prescription in relation to land also serves valuable economic objectives, including that of ensuring that land is kept marketable and is not sterilised by the inaction of the true owner, as Arden LJ explained in *R (Best) v Chief Land Registrar* [2015] EWCA Civ 17; [2016] QB 23, para 107.

46. It is true, as was submitted on behalf of the Crown, that there can be reasons why a legislature might decide to impose a longer prescriptive period for the acquisition of Crown land, or even to exclude Crown land from the operation of prescription. However, there is no apparent reason why a legislature might decide to distinguish in that regard between Crown land acquired under statute and Crown land acquired by other means. The policy argument advanced on behalf of the Crown founders on the irrationality of the policy which would have to be attributed to the legislature.

47. Fifthly, if the legislature intended to take such an important step as to exclude certain Crown land from the scope of prescription, it would be expected to do so expressly, as part of the provisions concerned with prescription. That expectation is reinforced by the comparison drawn on behalf of Mr Francis between the Ordinance and equivalent legislation in other British Overseas Territories, as explained at para 28 above. One might also expect, if the application of the registration system to Crown land depended on how that land had been acquired by the Crown, for the Register to distinguish between the relevant categories of Crown land—that is to say, Crown land acquired under statute and Crown land acquired by other means—rather than distinguishing simply between Crown land and privately owned land, as required by section 9(2).

48. Sixthly, section 160 lays down a general rule that, subject to section 159, the Ordinance binds the Crown. The construction of section 159 proposed by the Crown would deprive section 160 of much of its effect.

49. Seventhly, section 159 is not the kind of provision which anyone with experience of legislation would expect to be used to achieve the exclusion of certain Crown land from the scope of prescription. It is a savings provision found among the miscellaneous provisions at the end of the legislation. It has to be seen in the context not only of section 160, as has been explained, but also of a number of other provisions of the Ordinance which expressly protect rights and interests of the Crown. As explained at para 19 above, they include section 28(1), which defines the overriding interests that are protected without noting on the Register as including "(c) rights of compulsory acquisition, resumption, entry, search, user or limitation of user conferred by any written law", "(e) any unpaid moneys which, without reference to registration under this Ordinance, are expressly declared by any written law to be a charge upon land", and "(h) electric supply lines, telephone and telegraph lines or poles, pipelines, aqueducts, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law." They also include section 121, set out at para 21 above, which expressly protects the Crown's right to land or interests in land to which it has become entitled "under any written law or by virtue of any decision, judgment, order or procedure under the Land Acquisition Ordinance, 2006, Part 6 of the Immigration Ordinance, 2011 (Landholding by Immigrants), or under any other written law".

50. In the context of these provisions, and bearing in mind that there is a plethora of written laws conferring interests, rights and powers over land on the Crown, including those mentioned at para 29 above, and that other such interests, rights and powers might well be conferred on the Crown in the future, section 159 has the appearance of a sweeping-up provision, designed to ensure that protection is afforded to every kind of interest, right and power given to the Crown in relation to other people's land.

51. How, then, should section 159 be construed? In order to avoid undermining the purpose of the Ordinance, the words "the interests, rights, powers and privileges conferred on the Crown or the Government by any other written law" cannot be read literally. They must be understood as being impliedly subject to the exclusion of interests and rights of the Crown or the Government which fall within the ambit of the registration provisions of the Ordinance. Such interests and rights must be intended to be dealt with in accordance with the Ordinance, and are accordingly protected in the manner and to the extent that the Ordinance provides. In practice, that means that section 159 protects, primarily at least, non-registrable interests, rights and so forth conferred on the Crown by legislation in relation to land held by third parties. So understood, section 159 extends the scope of the protection given elsewhere in the Ordinance to the Crown's statutory rights and powers in respect of land in private ownership, so as to ensure that no lacuna exists. On the other hand, the Crown's ownership of land, whether derived from legislation or otherwise, falls within the scope of registration, as section 9 makes clear, and accordingly does not come within the ambit of the savings provision in section 159. Construed in that way, section 159 is compatible with the system of land registration established by the Ordinance, and does not undermine it in any way.

52. So construed, section 159 does not present any obstacle to the operation of prescription in relation to Crown land in accordance with Part IX of the Ordinance.

7. Conclusion

53. For the foregoing reasons, the Board will humbly advise His Majesty that the appeal should be allowed. The question posed by the Registrar should be answered in the affirmative, and the matter remitted to the Registrar for determination in the light of the Board's judgment.