



Trinity Term

[2016] UKPC 22

Privy Council Appeal No 0085 of 2015

JUDGMENT

Recreational Holdings 1 (Jamaica) Ltd (Appellant) v Lazarus (Respondent) (Jamaica)

From the Court of Appeal of Jamaica

before

Lord Neuberger

Lord Mance

Lord Wilson

Lord Carnwath

Lord Hodge

JUDGMENT GIVEN ON

27 July 2016

Heard on 13 June 2016

Appellant

Peter Knox QC

Dr Lloyd Barnett

Weiden Daley

(Instructed by Simons Muirhead and Burton)

Respondent

Allan S Wood QC

Miguel D A Williams

(Instructed by M A Law (Solicitors) LLP)

THE OPINION OF THE BOARD WAS DRAFTED BY LORD WILSON:

1.

A is the registered proprietor of land in Jamaica. Without A's permission, B takes possession of the land and remains in open and undisturbed possession of it for more than 12 years. Thereafter A sells (or purports to sell) the land to C. C provides valuable consideration and has no notice of B's possession of the land. Who owns the land ... B or C?

2.

Recreational Holdings 1 (Jamaica) Ltd ("the company") appeals against the order of the Court of Appeal of Jamaica dated 30 September 2014. By a judgment delivered by Morrison JA, with which Panton P and Phillips JA agreed, the court, save in one irrelevant respect, dismissed the company's appeal against an order of Kirk Anderson J ("the judge") dated 19 September 2012. By his order, the

judge, by way of summary judgment, held that ownership of certain land which was in dispute between the company and Mr Carl Lazarus, the respondent to the present appeal, was vested in Mr Lazarus.

3.

The disputed land is an area of nine acres in the parish of St Thomas, adjacent to the Yallahs River. It forms part of a parcel of land of more than 300 acres known as Windsor Lodge, located partly in the parish of St Thomas and partly in that of St Andrew.

4.

In 1978 Windsor Lodge was first brought under the operation of the Registration of Titles Act ("the Act") pursuant to the procedure set out in sections 24 to 42. The Registrar of Titles thereupon registered Mr Clinton McGann as the owner of Windsor Lodge.

5.

In 1987 the Registrar registered Mr Lazarus as the owner of about 27 acres of land in the parish of St Thomas. He had purchased the land in 1985. Of those 27 acres, 18 adjoin Windsor Lodge to the east. The remaining nine acres represent - unfortunately - the disputed land itself. The dual registration of the disputed land in favour of different apparent owners was to precipitate in the lower courts a particular line of argument now no longer pursued.

6.

Unsurprisingly Mr Lazarus regarded himself as the owner of the disputed land. The evidence given by him and on his behalf, to which, according to the trial judge, the company had no real answer, was that in 1986 he had erected a wire fence around what he understood to be his property, thus including the disputed land within the fence; that at about the same time he built a wooden shed on it for storage; that in 1987 and 1988 he constructed a small concrete house on it, where he stayed at weekends; and that from 1985 onwards he had been planting trees on it, including coconut, guava, avocado, naseberry, papaya and banana, and harvesting the fruit.

7.

In 1999 it came to the attention of Mr Lazarus and apparently also of Mr McGann that the disputed land was registered as belonging to each of them. In a letter to the Registrar dated 22 October 1999, attorneys instructed by Mr Lazarus claimed that the inclusion of the disputed land within Mr McGann's title to Windsor Lodge had been in error. But it is unclear what action, if any, the Registrar took in response to the letter; and neither of the registered owners took any further step to resolve the contradiction. The evidence of Mr Lazarus was that, following the date of the letter, his open, undisturbed, exclusive and intentional possession of the disputed land, which had begun (so it will be safe to assume) in 1986, continued for a further 12 years, ie until 2011.

8.

In February 2011 Mr McGann sold, or purported to sell, to the company all the land comprised in the title to Windsor Lodge at a price of Jamaican \$33.4m. In April 2011 the company was registered as the new proprietor of Windsor Lodge. In July 2011 it erected a fence around the disputed land; and within weeks proceedings to resolve the dispute about ownership of the land were issued, first by the company and then also by Mr Lazarus. The company relied on its certificate of title to the land. Mr Lazarus relied on his adverse possession of it since 1986, and the legal effect allegedly ascribed to it by the conjunction of sections 3 and 30 of the Limitation of Actions Act ("the Limitation Act"). Section 3 provides:

“No person shall make an entry [on to land], or bring an action ... to recover any land ... but within 12 years next after the time at which the right to make such entry, or to bring such action ..., shall have first accrued ...”

Section 30 provides:

“At the determination of the period limited by [section 3] to any person for making an entry, or bringing any action ..., the right and title of such person to the land ... for the recovery whereof such entry, action ... might have been made or brought within such period, shall be extinguished.”

9.

The judge held, without objection on the part of Mr Lazarus, that, of the two registered titles to the disputed land, the effective registration was that in favour of the company. Section 70 of the Act, to which the Board will return in para 16 below, provides that:

“... the proprietor of ... any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to ... [recorded] incumbrances ... but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except ...”

Mr Lazarus' certificate of title had not been registered prior to registration of the certificate of Mr McGann. So the latter prevailed.

10.

Nevertheless, in contending that it had a real prospect of successfully defending his claim to ownership of the disputed land by adverse possession, the company sought to rely on Mr Lazarus' certificate of title. Its main argument before the judge, which remained its first ground of appeal to the Court of Appeal, was that Mr Lazarus' possession could not be adverse if it arose under cover of a registered title. The company relied, for example, on the observation of Lord Millett in a judgment delivered on behalf of the Board in *Ramnarace v Lutchman*, [2001] 1 WLR 1651, at para 10 that “[p]ossession is not normally adverse if it is enjoyed by a lawful title or with the consent of the true owner”. But the difficulty for the company's argument was, as the judge and the Court of Appeal both held, that Mr Lazarus' registered title, far from being lawful, was entirely ineffective.

11.

Before the Court of Appeal, however, the company added a second ground of appeal; and this is the ground which, although rejected by that court, it pursues before the Board. The ground is that, by reason of the Act, the title to the disputed land registered in 2011 in the name of the company, as the bona fide purchaser of it for value, could not be displaced by any period of adverse possession, such as that of Mr Lazarus, which had begun prior to the registration in 2011.

12.

The company's reliance upon this ground faces an initial difficulty. It is in conflict with the opinion of the Board on an appeal from the Court of Appeal of Jamaica in *Chisholm v Hall* [1959] AC 719.

13.

In the *Chisholm* case the parties owned adjoining properties at 105 and 103 King Street in Kingston. In 1902 a fence was erected to mark the boundary between them. Unfortunately it was erected in the wrong place. It purported to enclose within the property at 105 King Street a strip of land about seven feet wide which was then part of the property at 103 King Street (“the disputed strip”). In 1928 the

then owner of 105 King Street sold it to D. On 12 March 1928, in anticipation of the sale, the vendor brought 105 King Street under the operation of the Act by registering herself as its proprietor and on 16 April 1928 D was registered as its proprietor instead. From 1928 onwards, because of the misalignment of the fence, D was in continuous, open, adverse possession of the disputed strip. The adjoining property, namely 103 King Street, had come under the operation of the Act in 1901; and in 1919, following the death of the registered owner, the Administrator General, as administrator of his estate, was registered as its proprietor instead. In 1941 the Administrator General came to sell 103 King Street but he discovered that he had lost the certificate issued in 1919. So on 16 October 1941 he obtained a replacement certificate and this enabled him to sell the property to P, whose title was registered a fortnight later (30 October 1941). P was a bona fide purchaser of it for value.

14.

In the Chisholm case it was in 1951 that P brought his claim against D to be entitled to the disputed strip. One of D's defences, being the defence which prevailed before the Board, was that he had been in adverse possession of it for 12 years prior to 1951 and so had then become its owner under sections 3 and 30 of the Limitation Act. Clearly he could not establish 12 years from the date in 1941 when the replacement certificate was issued to the Administrator General nor indeed from the date a fortnight later when P became its registered proprietor. The opinion of the Board, however, was that D was entitled to rely, even as against P, on his adverse possession of it ever since 1928.

15.

Now it is true that in the Chisholm case the optimistic submission of P before the Board was that the period of D's adverse possession had ended - and so had needed to start to run again - on 16 October 1941, when the replacement certificate was issued to the Administrator General, rather than that it had ended on 30 October 1941, when P's title was registered. But nothing turned on the gap of a fortnight. The Board was well aware that, in upholding D's appeal, it was holding that a bona fide purchaser for value of land, such as P, took it subject to unregistered rights acquired by adverse possession, which had accrued (or presumably were in the course of accruing) prior to registration of the purchaser's title.

16.

On what basis did the Board in the Chisholm case reach its conclusion? At p 734 it described two sections of the Act as being critical to the resolution of that case, namely the sections now numbered 68 (then 67) and 70 (then 69). Section 68 provides:

"... every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth ... and shall, subject to the subsequent operation of any statute of limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in ... the land therein described is seised or possessed of such estate or interest ..."

The main part of section 70 has largely been set out in para 9 above. It provides that, apart from incumbrances recorded on the certificate of title and subject to cases of fraud and to two further specified exceptions, the registered proprietor holds the land "absolutely free from all other incumbrances whatsoever". But then follows a proviso which reads:

"Provided always that the land which shall be included in any certificate of title ... shall be deemed to be subject to ... any rights acquired over such land since the same was brought under the operation of this Act under any statute of limitations, and to any public rights of way ... and to any unpaid rates... and also to the interests of any tenant of the land for a term not exceeding three years,

notwithstanding the same respectively may not be specially notified as incumbrances in such certificate ...”

17.

It was a central plank of P’s submission to the Board in the Chisholm case (upon which the company constructs a similar argument in the present appeal) that the word “subsequent” in section 68 meant “subsequent to the issue of the certificate”, with the suggested result that, because the period of adverse possession since 1941 had been less than 12 years, the section rendered his certificate conclusive evidence of his ownership of the disputed strip. The Board accepted at p 736 that, had it stood alone, section 68 might have been so construed; but it explained at pp 737-739 that, in the light of the express reference in the proviso to section 70 to rights under any statute of limitations “acquired over such land since the same was brought under the operation of this Act”, the word “subsequent” in section 68 also meant “subsequent to the first registration”. The Board continued at p 739:

“The scheme of section 70 is reasonably plain. The registration of the first proprietor is made to destroy any rights previously acquired against him by limitation, in reliance, no doubt, on the provisions as to the investigation of the title to the property and as to notices and advertisements, which are considered a sufficient protection to anyone claiming any rights of that description. But from and after the first registration the first proprietor and his successors are exposed to the risk of losing the land or any part of it under any relevant statute of limitations to some other person whose rights when acquired rank as if they were registered incumbrances noted in the certificate, and accordingly are not only binding upon the proprietor against whom they are originally acquired but are not displaced by any subsequent transfer or transmission.”

18.

In the Chisholm case the Board proceeded at p 742 to overrule a decision of the Supreme Court of Jamaica in 1931 in *Goodison v Williams*, Clark’s Reports 1917-1932, 349. In the *Goodison* case, the facts of which are indistinguishable from those in the present case, the Supreme Court had, by a majority, upheld the registered title of the bona fide purchaser for value as against the unregistered rights of an adverse possessor which had accrued against the purchaser’s vendor.

19.

Mr Knox QC on behalf of the company seeks to persuade the Board to depart from its decision in the Chisholm case; and the Board knows of few advocates who could have presented the company’s case more attractively. His general contentions are that, in focussing primarily on sections 68 and 70 of the Act, the Board in the Chisholm case surveyed the Act too narrowly; that, in the words of the preamble to the first version of the Act passed in 1888, its purpose was “to give certainty to the Title to Estates in Land, and to facilitate the proof thereof, and also to render dealings with Land more simple and less expensive”; that a central feature of the Torrens system of land registration adopted in the Act was to relieve the prospective bona fide purchaser for value of land from any need to examine the vendor’s title otherwise than by reference to the certificate issued to him; that it had been open to Mr Lazarus from 1998 onwards to have lodged a caveat with the Registrar under section 139 of the Act, whereupon under section 140 Mr McGann could have initiated proceedings before a judge of the Supreme Court to determine the validity of Mr Lazarus’ claim to title by adverse possession; that alternatively Mr Lazarus could then have applied to the Registrar under section 85 of the Act to be registered as the proprietor of the disputed land in fee simple, whereupon under section 86(2) Mr McGann could have initiated analogous proceedings; that, in that he had not pursued the issue raised by his attorneys in their letter to the Registrar dated 22 October 1999, Mr Lazarus was the author of

his own misfortune; and that the construction of the Act favoured by the Board in the Chisholm case placed a bona fide purchaser of land for value in an impossible position in that an adverse possessor of land for 12 years would continue to hold the rights thereby obtained even if thereafter he were to cease to be in actual occupation of the land and so were to be effectively undiscoverable by that purchaser.

20.

But Mr Knox has three particular contentions, each relative to a section of the Act.

21.

First, section 161. On the face of it the section exhaustively identifies six different situations in which entitlement to land may successfully be asserted against its registered proprietor. None of those situations, says the company, applies to an action by an adverse possessor such as Mr Lazarus to assert entitlement to land against a bona fide purchaser of it for value such as itself. As will be seen, the section refers to an action for the “recovery” of land. But, even if (as to which the judge made no finding) Mr Lazarus remained in actual occupation of the disputed land at the time of the issue of his proceedings, the company is right to describe them as an action for “recovery” of it because in this context to “recover” is widely defined to mean to “obtain any land by judgment of the Court”: *Williams v Thomas* [1909] 1 Ch 713 at 730, Buckley LJ.

22.

Section 161 provides:

“No action of ejectment or other action ... for the recovery of any land shall lie ... against the person registered as proprietor thereof under the provisions of this Act except in any of the following cases, that is to say -

(a) the case of a mortgagee as against a mortgagor in default;

(b) the case of an annuitant as against a grantor in default;

(c) the case of a lessor as against a lessee in default;

(d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;

(e) the case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of such other land, or of its boundaries, as against the registered proprietor of such other land not being a transferee thereof bona fide for value;

(f) the case of a registered proprietor with an absolute title claiming under a certificate of title prior in date of registration under the provisions of this Act, in any case in which two or more certificates of title ... may be registered ... in respect of the same land,

and in any other case ... the production of the certificate of title ... shall be held ... to be an absolute bar ... to any such action against the person named in such document as the proprietor ... of the land ... any rule of law or equity to the contrary notwithstanding.”

23.

The company correctly draws a parallel between sections 161 and 70 of the Act. In para 16 above the Board noted that, under the main part of section 70, the indefeasibility of the rights to the land of the

registered proprietor was subject to recorded incumbrances, to cases of fraud and to two other specified exceptions. Section 3 of the Act defines the word "incumbrance" widely enough to include not only mortgages and annuities charged on the land but also leases and so the reference in section 70 to recorded incumbrances is reflected in cases (a), (b) and (c) in section 161. The reference in section 70 to the case of fraud is reflected in case (d). The first of the two further exceptions in section 70 is the case, like the present, of land included in two certificates and the vulnerability of the holder of the later certificate to dispossession; this is reflected in case (f). The second further exception in section 70 is a claim to ownership of land wrongly described in another person's certificate; and this is reflected in case (e).

24.

The submission of the company is that the six cases specified in section 161 of the Act exhaustively describe the claims which can be made to recover land from its registered proprietor. Section 161 is, so it submits, the pivot around which, and therefore necessarily consonant with which, the other provisions of the Act (in particular the proviso to section 70) turn. It cites the Opinion of the Board in *Pottinger v Raffone* [2007] UKPC 22, on appeal from the Court of Appeal of Jamaica, in which Lord Rodger of Earlsferry on its behalf said:

"20. The main aim of this system of registration of title is to ensure that, once a person is registered as proprietor of the land in question, his title is secure and indefeasible except in certain limited circumstances which are identified in the legislation. This is achieved by section 161 ..."

25.

But it is important to note the facts in the *Pottinger* case. Mr Pottinger had indeed been an adverse possessor of land for 12 years but he had then successfully applied under section 85 of the Act to be registered as its proprietor. Ms Raffone, who had entered into a contract for the purchase of the land from the previous registered proprietor, challenged Mr Pottinger's entitlement to the land. She contended - in the event unsuccessfully - that he had obtained his registration by fraud. So her case fell squarely within section 161(d). The Board was not required to consider where, if at all, the claim of an unregistered adverse possessor against the registered proprietor fits into section 161 and so it made no mention of the proviso to section 70.

26.

The company argues that the claim of an unregistered adverse possessor fits into section 161(e) of the Act. Its argument is that when, in 1998, Mr Lazarus achieved 12 years of adverse possession of the land, there arose in Mr McGann's certificate of title a "misdescription": for his title to the land had been extinguished under section 30 of the Limitation Act and yet his certificate continued to include it. Thus (so its argument continues) section 161(e) would have given Mr Lazarus from 1998 onwards the ability to assert his rights against Mr McGann or, for that matter, against a transferee of Mr McGann who had not given value. But (so its argument concludes) section 161(e) is explicit: no such claim lies against "a transferee thereof bona fide for value" ... such as itself.

27.

In its Opinion in the *Chisholm* case the Board did not mention the section now numbered 161. It follows that it expressed no view on the argument now constructed upon section 161(e). But in the view of the present panel the argument is too far-fetched: an accurate description does not become a "misdescription" as the years pass, as rights fall and as others arise. Misdescription involves error at the time of description. If the analogous reference in the main part of section 70 to the inclusion of land in a certificate by "wrong description" had been apt to describe the basis of an adverse

possessor's claim against a registered proprietor, Parliament would have had no need to cater for his claim in the proviso.

28.

The fact is that, contrary to appearances, section 161 does not provide exhaustively for all the claims for the recovery of land which can be made against its registered proprietor. It provides for all the claims identified in the main part of section 70 but not for any of the claims identified in the proviso (set out, so far as relevant, in para 16 above). Take (as Lord Neuberger suggested in the course of the argument) the tenant for a term of three years or less. If wrongly dispossessed by the registered proprietor, the proviso entitles him to recover possession. Yet he does not fall within any of the six cases specified in section 161.

29.

The Real Property Act in force in Trinidad and Tobago has many similarities with the Act. In particular section 143 of the Real Property Act, although compressing the six cases into four, is, for all relevant purposes, identical to section 161 of the Act; and, in particular, section 143(c) specifies the case of misdescription in terms effectively identical to those of section 161(e). In *Republic Bank Ltd v Seepersad*, S268 of 2014, the Court of Appeal of Trinidad and Tobago, by judgments delivered as recently as 27 April 2015, held that, were the respondent able to establish his claim of adverse possession of land since 1965, his as yet unregistered rights would prevail over the registered rights of bona fide purchasers for value of the land in 2011 and over those of their mortgagee. In giving the only substantive judgment Mendonça JA observed at paras 45 and 46 that none of the four cases identified in section 143 of the Real Property Act included the claim of an adverse possessor and that it was wrong to read section 143 in isolation from the other provisions of the Act. The Board respectfully agrees.

30.

Second, section 71. This provides:

"Except in the case of fraud, no person ... taking ... a transfer ... from the proprietor of any registered land ... shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding ..."

The company argues that, at the time of its purchase of the land in 2011, Mr McGann, having in 1998 suffered the extinction of his right and title to it under section 30 of the Limitation Act, nevertheless remained its registered proprietor and so must be regarded as a bare trustee holding it from then onwards on trust for Mr Lazarus as its beneficial owner; and that the effect of section 71 is that, even if, at the time of its purchase, it had notice of the rights of Mr Lazarus under the trust (which it did not), the company would not have been affected by them.

31.

It would be extraordinary if the effect of a proviso to section 70 of the Act which expressly preserved unregistered rights under any statute of limitations was to be negated by reference to a trust in the section which immediately follows it. But it is clear that in Jamaica the relationship of Mr McGann and Mr Lazarus after 1998 was not one of legal owner and equitable owner. In *In re Atkinson and Horsell's Contract* [1912] 2 Ch 1 Cozens-Hardy MR described at p 9 the effect of the statutory provision in England equivalent to section 30 of the Limitation Act as being that "the person who has been in possession for more than the statutory period [gets] an absolute legal estate in the fee". Indeed the fact that the land has been brought under the operation of the Act makes no difference. In an

illuminating article entitled “The Land Registration System and Possessory Titles - A Jamaican Perspective”, (1998) WILJ 72, Dr Barnett explains:

“13. On the effluxion of the statutory periods, the Limitation Act expressly extinguishes the title of the owner who has been out of possession and implicitly confers a good and legal title on the adverse possessor. Since he can no longer be ejected by the former owner whether he was registered or not or by any third party he acquires a right in rem.”

Under [section 75\(1\) of the Land Registration Act 1925](#) which was introduced in England and Wales (and is now repealed), the registered proprietor was indeed to be deemed to hold the land in trust for the adverse possessor. But this new concept was “wholly inconsistent with the conceptions of the Limitation Acts as previously understood” (Fairweather v St Marylebone Property Co Ltd [1963] AC 510, 542, Lord Radcliffe). Nothing equivalent to [section 75\(1\)](#) has ever been introduced in Jamaica.

32.

Third, section 163. This provides:

“Nothing in this Act contained shall be so interpreted as to leave subject to an action for the recovery of the land ... any purchaser bona fide for valuable consideration of land under the operation of this Act, on the ground that the proprietor through ... whom he claims may have been registered as proprietor through fraud or error...and this whether such fraud or error shall consist in wrong description of the boundaries or of the parcels of any land, or otherwise howsoever.”

The company argues that loyalty to the purpose behind the Act, namely to give nearly paramount effect to a registration, demands that a broad construction be given to section 163; that the words “or otherwise howsoever” show that there is no limit to the type of error which it addresses; that indeed there came a time, namely in 1998, when Mr McGann became registered as proprietor through error; and that therefore the section precludes Mr Lazarus from recovering the land from the company, as a purchaser bona fide for valuable consideration, on the grounds of his adverse possession and, in consequence, of Mr McGann’s erroneous registration.

33.

The Board regards it as impossible to accept that Mr McGann was registered as proprietor of the land through error. The company’s argument about the meaning of “error” in section 163 fails in effect for the same reasons as have precipitated the failure of its argument about the meaning of “misdescription” in section 161(e); indeed it is noteworthy that the first example of error given in section 163 is “wrong description”. The Board is not prepared to shoe-horn the facts of the present case into section 163 when the result would be to negative the clear words of the proviso to section 70.

34.

So the Board rejects each of the company’s contentions. It concludes as follows:

(a)

the Board’s Opinion in the Chisholm case was correct;

(b)

the proviso to section 70 of the Act explicitly subordinates the title of the registered proprietor to such unregistered rights under the Limitation Act as have begun to accrue since the first registration under the Act; and no exception is made, as it is elsewhere in the Act, for the registered proprietor who can claim to have been a bona fide purchaser for value;

(c)

section 68 of the Act does not (to borrow the word from Mr Knox) trump the proviso to section 70 because, as was held in the Chisholm case, the word “subsequent” in section 68 means “subsequent to the first registration”, with the result that section 68 is complementary to the proviso;

(d)

notwithstanding the near paramountcy under it of the registered title and the often favoured status under it of the bona fide purchaser for value, the Act does nothing to disturb this obvious conclusion: that, if the vendor’s title has been “extinguished” under section 30 of the Limitation Act, there remains no title for the vendor to pass...and none for his purchaser to receive; and

(e)

the decision of the Court of Appeal, explained in a judgment of Morrison JA to the clarity of which the Board pays respectful tribute, was correct.

35.

In passing the Act in 1888 Parliament was deciding how best to allocate risk in circumstances where an innocent purchaser buys land subject to unregistered rights of adverse possession. It decided that the risk of failing to secure title should be allocated not to the adverse possessor, but instead to the innocent purchaser who should be confined to his right to damages against his vendor for breach of contract. In the article which the Board has already praised at para 31 above, Dr Barnett writes:

“4. From a practical point of view, the major qualification of the principle of indefeasibility [of the registered title] is the possessory title. This is especially so, because of the number of landowners who have migrated, the shortages and high cost of good agricultural or building land, the widespread squatting on lands which prevails throughout Jamaica, and the highly developed techniques of capturing land. Section 70 contains the relevant statutory provision.”

36.

The Board will therefore humbly advise Her Majesty that this appeal should be dismissed and that, subject to any submissions which it may file within 14 days of the date of the promulgation of this Opinion, the company should pay the costs of Mr Lazarus in relation to it.