

EASTERN CARIBBEAN SUPREME COURT  
ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

ANUHCVP2009/0015

BETWEEN:

AUSTIN MARTIN, Executor of the Estate  
of MARY EDITH DOREEN GRASON, deceased  
suing herein by his Attorney WINSTON DERRICK

Appellant

and

THE ATTORNEY GENERAL

Respondent

Before:

The Hon. Dame Janice M. Pereira, DBE  
The Hon. Mr. Mario Michel  
The Hon. Mde. Gertel Thom

Chief Justice  
Justice of Appeal  
Justice of Appeal [Ag.]

Appearances:

Mr. Dane Hamilton, QC for the Appellant  
Mr. Justin Simon, QC with him Ms. Rose Ann Kim for the Respondent

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2014: July 7<sup>th</sup>  
Reasons for Decision

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*Civil appeal – Lands of Antigua and Barbuda Sugar Factory Limited and the Antigua and Barbuda Syndicate Estates Limited (Vesting) Act – Land Adjudication Act – Registered Land Act*

The appellant is the executor of the Estate of Mary Edith Doreen Grason, deceased. Ms. Grason, by virtue of Mr. Francis John Goodwin's will, was the beneficiary of his estate which consisted of various plantations or estates referred to collectively as the Four Estates. Prior to Mr. Goodwin's death in 1966, he sold at least three of the four estates to Antigua Syndicate Estates Limited ("Antigua Estates") with Antigua Estates mortgaging simultaneously, the Four Estates to Mr. Goodwin to secure the payment of the purchase price. Both transactions are dated 6<sup>th</sup> September 1957. The terms of the mortgage required that the remaining balance owed for the Four Estates be paid in instalments until the total balance was paid off in full. At the time of Mr. Goodwin's death all instalments under the first tranche of the purchase price had not been met.

Under an agreement, dated 7<sup>th</sup> April 1967, between Antigua Estates and Antigua Sugar Factory Limited, acting through a Receiver and the Government of Antigua and Barbuda, the Four Estates were sold to the Government. At the time of that agreement, the mortgagor, Antigua Estates, was in arrears of some 7 instalment payments due to the mortgagee coupled with the second tranche of the purchase price which was then due and payable. There was no evidence that the mortgagee, Mr. Goodwin, whether by his heirs, personal representatives or successors, took any step by way of making demand, bringing suit or otherwise foreclosing or retaking possession of the mortgaged estates. The Four Estates were later vested in the Crown by virtue of the **Lands of Antigua and Barbuda Sugar Factory Limited and the Antigua and Barbuda Syndicate Estates Limited (Vesting) Act** ("Vesting Act").

Ms. Grason, in her Will made in 1987, made no mention whatsoever of any property or to having any interest in monies secured by property in Antigua and Barbuda. Probate of her Will was granted in the UK in 1996 which was later resealed in Antigua and Barbuda in 2006.

The appellant, suing in his capacity as executor of Ms. Grason's Will through his attorney Winston Derrick, challenged the Government's ownership of the Four Estates. The learned trial judge ruled against the appellant and held that in the absence of documentary or other sufficient proof to the contrary the appellant had failed to prove its non-receipt of the balance of the debt arising under the mortgage. Further, there was no action in relation to the mortgage or on the outstanding balance (if any) on the mortgage until after some 35 years of undisturbed and very public possession by the Crown.

**Held:** dismissing the appeal and awarding costs to the respondent fixed at two-thirds of the prescribed costs awarded below, that:

1. The learned trial judge was correct to hold that in the absence of documentary or other sufficient proof to the contrary, the appellant failed to prove its non-receipt of the balance of the debt arising from the subject mortgage and flowing from that failed to prove the extinction of the mortgagor's equitable right of redemption and therefore the mortgagee's right to the fee simple along with all the benefits that flow from that estate. There is no evidence put forward on this appeal which justifiably challenges these findings.
2. The Crown, by a first registration, was recorded as registered proprietor after claiming the lands pursuant to the adjudication process under the **Land Adjudication Act**. There was no petition, objection or appeal in respect of the Crown's claim. The registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel subject to incumbrances shown on the register. The Crown has been recorded on the land register as proprietor since February 1978 with no incumbrance relating to the mortgage noted thereon. As such the Crown must be deemed, as a matter of law, to be holding the lands free of any such incumbrance as from the time of its first registration in 1978.

Section 23 of the **Registered Land Act**, Cap. 374, Laws of Antigua and Barbuda.

3. Rectification may be permitted under section 140 of the **Registered Land Act** where it is shown that registration of a proprietor, including a first registration was due to mistake or fraud. The facts and circumstances showing either fraud or mistake must be pleaded and proved.

## JUDGMENT

- [1] **PEREIRA, CJ:** On 11<sup>th</sup> March 2014, the Court heard an appeal from the decision of the trial judge (Harris J), contained in a written judgment delivered on 24<sup>th</sup> April 2009 in which he dismissed the appellant's claim in its entirety. He also ordered the appellant (the claimant below) to pay the prescribed costs to the respondent based on a value of the claim as \$50,000.00 pursuant to rule 65.5(2)(b) of the **Civil Procedure Rules 2000** ("CPR"). At the conclusion of the hearing the Court dismissed the appeal with prescribed costs to the respondent fixed at two thirds of the prescribed costs awarded below and promised to give written reasons thereafter. We now do so.

### **Background and Chronology**

- [2] (1) The appellant is the executor of the Estate of one Mary Edith Doreen Grason, deceased, who died on 16<sup>th</sup> September 1996. Ms. Grason resided in the United Kingdom up to the time of her death. She was the named beneficiary of the estate of one Francis John Goodwin ("Francis John"), by virtue of his Will made on 27<sup>th</sup> November 1964.
- (2) Prior to Francis John's death, he appears to have been possessed of various plantations or estates of land in Antigua described as:
- (i) "Gobles" said to contain approximately 227 acres;
  - (ii) "Gaynors" said to contain approximately 161 acres;
  - (iii) "The Grange" said to contain approximately 36 acres; and

(iv) It is asserted, a plantation or estate called "Elms Creek" containing approximately, 161 acres;

All together referred to as the Four Estates.

- (3) Francis John, prior to his death, by Indenture No. 278/1957 made on 6<sup>th</sup> September 1957 ("the Indenture of Sale"), agreed to sell and convey to Antigua Syndicate Estates Limited ("Antigua Estates") at least, the plantations or estates of Gobles, Gaynors and the Grange for a total purchase price of \$43,200.00. The sum of \$720.00 was paid on account of the purchase price as acknowledged in the Indenture of Sale, leaving a balance of \$42,480.00.
- (4) The balance of \$42,480.00 was, in turn, secured by a mortgage given by Antigua Estates in favour of Francis John. The Indenture of Mortgage ("the Mortgage") was entered into on even date as the Indenture of Sale and recorded as No. 279/1957. The property mortgaged by Antigua Estates, as set out in the schedule to the Mortgage, listed not only the three estates described and conveyed in the Indenture of Sale, but also listed, as no. 3 in the schedule, the estate called "Elms Creek", as comprising, together with the other three estates above mentioned, the properties of Antigua Estates being mortgaged to Francis John, to secure the balance of the purchase price.
- (5) The Indenture of Mortgage provided for the payment of the \$42,480.00 as follows:
  - (a) \$28,080 by quarterly instalments of \$720.00 payable on 1<sup>st</sup> November, 1<sup>st</sup> February, 1<sup>st</sup> May, and 1<sup>st</sup> August in each year, the first such payment to be made on 1<sup>st</sup> November 1957 and the last to be made on 1<sup>st</sup> May 1967; and
  - (b) the balance of \$14,400.00 on 1<sup>st</sup> August 1967.

Provided that if on 1<sup>st</sup> August 1967, the mortgagee (Francis John) and/or his wife was still living then the balance would be paid by the said quarterly instalments of \$720.00 throughout the life of the mortgagee or his wife until the total balance of \$42,480.00 was paid off in full. If the full sum was not paid off by the time of death of Francis John or his wife then the balance was to be paid by the mortgagor (Antigua Estates) to the mortgagee's personal representatives within three (3) months after the death of the survivor of Francis John and his wife.

- (6) Clause 4(3) of the Mortgage provided for the mortgagee and his wife to occupy the dwelling house at Gaynor's estate for the remainder of their lives.
- (7) Francis John's wife pre-deceased him having died in August 1960. Francis John then died in July 1966. Accordingly, at the time of his death all instalments under the first tranche of the purchase price will not have been met. Probate of his Will was granted on 8<sup>th</sup> February 1967.
- (8) Ms. Grason, prior to her death in the United Kingdom, had also made a Will in 1987 in which she devised her property situate in the United Kingdom to her children. She made no mention whatsoever of any property or to having any interest in monies secured by property in Antigua. Probate of her Will in the UK was granted in October 1996. That probate was resealed in Antigua and Barbuda in May 2006.

[3] It was suggested at the hearing of the appeal that Elms Creek was the property of Francis John and that since it was not conveyed in the Indenture of Sale, that it had been wrongfully included in the Mortgage. There is no evidence whatsoever which throws any light on the basis of Antigua Estates ownership. However, both Francis John and Antigua Estates executed both Indentures the same day and both duly attested. It can only be concluded that at the time of the execution of the Indentures, that Antigua Estates owned Elms Creek, and thus was in a position to

mortgage it along with the other three estates then sold by Francis John, to Antigua Estates.

### **The sale to the Government of Antigua**

- [4] The next event in relation to the Four Estates, so far as the records show, is another agreement dated 7<sup>th</sup> April 1967, in which Antigua Estates and Antigua Sugar Factory Limited, acting through a Receiver appointed on behalf of the Royal Bank of Canada, sold all their assets and undertaking to the Government of Antigua ("the Government Agreement"). The Government Agreement recorded at clause 11 as follows:

"THE property known as Gaynors Estate is subject to a mortgage to secure the repayment of E.C.. 19,440 with the interest and the Government HEREBY AGREES with Estates that it will take such property subject to the said mortgage and that it will discharge all the obligations that may become due under the said mortgage. If the mortgagee shall not agree to a transfer to the Government of such property subject to the said mortgage, the Government shall discharge the said mortgage at its own costs and expense."

- [5] The parties are ad idem that, based on the sum of EC\$19,440, stated in clause 11 of the Government Agreement, it can only be reasonably inferred that at the time of that agreement, the mortgagor was in arrears of some 7 instalment payments due to the mortgagee coupled with the second tranche of the purchase price which was then due and payable. Accordingly, the mortgagor would have been in default under the terms of the Mortgage.

- [6] It is not known whether Francis John's personal representative agreed or did not agree to the transfer of the property subject to the Mortgage. Indeed there is no evidence which established either that:

- (a) the Mortgage still subsisted - i.e. that the Government took the transfer of the land subject to the Mortgage; or
- (b) that the Mortgage was discharged at Government's costs and expense, (in the event of the mortgagee's failure to agree to the

transfer to Government of the property subject to the Mortgage) as contemplated in clause 11 of the Government Agreement.

There is absolutely no evidence of any steps taken by Francis John's personal representative either to foreclose on the Mortgage or re-take possession of the Estates or any steps taken to enforce the mortgagor's obligations or the mortgagee's rights whether by way of action, legal, physical or otherwise. There is a complete void as it relates to the stance taken (if any) by the mortgagee or the mortgagor to redeem its equity in the Four Estates. In short, there is no evidence of any steps taken by either side.

### The Vesting Act

[7] The next event appears to be the **Lands of Antigua and Barbuda Sugar Factory Limited and the Antigua and Barbuda Syndicate Estates Limited (Vesting Act ("Vesting Act")**<sup>1</sup> passed by the Government of Antigua and Barbuda in December 1969. Interestingly the **Vesting Act** vests in the Crown 'freed and discharged from any mortgage in favour of Royal Bank of Canada' the lands of Antigua Sugar Factory and Antigua Estates specified in the First Schedule to the **Vesting Act**. Nowhere in that First Schedule is there a mention of the Four Estates.

[8] Section 3 of the **Vesting Act** states as follows:

"Nothing in this Act shall annul, derogate, avoid or revoke any of the provisions of the Agreement set out in the Second Schedule to this Act relating to any interests in or encumbrances on the lands **hereby vested** in the Crown held by persons other than the parties to the said Agreement and the Royal Bank of Canada before the commencement of this Act." (Emphasis added).

The agreement comprising the Second Schedule is the Government Agreement which contains clause 11 (set out at paragraph 4 above) which records the incumbrance over Gaynors Estate. In my view, the **Vesting Act** is not free from ambiguity as whereas on the one hand, it fails to list in the First Schedule the Four

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<sup>1</sup> Cap. 240, Laws of Antigua and Barbuda.

Estates as being vested, on the other hand, by virtue of the Government Agreement, the Government of Antigua and Barbuda purchased all the undertaking and assets of the Factory and the Estate.<sup>2</sup> The assets of Estates, based on the Indenture of Sale and the Mortgage, would have comprised the Four Estates. By incorporating the Government Agreement it seems to assume that all the assets of Antigua Estates (and Antigua Sugar Factory) had been vested in the Crown but subject to the incumbrance over Gaynor's Estate as recorded in clause 11 of the Government Agreement. The marginal note to section 3 of the **Vesting Act** reads: "Lands vested subject to agreement. Second Schedule." This stands to reason, as the interests in the Four Estates will have already passed to the Crown under the Government Agreement executed in 1967 - before the **Vesting Act**, which came into effect later in 1969. In according business common sense and purpose to the provisions of the **Vesting Act**, having regard to the factual matrix and the contextual language of the provisions, I interpret them as having treated the Four Estates as having been vested in the Crown but, nonetheless, subject to the Mortgage to which the Four Estates were subject at the time of the purchase by the Government. I am therefore unable to accept the appellant's submission that the **Vesting Act** did not vest any of the Four Estates in the Crown. I am satisfied for the reason which I have given that the Four Estates were treated as having been vested in the Crown but subject to the Mortgage in favour of Francis John.

### **The Lapse of time and the evidence**

[9] Nothing further is heard of the Mortgage, or payment of the sums secured by the Mortgage for a considerable number of years. There is no evidence of satisfaction nor is there evidence of the mortgagee, whether by his heirs, personal representatives or successors, having taken any step by way of making demand, bringing suit or otherwise foreclosing on or retaking possession of the mortgaged estates. The evidential trail as it relates to the Mortgage goes cold on either side. The learned trial judge states at paragraphs 22 and 23 of his judgment as follows:

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<sup>2</sup> See Recital No. 7 and Clauses 1-4 of the Government Agreement.



"22. The Claimant [the appellant] did not take any action in relation to the mortgage or on the outstanding balance (if any) on the mortgage or in relation to any issue raised in this action before this court, until the year 2001, after some 35 years of undisturbed and very public possession by the Crown.

"23. Prior to 2001 the Mortgagee/Claimant had not taken any action to foreclose on the Mortgage, to extinguish the mortgagor's equity of redemption or to otherwise realise his credit interest arising from the mortgage. I draw certain inferences from this omission, to the detriment of the claimant."

The learned trial judge further found at paragraph 33 that "on the evidence the, Claimant is unable to prove that the \$42,440.00, or any part of it remains unpaid."

He later concluded in part at paragraph 34 as follows:

"In light of all the circumstances and the state of the evidence in this matter, I am of the view that in the absence of documentary or other sufficient proof to the contrary, the Claimant has failed to prove its non-receipt of the balance of the debt arising from the subject mortgage and flowing from that; failed to prove the extinction of the mortgagor[']s equitable right of redemption and therefore the mortgagee's right to the fee simple along with all the benefits that flow from that estate."

Nothing has been put forward on this appeal, which justifiably challenges these findings. The state of the evidence has not improved before this Court. He was quite justified in reaching these conclusions.

[10] The learned judge also considered the applicable statutes of limitation<sup>3</sup> in relation to the bringing of actions in respect of mortgages, and noted the applicable limitation period as being a period of 12 years. He concluded (paragraph 40) that "[i]f neither party can now rely on the applicable limitation periods then all the parties' rights in equity are still available to them and the equity of redemption still subsists." He also placed reliance on the law in respect of the 'equity of redemption' which operates on the equitable principle 'once a mortgage, always a mortgage'. In short, equity compelled the mortgagee to treat the property as no more than a security for the money actually owed to him<sup>4</sup>. This principle was quite

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<sup>3</sup> The Real Property Limitation Act, Cap. 367, Laws of Antigua and Barbuda; the Limitation Act 1997, Cap. 456, Laws of Antigua and Barbuda.

<sup>4</sup> See: Megarry & Wade, Law of Real Property (5<sup>th</sup> edn, Sweet & Maxwell 1984) p. 917.

recently reiterated in the Privy Council decision in **Cukurova Finance International Limited et al v Alpha Telecom Turkey Ltd**<sup>5</sup> notwithstanding that the contractual remedy of 'appropriation' given under an English share charge had already been enforced by the lender.

[11] It is to be noted that the **Title by Registration Act**<sup>6</sup> which may be said to be the precursor to the **Land Adjudication Act**<sup>7</sup> and the **Registered Land Act**<sup>8</sup> gave statutory recognition to the equitable principle of treating the mortgagee as having a security interest only in the mortgaged property. Indeed the **Title by Registration Act** provided for the noting of a mortgage upon the certificate of title. That Act, by virtue of section 41, stated as follows:

"So soon as the Registrar of Titles has noted the mortgage upon the certificate of title, the land contained in such certificate shall be held in pledge by the mortgagee, ... for the repayment to him of the principal sum actually advanced and the interest set forth therein."

There is no evidence that there was any certificate of title in respect of the Four Estates in the names of either party. A fortiori, there is no evidence of a notation on any certificate of title in respect of the Mortgage.

### **The Land Adjudication and Registered Land Acts**

[12] This brings me to a consideration of the **Land Adjudication Act** and its companion, the **Registered Land Act**. It may be noted at the onset that the equitable principle of the creation of a security interest over land for monies advanced by a lender, was carried over to the **Registered Land Act**. The concept of a conveyance of legal title in land by a deed of mortgage became obsolete and has been replaced by the concept of a security interest called a 'charge'.<sup>9</sup> Section 64(4) of the **Registered Land Act** expressly states:

"A charge shall not operate as a transfer but shall have effect as a security only; and a chargee may not require a chargor to give him a power of attorney in addition to a charge for the sole purpose of security."

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<sup>5</sup> [2013] UKPC 2.

<sup>6</sup> Cap. 429, Laws of Antigua and Barbuda, (first enacted in 1887 and last amended in 1989).

<sup>7</sup> Cap. 234, Laws of Antigua and Barbuda.

<sup>8</sup> Cap. 374, Laws of Antigua and Barbuda.

<sup>9</sup> See section 64 of the Registered Land Act.

- [13] The **Land Adjudication Act** came into force in September 1975 and the **Registered Land Act** in December 1975. The **Land Adjudication Act** was passed for the purpose of adjudicating upon all lands in the State of Antigua and Barbuda for the further purpose of bringing all lands in the State under the Registered Land scheme. It was a highly publicised process. The **Land Adjudication Act** followed some five (5) years after the **Vesting Act**, and some 18 years after the creation of the Mortgage.

#### **The evidence on Adjudication and Registration**

- [14] The documentary evidence produced shows an Adjudication Record, referring to a claim made by the Crown carrying number 322884A 2 and noting the section as St. Phillips South with an undetermined area. It is common ground that the lands covered in this claim represent the lands which comprise the Four Estates. Under item 12 of the Adjudication Record which provides for "Particulars of any right affecting the parcel which is registerable as a lease, mortgage, charge..." to be noted is blank. The Adjudication Record states that the form was completed on 16<sup>th</sup> March 1977 and is signed by the Recording Officer. The land register in respect of the said lands claimed was opened on 20<sup>th</sup> February 1978 and gives that date as the first registration of the Crown as registered proprietor of the said lands as stated in the Adjudication Record, with an undetermined acreage. No incumbrance relating to the Mortgage is noted or recorded on the land register.
- [15] There is no evidence that any steps were taken by the mortgagee, whether by his heirs, personal representatives or successors in title to claim the lands or the estates as the proprietor or as a mortgagee or chargee. There is no evidence, oral or documentary, suggesting that the mortgagee or his representatives took any steps of any kind to claim or record any interest, whether legal or equitable or by way of security, in any of the lands comprising the Four Estates. Whether the mortgagee's interest subsisted up to the time of the claim made by the Crown to the Adjudication Officer leading to the Adjudication Record in March 1977 and entry on the Land Register of the Crown with unencumbered title in February

1978, is anyone's best guess. What is clear from the documentary evidence is that the Adjudication Record in respect of the lands became final as provided for under section 23 of the **Land Adjudication Act**. There is no evidence that the appellant or indeed anyone challenged or sought to challenge the Crown's title or right to the lands comprising the Four Estates whether by way of petition<sup>10</sup>, cross claim or action, or by way of appeal<sup>11</sup> or in any manner whatsoever. There is no evidence that the appellant or anyone through whom he claims took any steps to have noted on the land register any particulars of the Mortgage which, under the **Registered Land Act**, would have operated as a charge following the Land Adjudication process and the first registration of the Crown as proprietor. There is no evidence to suggest that the Adjudication Officer failed in his duties to safeguard the rights of absent persons as provided for in section 9 of the **Land Adjudication Act**. Indeed, there is no mention in Ms. Grason's Will (through whom the appellant claims) and who was the beneficiary of Francis John's estate, of any land or interest in land in the State of Antigua and Barbuda held by Francis John or his successor Ms. Grason.

- [16] It is only after decades of silence and complete inaction that the appellant sought to claim: firstly, by way of an application for prescription in 2001 which was rejected by the Registrar of Lands; secondly, by later bringing a claim in the High Court in 2004 for rectification of the land register pursuant to section 121 (sic) of the **Registered Land Act**<sup>12</sup>, which for all practical purposes failed. Lastly, in 2006, he launched proceedings in the court below, from which this appeal arises, by which he sought declaratory relief and consequential orders premised on the subsistence of the Mortgage, which he asserts was never redeemed or the payment obligations satisfied. This is after the passage of some 35 or more years after the last mention of the Mortgage by virtue of the incorporation of the Government Agreement into the **Vesting Act**.

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<sup>10</sup> See section 20 of the Land Adjudication Act.

<sup>11</sup> See section 24 of the Land Adjudication Act.

<sup>12</sup> Which claim was not served on the Registrar of Lands which thus led to the order of Thomas J in 2006, setting aside for irregularity, the order of the court made on 30<sup>th</sup> July 2004 - see Record of Appeal, Volume 4, pp. 58-62.

[17] The Crown has been recorded on the land register as proprietor since February 1978 with no incumbrance relating to the Mortgage noted thereon and it is not in dispute that the Government has dealt with the lands as an absolute proprietor thereof, and has subdivided and disposed of many portions of the land over time. Section 23 of the **Registered Land Act** makes clear the effect of registration with absolute title. It states:

“Subject to the provisions of section 27<sup>13</sup> the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject–

(a) to the leases, **charges and other incumbrances** ... if any, **shown in** the register; and

(b) ... ” (Emphasis added).

I have already stated above that no notations in respect of the Mortgage was ever placed on or ‘shown in’ the register. As such the Crown must be deemed, as a matter of law, to be holding the lands free of any such incumbrance as from the time of its first registration in 1978. The appellant, not having taken any steps during the Land Adjudication process to secure or note the security interest on the Adjudication Record or on the land register, can only be considered as having lost that interest<sup>14</sup> having regard to section 23 of the **Registered Land Act** coupled with the lapse of some 28 years after the Adjudication process became final.

[18] Quite apart from this, the Court frowns on stale claims. The whole scheme of the Land Adjudication exercise, with its built in checks and balances by way of notices, objections, petitions and appeals, was to provide for an orderly and final process leading to certainty in land ownership and land disputes. The entire process seeks to prevent stale claims, save where it may be said that registration, including a first registration was obtained by fraud or mistake, in which case rectification of the register may be ordered. The appellant on this appeal sought to raise a challenge and to seek rectification of the land register under the **Registered Land Act** based

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<sup>13</sup> Section 27 deals with transfers “without valuable consideration”.

<sup>14</sup> See John A. Gumbs v Attorney General of Anguilla [2009] UKPC 27.

on mistake. Suffice it say that such a basis was never pleaded and was not particularised in any way. However, the learned trial judge addressed fraud and mistake in considering section 140 of the **Registered Land Act** which allows for rectification of the land register on the ground of fraud or mistake. At paragraph 47 he stated thus:

“Under the Act, ... section 140, an aggrieved person may apply to have the register rectified to reflect another registered proprietor on the ground of inter alia, fraud or mistake. No fraud has been disclosed and proved by the Claimant. The law with respect to “mistake” under the RLA concerns the first registration. The first registration was clearly not a mistake in the sense that the Adjudication record adjudged the Crown as proprietor and that status was accurately carried over to the register under the R.L.A. The claimant has not contended otherwise. No mistakes there.”

While it is not correct to say that section 140 deals only with mistake made on a first registration, it is nonetheless the position on the facts of the instant case that the Crown was registered on the first registration under the **Registered Land Act**. The learned trial judge was, in my view, right in concluding as he did that the first registration was clearly not a mistake in the sense described.

[19] The learned judge returned to the question of mistake and fraud at paragraph 51. He stated in part as follows:

“As explained in the Privy Council case **Louisien v Jacob** referred to above, there is no evidence of the adjudication officer; (i) acting beyond his statutory authority, or (ii) otherwise conducting himself in a manner inconsistent with the [A]djudication Act. The claimant simply did not act in accordance with the Land Adjudication Act to establish its interest, if it had one. I see neither the mistake nor fraud in the adjudication process or the subsequent registration process that is necessary to upset the Crown's title.”

I find no fault with this conclusion. In any event, the cases dealing with rectification of the register for mistake are quite clear.<sup>15</sup> In this case it cannot be said that there was any mistake in the recording of the information on the land

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<sup>15</sup> See *Sylvina Louisien v Joachim Rodney Jacob* [2009] UKPC 3; *Skelton and Others v Skelton* (1986) 37 WIR 177.

register as carried over from the Adjudication Record. No sustainable allegation of fraud was made, and, quite properly, no argument on this basis put forward.

**Conclusion**

[20] For the reasons given above, we concluded that the learned trial judge was correct to dismiss the claim and accordingly dismissed the appeal.

**Dame Janice M. Pereira, DBE**  
Chief Justice

I concur.

**Mario Michel**  
Justice of Appeal

I concur.

**Gertel Thom**  
Justice of appeal [Ag.]