*Privy Council Appeal No 19 of 2005*

**Stanford International Bank Ltd** *Appellant*

*v.*

**Austin Lapps** *Respondent*

FROM

**THE COURT OF APPEAL OF**
**ANTIGUA AND BARBUDA**

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JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL

Delivered the 20th November 2006

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*Present at the hearing:-*

Lord Nicholls of Birkenhead
Lord Hoffmann
Lord Scott of Foscote
Lord Walker of Gestingthorpe
Baroness Hale of Richmond

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*[Delivered by **Lord Scott of Foscote**]*

Introduction

1. The long drawn-out litigation that has led to this appeal to the Board has been caused by a dispute over a small piece of land, 0.6 of an acre or thereabouts, in the vicinity of the VC Bird International Airport in Antigua. It is impossible to make sense of the issues that the Board must resolve on this appeal without first describing the history and events that led to the commencement of the litigation.

2. As long ago as 1966 the respondent, Mr Austin Lapps, acquired from the Government of Antigua and Barbuda Crown land close to the

Airport (then known as Coolidge International Airport). He used the land for carrying on a car rental business and in about 1970 began using the disputed piece of land, also Crown land, for the purpose of parking some of the vehicles he used in his business. Mr Lapps said in the witness statement which constituted his evidence at the trial that permission to do so had been given to him by the Government. There was, however, nothing in writing evidencing the permission and no formal cabinet decision authorising Mr Lapps' use of the land was ever made. Nonetheless Mr Lapps undoubtedly went into occupation of the land in or about 1970 and remained in undisturbed occupation until the events in 1995 and 1996 to which their Lordships will refer. Mr Lapps has never suggested that his occupation of this land constituted adverse possession. He believed throughout that he was occupying with the permission of the Government.

3. In the Cadastral Survey of 1976 the 0.6 of an acre was surveyed, along with other land in the vicinity, and became part of Parcel 384, Block 41 2094A, in the Barnes Hill and Coolidge Registration Section. Parcel 384 comprised 3.06 acres. Mr Lapps says that at around this time he approached Mr V.C. Bird, the then Prime Minister of Antigua and Barbuda, asked to be allowed to purchase or lease the 0.6 of an acre but was told the Government had not yet decided what to do with the land. He, Mr Lapps, says that in 1984 he repeated his request to Mr Bird and was assured that steps would be taken to regularise his occupation of the land.

4. Shortly thereafter, in 1985, Mr Lapps commenced the construction of an hotel on the land on which he had been conducting his car rental business. The hotel, the Lapps Airport Hotel, opened in 1987 with 12 rooms. It has since expanded to 40 rooms. No part of the hotel is on the 0.6 of an acre. After the opening of the hotel Mr Lapps continued his attempts to persuade the Government to sell or lease him the 0.6 of an acre. He says that in 1991 the then Minister of Agriculture told him that he would be getting a 99 year lease. His occupation of the land continued. He used it mainly for the purpose of storing construction materials.

5. In 1995 the appellant bank, Stanford International Bank Ltd, enters the story. Mr Lapps says that in the early part of 1995 he was paid a number of visits by servants or agents of the bank who made him offers to purchase his hotel, all of which offers he refused. But, he says, in October 1995, on returning to Antigua from abroad, he found that the bank had fenced in part of the 0.6 of an acre and planted a number of shrubs and other plants on the fenced-in area. In his witness statement Mr Lapps said that he made immediate complaints to the then Prime

Minister, Mr Lester B. Bird, and continued in his witness statement as follows:

> "He assured me that Stanford was temporarily propagating some plants with which he hoped to beautify the airport, that the land was not for sale and Mr Stanford had no authority to interfere with the land I had been occupying. I thereafter prevented Mr Stanford from any further use of the said land."

Mr Lapps had given testimony to the same effect in an affidavit he swore on 17 September 1996 in interlocutory proceedings. After referring to the Prime Minister's assurances Mr Lapps continued:

> "I proceeded to prevent Mr Stanford from any further use of the lands, pointing out to him that he already had sufficient land on which to propagate his plants."

6. On 6 December 1995 a decision was made by the Cabinet of Antigua and Barbuda to grant the bank a 99 years lease of Parcel 384 (which included the 0.6 of an acre). The lease was formally executed and dated 19 July 1996. It granted the bank a lease of Parcel 384 for a term of 99 years from 25 August 1995 at a premium (described as a "total rent") of $198,000 payable prior to execution.

7. It is not in dispute that the lease granted to the bank was validly and effectively granted. The procedure to be followed for the leasing or otherwise disposing of Crown lands in Antigua and Barbuda was deposed to by Mr Lionel Stevens in paragraph 7 of his affidavit of 14 June 2002. Mr Stevens was at the date of the affidavit, and had been for the previous 25 years, Secretary to the Cabinet of Antigua and Barbuda. In paragraph 8 of his affidavit he added this:

> "Based on my research and my own personal knowledge, there is [not] and never was any agreement between the Government of Antigua and Barbuda and Mr Austin Lapps wherein the Government agreed to lease or otherwise dispose of lands at Coolidge now described as Registration Section: Barnes Hill & Coolidge, Block: 41 2094A, Parcel: 384 or any part thereof [to] Mr Lapps."

He was not cross-examined.

8. Also on 19 July 1996 the bank, a non-citizen for the purposes of the Non–Citizens Land Holding Regulation Act, was granted a licence to hold as lessee the land, Parcel 384, demised by the lease.

9. By a letter to Mr Lapps dated 25 July 1996 the bank's attorneys, Cort & Associates, informed him of the bank's lease of Parcel 384, referred to his use of part of the leased property (i.e. the 0.6 of an acre) for the purpose of storing construction materials, and continued:

> "In the premise, I am to advise that my Client intends to fully utilize the entire leased property and, in the circumstance, hereby request that you remove the said construction materials and debris therefrom by 9th August, 1996. Please be guided accordingly."

10. The Registered Land Act of Antigua and Barbuda requires a lessee to be registered in the Land Registry as the proprietor of the lease. Until registration has taken place a legal estate in the land comprised in the lease does not vest in the lessee (see section 25). On 20 August 1996 the bank was duly registered as lessee of Parcel 384.

11. Mr Lapps failed either to respond to the letter to him of 25 July 1996 or to remove his construction materials from the 0.6 of an acre. So the manager of the bank, Mr Edward Smith, wrote him a letter dated 26 August 1996 asking for the removal of his (Mr Lapps') materials and debris within twenty four hours. "Otherwise", said the letter, "we will ensure that this is done ourselves". Mr Lapps took no action in response to this letter either and, by a letter of 30 August, Mr Smith wrote again. In this letter Mr Smith, after referring to the danger of leaving materials lying around loose in the hurricane season, said that the bank was in the process of moving Mr Lapps' materials, under the supervision of the police, to a building a few hundred yards away to which Mr Lapps would be given access.

12. The letter of 30 August 1996 was presented personally to Mr Lapps on that date, but Mr Lapps refused to accept it. So it was mailed to Mr Lapps' business address. This had the consequence that the process of attempting to move Mr Lapps' materials from the 0.6 of an acre to the nearby building commenced without Mr Lapps having read the letter. So the bank's actions on 30 August may have come as a surprise to him. But that was not the bank's fault. In paragraph 8 of his affidavit sworn on 11 September 1996 Mr Edward Smith said this:

> "While in the process of commencing the operation in respect of moving the said materials, Mr Lapps vehemently objected and embarked upon a process of extremely threatening behaviour upon which the plan to remove the said materials and debris was aborted."

13. The events of 30 August 1996 must have induced Mr Lapps to consult attorneys for in the afternoon of that day an attorney, Mr Collins, acting for Mr Lapps, asked Mr Smith to supply evidence of the bank's leasehold interest in Parcel 384. On 3 September Mr Collins met the bank's attorneys, was shown the relevant documentation evidencing the lease and requested further time, until 6 September, for Mr Lapps to vacate the 0.6 of an acre. The bank renewed its offer to remove and store the construction materials. However Mr Lapps did not remove his construction materials from the site and refused to allow the bank to do so. So the bank commenced proceedings.

The proceedings

14. The bank's writ and statement of claim, issued on 11 September 1996, was short and simple. It pleaded the bank's lease and Mr Lapps' refusal to vacate the 0.6 of an acre and claimed possession of the land, an order for an injunction restraining any further use of the land by Mr Lapps and damages for trespass. On the same day an *ex parte* application for an injunction, supported by Mr Smith's affidavit of 11 September 1996, was made. Benjamin J made an *ex parte* order requiring Mr Lapps to remove his construction materials by Tuesday 17 September 1996.

15. By a letter of 17 September 1996 from his attorneys, Bird & Bird, Mr Lapps requested a two week extension of time to comply with Benjamin J's order and on the same day swore an affidavit. The affidavit contained a number of allegations about a Mr Allan Stanford, who their Lordships assume to be the controlling figure in the bank, which have no relevance to any issue regarding the 0.6 of an acre but were plainly included in the affidavit in order to cast the bank in an unfavourable light. More relevantly, the affidavit set out the circumstances in which Mr Lapps had entered into occupation of the 0.6 of an acre and described the representations about the land that he said he had received from various government ministers. He asserted (in paragraph 8) that the letter of 25 July 1996 had been written in misapprehension of his "legal occupation of the said 0.6 acre", denied he had received the further letters of 26 August or 30 August but admitted paragraph 8 of Mr Smith's affidavit (to which reference has been made in paragraph 12 above).

16. Mr Lapps' affidavit of 17 September 1996 contained no hint of an arguable legal answer to the bank's possession claim but an affidavit of 23 September 1996, sworn by Mr Lapps in support of an application to join the Crown as a third party to the action, did a little better. In this affidavit Mr Lapps asserted that the 0.6 of an acre was land that he had "occupied for over 25 years with the consent and encouragement of the Government, and for the past 4 years under an oral lease". And in a statutory declaration two days later Mr Lapps again asserted that he had an agreement for a lease from the Government and said that he was "currently awaiting formal execution of the said lease by the Government."

17. On 25 September 1996 an order was made extending to 15 October 1996 the time for compliance by Mr Lapps with the *ex parte* order made by Benjamin J on 12 September. But on 3 October Mr Lapps applied for the order to be discharged on the ground of the non-disclosure by the bank of its non-citizen status and its alleged failure to obtain a Non-Citizens Landholding Licence as required by the Non-Citizens Landholding Regulations. An affidavit sworn by Mr Edward Smith on 16 October 1996 exhibited a copy of the Non-Citizens Landholding Licence that the bank had been granted on 19 July 1996. The exhibited copy shows that the Licence bears a "Registrars Office" stamp indicating that the Licence had been registered on 27 September 1996. Mr Smith said also that Mr Lapps had removed his construction materials from the 0.6 of an acre.

18. The application for the discharge of the *ex parte* injunction was heard by Benjamin J on 29 October and 6 November 1996. In a judgment delivered on 8 November Benjamin J discharged the *ex parte* injunction on the ground of non-disclosure by the bank that, at the time its *ex parte* application was heard, its Licence to hold the lease had not yet been registered. The learned judge noted that section 4(1) of the Non-Citizens Landholding Licence Regulation said that a licence "shall be of no force or effect until registered …." Their Lordships of course recognise the breadth of the bracket of discretion within which decisions as to the grant or withholding or discharge of *ex parte* injunctions may properly be made and recognise the importance on any *ex parte* application of full and frank disclosure by the applicant of all potentially relevant matters within the applicant's knowledge. But nonetheless their Lordships are unable to endorse the learned judge's decision to discharge the injunction. The non-registration of the licence on 12 September had been remedied by registration on 26 September. Time for compliance with the order had by then been extended to 15 October. By the time the discharge application came before Benjamin J the bank had an apparently unimpeachable legal title under its lease, Mr Lapps' contrary claim, based

upon an alleged prior oral agreement with the Government unsupported by anything in writing or any corroborating evidence from any Government Minister or official, provided no sort of a case by means of which to impeach the bank's right to possession. The need for an interlocutory injunction to protect that right pending trial appears to their Lordships to have been obvious. In the circumstances, the non-disclosure of the fact that the bank had not yet registered its Non-Citizens Landholding Licence, the disclosure of which is likely to have led to no more than a demand for an undertaking by the bank immediately to register the Licence, seems to their Lordships to lack the weight attributed to it by the learned judge. It is relevant to notice also that, as was subsequently held by Mitchell J, the absence of a registered non-citizens landholding licence can be relied on by the Crown but is not a matter that can avail a third party. As the judge put it, "The Crown is free to put an unlicensed non-citizen into lawful possession of a portion of Crown land which possession the non-citizen will be entitled to protect …." The point appears to have been settled by the Privy Council decision in *Young v Bess* [1995] 46 W1R 165. A failure to disclose facts that are of no relevance to any issue between the litigating parties cannot, in their Lordships' opinion, sustain an application to discharge an *ex parte* injunction on the ground of non-disclosure.

19. The discharge of the injunction left the 0.6 of an acre somewhat in limbo. Mr Lapps had already removed his construction materials. The plants and shrubs planted by the bank in October 1995 on part of the site were still growing there. There is no clear evidence as to which of the contesting parties was, as at 8 November 1996, in occupation or possession of the site. On 11 November 1996, however, activities by the bank on the 0.6 of an acre led Mr Lapps to apply, *inter partes*, for an injunction restraining the bank from entering the land until the determination of the action. The exact nature of the bank's activities that gave rise to this application is in dispute and it is not necessary for their Lordships to resolve the issue. It suffices for present purposes to say that on 22 November 1996 Redhead J, as he then was, granted the injunction and ordered the bank to remove a fence it had erected separating the 0.6 of an acre from Mr Lapps' adjacent land. The usual cross-undertaking in damages was given by Mr Lapps.

20. The record before their Lordships does not include any judgment by Redhead J or judge's notes indicating the reasons for his decision that the interlocutory injunction should be granted. The 0.6 of an acre was part of Parcel 384 in respect of which the bank was the lessee under a registered lease. So why was the bank injuncted from entering on to part of the land comprised in its lease? It is suggested that on 8 November 1996, when Benjamin J discharged the bank's *ex parte* injunction, both

parties had given undertakings to the court that the *status quo* regarding occupation and use of the 0.6 of an acre would not, pending trial of the action, be disturbed and that Redhead J's grant of the injunction against the bank was attributable to the bank's breach of that undertaking by its activities on 11 November. In support of the suggestion is this comment made by the trial judge, Mitchell J, in his judgment delivered on 16 September 2002:

> "On Monday 11 November 1996, the Claimant, in defiance of the order of the court, once more sent its servants and agents onto the land and again removed the Defendant's building materials and fencing …"

And in the Court of Appeal Redhead JA, as he had become, giving the judgment of the court, repeated in paragraph 20, almost *verbatim,* the cited comment made by Mitchell J and then said

> "There is no …. attempt by the appellant to deny these serious allegations."

But there was no court order of which the actions of the bank referred to by Mitchell J and Redhead JA would have been in breach. It is possible that the references to an order of the court may have been a reference to the undertaking said to have been given by the bank to Benjamin J. The problem, however, with that suggestion is that there is no record on the court files of any such undertakings having been given to Benjamin J by either the bank or Mr Lapps. Mr Dane Hamilton, attorney for Mr Lapps before Benjamin J, in an affidavit of 22 June 2006, said this about the hearing:

> "I was present as was my client Austin Lapps. The hearing took place in Chambers. Both parties by their counsel agreed to maintain the status quo on Mr Justice Benjamin expressing the view that the matter ought to be given a speedy trial."

But Dr Errol Cort, who appeared for the bank at the hearing, in his affidavit of 22 June 2006, gave evidence to the contrary:

> "… the issue of an undertaking or agreement to maintain the status quo did not arise. No undertaking was ever given by either counsel nor was any agreement sought or reached between counsel whether oral or otherwise regarding maintaining the status quo. Given the highly contentious

> nature of the matter, the importance and significance of the issues at that point to the parties, any alleged undertaking or agreement of whatever nature would have been reduced to writing and filed as a consent order, but this did not happen."

21. An undertaking to the court has the same effect on the party who gives it and demands the same strict observance as does an injunction. An intentional breach of an undertaking is as much a contempt of court as an intentional breach of an injunction. It is, therefore, of the greatest importance that, as with an injunction, any undertaking offered to and accepted by the court should be recorded on the court file. Their Lordships do not doubt that that is the practice in the courts of Antigua and Barbuda. While, therefore, it is clear that both Mitchell J and the Court of Appeal believed there to have been an order of (or an undertaking given to) Benjamin J of which the bank's actions on 11 November 1996 constituted a breach, the absence of any record of any such order having been made, or of any undertaking by the bank to the same effect as the believed order having been given, requires, in their Lordships' opinion, the conclusion that the learned judge and justices of appeal were proceeding under a misapprehension. Their Lordships are of opinion that the injunction against the bank of 22 November 1996 ought not to have been granted.

22. The consequence of the 22 November injunction was that Mr Lapps resumed, or continued, in occupation and had the use of the 0.6 of an acre from 22 November 1996 until the determination of the action.

23. In the meantime Mr Lapps had served a Defence and Counterclaim. His defence to the bank's possession claim was the alleged oral agreement for a lease. His counterclaim raised, first, nuisance claims on which nothing now turns and, second, claims for damages for trespass. Two acts of trespass were alleged: first, the action of the bank in October 1995 in entering on to the land and planting various shrubs and other plants; second, the actions of the bank on 30 August 1996 in removing wire fencing erected by Mr Lapps and removing his construction materials. For the first trespass mesne profits at the rate of $900 per year were claimed. For the second trespass, the cost of repairing the fence ($1800) and the value of lumber and steel said to have been taken ($50,000) was claimed.

<u>The judgment of Mitchell J</u>

24. On 31 January 1997 an order for an early trial was made by Redhead J. But the trial did not commence until 9 July 2002 and Mitchell J's judgment was delivered on 16 September 2002. No explanation for

the delay from 31 January 1997 to 9 July 2002, a timespan hardly consistent with an order for an early trial, has been offered.

25. On the issue as to whether the bank or Mr Lapps was entitled to the 0.6 of an acre the learned judge found, not surprisingly, in favour of the bank. This finding was not challenged on appeal and on, or shortly after, 16 September 2002 the bank went into possession of the land. The consequence, therefore, of the interlocutory injunction granted by Redhead J on 22 November 1996 was that from then until 16 September 2002 the bank was deprived of the use of the 0.6 of an acre notwithstanding that it was lessee of the land under its registered lease. No claim has yet been made by the bank pursuant to Mr Lapps' cross-undertaking in damages.

26. Despite finding in favour of the bank on the possession issue, the judge made a number of findings that have some relevance to Mr Lapps' claims for damages for trespass. He held (para.15) that there never had been any agreement for a lease of the 0.6 of an acre to Mr Lapps. He held (para.16) that Mr Lapps had not held a contractual licence to occupy the land but concluded (para.18) that his long occupation of the land, acquiesced in by the Government had given him the status of a tenant at will and entitled him "to expect a proper notice bringing to an end his right to occupy the portion of the Parcel." He held (para.20) that reasonable notice to terminate the tenancy at will would have been at lease one year's notice. Mr Lapps had never been given any such notice so it followed that the bank's entry on the land not only in October 1995, which was before the bank had acquired its lease, but also on 30 August 1996, after it had done so, was a trespass.

27. No evidence of any special damage suffered by Mr Lapps had been given but the judge awarded general damages in the sum of $270,000, a sum significantly higher than the $198,000 that the bank had had to pay for its 99 year term. The judge's justification for the size of the award was expressed in paragraph 20 of his judgment. He referred to

> "… the oppressive and violent way in which the Claimant evicted the Defendant without any warning; the complete absence of any right to possession of the land by the Claimant by way of a registered lease at the time that the eviction by the Claimant took place …"

and to

> "… the fact that the Claimant is an apparently rich and powerful banking institution which appears to have used its wealth and substance, and its access to uniformed officers of the Police Department, to assist it in its unlawful eviction of the Defendant, to bully its feebler neighbour the Defendant; and the continued acts of the Claimant over the years following 1995 when it wrongfully continued to exercise by force its claim to a right to possess the portion of Parcel 384 occupied by the Defendant, including its removal from the site after Hurricane Luis of the Defendant's building materials needed for the extension of his Hotel."

The bank's appeal to the Court of Appeal

28. In its Grounds of Appeal the bank raised the following issues:

(i) the point of time at which Mr Lapps' tenancy at will of the 0.6 of an acre came to an end;

(ii) the point of time at which Mr Lapps became a trespasser on the 0.6 of an acre;

(iii) whether the bank should have been awarded damages for the period during which Mr Lapps had been occupying the land as a trespasser;

(iv) whether the quantum of general damages awarded to Mr Lapps was excessive.

The Skeleton Argument provided by Dr Cort to the Court of Appeal addressed each of these issues.

29. The Court of Appeal judgment was given on 16 September 2003 by Redhead JA after a one day hearing on 29 May 2003. It contains, their Lordships regret to say, a number of inaccuracies. Thus

(i) Paragraph 5 of the judgment, referring to the bank's entry on to the disputed land in October 1995, said that the bank had "occupied the land for at least one year before it was granted the lease." But Mr Lapps' evidence was that soon after the bank's entry on to the land, and having consulted the Prime Minister, he (Mr Lapps) had "prevented the bank from making any further use of the land." This error was repeated in paragraph 28 of the judgment.

(ii) Paragraph 6 of the judgment said that Mitchell J had "dismissed [the bank's] claim". But the judge had held that the bank was entitled to possession of the disputed 0.6 of an acre and, after his judgment had been given, the bank went into possession. However, the formal order of the

judge has not been included in the Record before the Board and it is therefore possible that, although it would have been inconsistent with his judgment, the judge did dismiss the bank's possession claim.

(iii) Their Lordships have already referred to Redhead JA's reference in paragraph 20 to the bank's breach of a court order that appears, from the documents before their Lordships, not to have existed. A further reference to this believed order is made in paragraph 24 where the learned justice of appeal said this:

> "The attitude of the appellant demonstrated a callous disregard for the laws of the country because while the *injunction was in force* the appellant with unbridled arrogance scoffed at our hallowed institution, defied the order of the court and repeated its acts which it was enjoined not to do" (emphasis added)

The only injunction made against the bank was the injunction made by Redhead J (as he then was) on 22 November 1996. There is no suggestion, or evidence, that thereafter, until judgment had been given by Mitchell J, the bank had re-entered the 0.6 of an acre or done anything that represented a breach of that injunction.

(iv) Finally, mention needs to be made of paragraph 29 of the judgment, in which Redhead JA referred to the allegations of nuisance by noise that had been made by Mr Lapps and treated those allegations as relevant to the quantum of damages awarded to him. But Mitchell J had made no findings regarding those allegations and had not awarded any damages for the alleged nuisance by noise. The general damages of $270,000 that the judge had awarded had been damages for trespass.

30. The Court of Appeal did not in terms address either the question as to when Mr Lapps' right to occupy the land had come to an end or the question as to when Mr Lapps had become a trespasser. It appears from paragraphs 26 and 27 that the Court of Appeal accepted that Mr Lapps had occupied as a tenant at will. The paragraphs read as follows:

> "26. Dr Cort referred us to *Martinali v Ramuz and another 1953 2 All ER 892*. At page 893 Denning LJ as he then [was] said:
>
> > 'It is elementary that tenancy at will is determined by a demand for possession, not by a notice to quit'.

> 27. I do not think that the law is in any doubt. However the demand must come from or through some action of the landlord."

As to the bank's damages claim for the period that Mr Lapps had been in occupation, Redhead JA referred to the claim (see paragraphs 17 and 18) but allowed no deduction on that account from the damages held to be payable by the bank to Mr Lapps.

31. As to the quantum of the damages award to Mr Lapps, Redhead JA (in paragraph 30) cited a passage from Clerk and Lindsell on Torts (15th Ed) at paragraph 23-103 about aggravated damages and the circumstances in which vindictive or exemplary damages may be awarded. In the following paragraph of the judgement Redhead JA said that he regarded the cited passage as "very apt to the present case" and the he "would have no hesitation in awarding punitive damages". It is plain that the Court of Appeal regarded the quantum of damages awarded to Mr Lapps to be justifiable as an exemplary award. The bank has appealed to the Board.

<u>The issues before the Board</u>

32. Mr Dingemans QC, counsel for the bank, was asked at the outset of his address to their Lordships what relief he was seeking. He said that he was seeking the setting-aside of the damages award to Mr Lapps and, of course, costs. He did not renew before the Board either in his written Case or in any oral submissions the bank's claim for damages for trespass against Mr Lapps. But, in order to set the stage for his submission about the damages payable to Mr Lapps, he submitted that the only trespass committed by the bank for which it could be held liable in damages was its entry on to the 0.6 of an acre in October 1995 and its actions in planting shrubs and other plants on a portion of the land. The bank's re-entry onto the land on 30 August 1996 did not, he submitted, constitute a trespass because by then any right of occupation that Mr Lapps had previously enjoyed had been terminated, Mr Lapps had become a trespasser and the bank had become the lessee of the land, entitled to occupation pursuant to its registered lease. Nothing done on the land by the bank thereafter could have constituted a trespass.

33. Accordingly, the issues before the Board are those described in sub-paragraphs (i), (ii) and (iv) of paragraph 28 above. The sub-paragraph (i) and sub-paragraph (ii) issues can be taken together.

34. Both Mitchell J and the Court of Appeal referred to Mr Lapps as a tenant at will. There was certainly no express tenancy at will but there

may have been an implied one. According to Halsbury's Laws of England, 4th Ed.Reissue, Vol 27 (1) at para 169:

> "A tenancy at will is implied where a person is in possession by the owner's consent…Such a tenancy is implied accordingly in cases of mere permissive occupation without payment of rent…"

But it was held in Doe d Hull v Wood 14 M&W 682 at 687 that an affirmative consent was necessary and not simply a mere negative or silent consent. The evidence of the Cabinet Secretary makes it tolerably clear that there was never any affirmative consent by the Cabinet to Mr Lapps taking possession of the 0.6 of an acre. He went into and remained in occupation of the land to the knowledge and with the encouragement of the Prime Minister but nothing has been shown to their Lordships to indicate that the Prime Minister had any authority to create a tenancy at will over this small piece of Crown land. Paragraph 170 of the same volume of Halsbury's Laws says that:

> "Entry into occupation of land pending negotiation for the grant of a lease…gives rise to a tenancy at will…"

But although Mr Lapps regarded himself as in occupation pursuant to an oral agreement for a lease there is no evidence that there were ever any negotiations to settle the terms of the lease and no rent was ever paid. Accordingly their Lordships have some doubt whether there was sufficient justification for according Mr Lapps the status of a tenant at will. However their Lordships are content to proceed on the footing that Mr Lapps did enjoy that status. It is common ground that until the advent of the bank in October 1995 Mr Lapps enjoyed a quality of possession of the 0.6 of an acre, sufficient to sustain a trespass action if his possession were disturbed by someone with no better right to possession that he had. The important issue is when Mr Lapps' assumed tenancy at will came to an end.

35. Mitchell J held that Mr Lapps was entitled to a year's notice to quit. The Court of Appeal appear to have accepted that that was so although the judgement of Redhead JA does not expressly say so. This conclusion of Mitchell J cannot be sustained. Their Lordships would refer again to Halsburys Laws Volume 27(1). Paragraph 123 deals with the determination of a tenancy at will by the landlord and says, inter alia, that:

> "The tenancy is impliedly determined by the landlord when he does any act on the premises which is inconsistent with the continuance of the tenancy…and also when he does an act off the premises which is inconsistent with the tenancy, as, for example, when he grants a lease of the tenancy to commence forthwith. An act done off the premises does not, however, determine the tenancy until the tenant has notice of it."

Among other cases, Doe d Davies v Thomas (1851) 6 Ex 854 is cited in the notes to paragraph 173 as authority. Parke B stated the law in clear terms:

> "The law upon the subject is, that if an assignment or conveyance on the reversion takes place behind the back of the tenant, it does not affect him until he has notice of it; but if he has knowledge from the assignee of the reversion, or has himself achieved the same information, it is a determination of the will…Every conveyance of the reversion is inconsistent with the will to occupy under him, but the tenant is not to be treated as a trespasser until he has had notice of the determination of the will – not formal notice, but knowledge of it: - as soon as he has that, he must know that he is not to occupy."

Alderson B and Martin B agreed.

36. The grant by the Crown of the 99 year lease to the bank was an act inconsistent with the continuance of any tenancy at will of the 0.6 of an acre that Mr Lapps may have enjoyed. The tenancy would not have been brought to an end until he had been given notice of the lease. But he was given that notice by the letter to him of 25 July 1996 from Cort and Associates. The date of registration of the lease at the land registry and the date of registration of the bank's Non-Citizens Landholding Licence are irrelevant. What is important is the evidence of the intention of the Crown, acting by the Government of Antigua and Barbuda, to terminate the tenancy at will. The grant of the lease evidenced that intention. Mr Newman QC, counsel for Mr Lapps, submitted that notice of the lease had to be given by the owner of the land. The passage from the judgement of Parke B, cited above, shows that that is not so:

> "… but if he has knowledge from the assignee of the reversion. …"

37. It follows that Mr Lapps' tenancy at will, if he had one, was terminated on receipt by him of the letter of 25 July 1996. He chose to ignore the letter but that is neither here nor there. He was given two weeks grace, until 9 August 1996, to vacate the land and take away his construction materials. He failed to do so and, by the letter of 26 August 1996 was given a further 24 hours from the date of that letter to remove his construction materials. Their Lordships conclude that Mr Lapps became a trespasser on the land on, at latest, 10 August 1996.

38. On 30 August 1996 the bank entered upon the land, as it had every right to do as leasee under a registered lease. Mr Lapps had no remaining rights, let alone any overriding rights, entitling him either to remain in occupation or to protest about the bank's entry on to the land. According to the evidence the bank had arranged for the police to be present in order to oversee the removal by the bank of Mr Lapps' construction materials. To describe the bank's actions and the making of these arrangements as overbearing or bullying is, in their Lordships' opinion, a travesty.

39. As to the final issue to be dealt with, namely, the quantum of damages for trespass proper to be awarded to Mr Lapps, the only trespass established against the bank is their entry on to the land in October 1995 and their actions in fencing in a portion of the 0.6 of an acre and planting shrubs and other plants thereon. In paragraph 14 of his counterclaim Mr Lapps claimed mesne profits at the rate of $900 per year for this trespass. There was no pleading or evidence of any aggravating factors relating to this October 1995 trespass. Mr Lapps took steps promptly to terminate the bank's use of the land (see paragraph 5 above). That use was therefore, short-lived and there is no evidence that the bank re-entered the land until 30 August 1996. The notion that aggravated or punitive damages are warranted as a due award for this trivial trespass is, in their Lordships' opinion, grotesque. No special damages have been proved and an award of general damages of $500 is, in their Lordships' opionion, the most that can be justified.

40. But a result of this litigation that led to a requirement that the bank pay $500 damages to Mr Lapps would not, on the facts of this case, represent justice. Mr Lapps was in wrongful occupation of the 0.6 of an acre from 10 August 1996 to 30 August 1996 and from 22 November 1996, when the injunction against the bank was granted, until 16 September 2002 when Mitchell J gave judgement. The bank has made no claim as yet under the cross-undertaking in damages given by Mr Lapps to Redhead J, and it may now be too late for the bank to do so. But the history of this piece of land from October 1995 to September 2002 requires, in their Lordships' opinion, any damages due from the bank to

Mr Lapps for its trespass on the land, to be set off against the much greater sum of damages to which the bank would have been entitled in respect of Mr Lapps' wrongful occupation of the bank's land.

41. Accordingly their Lordships will allow the bank's appeal, set aside the damages award in favour of Mr Lapps and the orders for costs in his favour made in the courts below. Their Lordships assess Mr Lapps' damages for trespass at $500 but direct that that sum be set-off against the damages payable by Mr Lapps for his occupation of the bank's land between 10 August and 30 August 1996 and after 22 November 1996. Their Lordships' consider that it would be in the interests of all parties if a line were now drawn under the dispute between the bank and Mr Lapps regarding the 0.6 of an acre. If the bank does attempt to recover, pursuant to the cross-undertaking, a sum from Mr Lapps for his occupation of its land after 22 November 1996, additional to the $500, and their Lordships express no view as to whether, having regard to the lapse of time, the bank should be permitted to do so, the bank must bring into account the $500 against any sum it may be awarded.

42. Mr Lapps must pay the costs of this appeal, the costs of the trial of the action and the costs of the appeal to the Court of Appeal.