SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

HCVAP 2006/016

BETWEEN:

[1] LUELLA MITCHELL
(Administratrix of the Estate of Cornelius Jones deceased)
[2] LUELLA MITCHELL
(Beneficiary of the Estate of Cornelius Jones deceased)
[3] REGINALD JONES
[4] THELMA JONES
(Grantees of the Estate of Cornelius Jones deceased)

Appellants/Defendants

and

MAURICE JONES
(Beneficiary of the Estate of Cornelius Jones)

Respondent/Claimant

Before:

The Hon. Mde. Ola Mae Edwards	Justice of Appeal
The Hon. Mde. Janice George-Creque	Justice of Appeal
The Hon. Mr. Davidson Baptiste	Justice of Appeal

Appearances:

Mr. Emery Robertson for Appellants
Mr. Joseph Delves for the Respondent

2009: June 23;
2010: May 31.

Civil Appeal – Land Law – Administration of Estates – locus standi – intestacy – interest of legitimate child – interest of illegitimate child – adverse possession – limitation – findings of fact by trial judge – credibility of witnesses – function of the appellate court – Intestates Estates Act No. 24 of 1947 – Administration of Estates Act Cap. 377

The third named appellant, Reginald Jones, is the illegitimate son of Cornelius Jones ("the Deceased"), who died intestate in 1959. Carlton Jones and Andrew Jones were the legitimate sons of the Deceased. Carlton died in 1991 and Andrew died in 2002. The respondent, Maurice Jones, is the grandson of the Deceased and the illegitimate son of Carlton Jones.

The Deceased was recorded as the lawful owner of 2 acres of land in Union Island ("the Land"). The Deceased's wife and legitimate sons (Carlton Jones and Andrew Jones) died intestate without administering the Deceased's estate. In 1994, the Deceased's sister, Luella Mitchell, obtained the Grant of Letters of Administration on the ground that she was the only person entitled to the Deceased's estate. By Deed of Assent, she conveyed the Land which comprised the Deceased's estate to Reginald Jones.

Maurice Jones commenced proceedings in the court below against Luella Mitchell and Reginald Jones in which he claimed to be a beneficial owner of the Land. He sought a declaration to that effect, revocation of the grant of Letters of Administration and cancellation of the Deed of Assent. Reginald Jones and his wife, Thelma Jones filed a defence in which they denied knowledge of the grant of Letters of Administration to Luella Mitchell or her conveyance to them of the Land by Deed of Assent. Reginald Jones raised the defence of limitation and claimed to be in adverse possession of the Land as from 1969.

The learned judge found Maurice Jones to be a credible witness but disbelieved the evidence of Reginald Jones, having regard, among other things, to his conflicting evidence regarding the date he went into possession of the Land. The grant of Letters of Administration were accordingly revoked, the Deed of Assent cancelled and Maurice Jones declared a beneficial owner of the Land. Reginald and Thelma Jones appealed on the grounds, among other things, that the learned judge erred in: (i) failing to make a finding as to who was in actual possession of the Deceased's estate; (ii) declaring that Maurice Jones was a beneficiary of the estate when the issue was not before her; (iii) finding that Reginald Jones was neither in possession nor had the animus possidendi, which was against the weight of the evidence; and (iv) holding that Reginald Jones had failed to prove that he was in adverse possession for a period of 12 years before the commencement of the action or at any time. On appeal, Reginald Jones also sought to raise the issue of Maurice Jones' locus standi to institute the claim.

Held: dismissing the appeal and ordering the appellants, Reginald and Thelma Jones, to pay the respondent's costs in the appeal fixed at two thirds of the sum awarded in the court below (Edwards J.A. dissenting):

1. On the application of the then governing law, the Intestates Estates Act 1947, Carlton Jones, who was a legitimate son the Deceased, was entitled to a two-third share in the Deceased's estate. Section 61 of the Administration of Estates Act[1], which is applicable to intestates dying after 1st January 1970, recognises the entitlement of a child born out of wedlock to inherit from its parents in the same manner and to the same extent as a child born in wedlock. Reginald Jones could not claim the benefit of this provision as the Deceased died in 1959. However, Maurice Jones, whose father, Carlton, died in 1991, obtained the benefit of this provision and was therefore entitled to claim a beneficial interest in the Deceased's estate. In the circumstances, Maurice Jones had the required locus standi to institute the proceedings to

[1] Cap. 377

challenge the grant of the Letters of Administration and the subsequent vesting of the Land in Reginald Jones.

2. Maurice Jones, who was found by the learned judge to be a beneficial owner of the Land, would be in the position of a paper owner and would be presumed or deemed to be in possession of the Land unless his right to possession is lost to the adverse possessor. It was not therefore necessary for the learned judge to make a finding as to who was in "actual possession".

   Celestine v Baptiste Grenada HCVAP 2008/011, followed.

3. Having regard to the nature of the relief sought by Maurice Jones and to the fact that a determination on the question of adverse possession necessarily involved a consideration of the paper owner's identity, the learned judge properly ruled that Maurice Jones was a beneficiary of the Deceased's estate.

4. The learned judge correctly held that adverse possession is established where it is proven to the satisfaction of the court that the adverse possessor was in actual possession of the land for the required period and had the necessary intention to possess – the animus possidendi.

5. Having regard to the learned judge's findings on the credibility of the evidence of Reginald Jones and Maurice Jones and to her reasons for so finding, it was properly open to her to find that Reginald Jones had failed to prove both elements necessary to establish adverse possession. No cogent reason was advanced by Reginald Jones for disturbing the learned judge's finding. It is not the function of an appellate court to impose its view for that of the trial judge where the credibility of one witness as against the other is critical to the determination of a factual dispute. The finding of the learned judge on this issue must accordingly be upheld.

   Watt or Thomas v Thomas [1947] AC 484, applied. Grenada Electricity Services Limited v Isaac Peters Grenada Civil Appeal No. 10 of 2002, Elena Collongues v Andrew Lych and another Territory of the Virgin Islands HCVAP 2007/001 and The Epicurean Limited v Madeline Taylor Antigua and Barbuda Civil Appeal No. 4 of 2003, followed.

JUDGMENT

[1] GEORGE-CREQUE, J.A.: This appeal arises from the decision of the learned judge in which she granted to the respondent, Maurice Jones (being the claimant below), a declaration that he is a beneficial owner of land situate at Donaldson,

Union Island measuring approximately 2 acres ("the Land"). The learned judge also granted to the respondent the other relief prayed for in his claim, namely:

(1) the revocation of the grant of Letters of Administration issued to Luella Mitchell in the estate of Cornelius Jones ("the Deceased"); and

(2) the cancellation of a Deed of Assent numbered 3898 dated 8th December 1994, by which the said Luella Mitchell, as administratrix of the estate of the Deceased, conveyed the Land to the appellants, (Reginald Jones and his wife, Thelma Jones), as Grantees of the Deceased's estate.

[2] In so doing, the learned judge rejected the appellants' defence which in effect pleaded that Maurice Jones' claim was statute barred by virtue of section 17 of the Limitation Act[2] and his right extinguished by virtue of their alleged adverse possession of the Land as from 1959.

[3] Reginald Jones and his wife, Thelma Jones, appealed the decision of the trial judge. Luella Mitchell, even though she is described as an appellant on this appeal, took no part whatsoever in the proceedings below. She did not acknowledge service of the claim nor did she defend it. It must be taken that judgment as against Luella Mitchell was by default. Luella Mitchell has not appealed. Accordingly, she is not a party to this appeal and, to that extent, the headings as it relates to this appeal describing her as an appellant, is misleading. The issues are joined only as between the appellants, Reginald and Thelma Jones, on the one hand, and the respondent, Maurice Jones, on the other.

[4] Before setting out the issues raised on this appeal, it is useful to summarize the background so as to place this matter into proper context:

(1) Maurice Jones is the grandson of the Deceased. Luella Mitchell, the administratrix, is the sister of the Deceased.

[2] Cap. 90 of the 1990 Revised Laws of Saint Vincent and the Grenadines

(2) The Deceased was married to one, Caroline Jones, and they had two children namely, Carlton Jones and Andrew Jones. The Deceased also had another son namely, Reginald Jones (one of the appellants). It is accepted that Reginald Jones is the illegitimate son of the Deceased and that Maurice Jones is the illegitimate son of Carlton Jones.

(3) The Deceased died intestate on 27th April 1955. He was then survived by his widow, Caroline, and their two lawful sons, Carlton and Andrew, as well as his illegitimate son, Reginald. At the time of death, the Deceased was recorded as the owner of the Land. This comprised his estate.

(4) Caroline Jones subsequently died on 24th July 1961, without administering the estate of the Deceased.

(5) Based on Maurice Jones' pleaded case, his father, Carlton Jones, died in 1991, and his uncle, Andrew Jones, in 2002. Neither son obtained a grant for the administration of the Deceased's estate during their lifetime.

(6) The estate of the Deceased remained un-administered until 1994 when Luella Mitchell obtained the grant of Letters of Administration in application numbered 176/1994 on the basis that she, as his surviving sister, was the only person entitled to the Deceased's estate notwithstanding that the Deceased, as at the time of death, had been survived not only by his wife, Caroline, but also by their two sons, Carlton and Andrew.

(7) Luella Mitchell, upon obtaining the grant, by Deed of Assent in 1994, bearing Deed No. 3898 of 1994 conveyed the Land which comprised the estate of the Deceased to Reginald Jones.

(8) Maurice Jones then launched proceedings in the court below against Luella Mitchell and also against Reginald Jones in which he claimed to be a beneficial owner of the Land and also challenged the grant of Letters of Administration to Luella Mitchell; her entitlement to share in the estate of the Deceased, as well as the Deed of Assent executed by her in favour of Reginald Jones.

The pleaded cases

[5] Maurice Jones in his statement of claim pleaded, among other things, that:

(1) He is a grandson of the Deceased. At the time of death the Deceased was seized of the Land.[3]

(2) He is the son of Carlton Jones who in turn was one of the sons of the Deceased pursuant to his marriage to Caroline Jones.[4]

(3) The deceased died in 1955; his wife, Caroline, died in 1961; Carlton died in 1991; and Andrew died in 2002.[5]

(4) Luella Mitchell in 1994 obtained a grant of Administration in the Deceased's estate on the basis of a declaration sworn to by her to the effect that she, as his surviving sister, was the only person entitled to administer the Deceased's estate and that this statement was false.[6]

(5) By Deed of Assent Luella Mitchell, as administratrix, purportedly transferred the Land to Reginald Jones.[7]

[3] Paras.1 and 2
[4] Paras. 4, 5 and 6
[5] Paras. 5 and 7
[6] Para. 9
[7] Para. 11

(6) Luella Mitchell was not entitled to a grant of Administration; was not entitled to share in the estate of the Deceased and had no good title in law to transfer the Land to Reginald Jones.[8]

(7) He had learnt that Reginald Jones was in effect seeking a possessory title to the Land by virtue of long possession.[9]

[6] Reginald and Thelma Jones in their defence:

(1) did not admit that Maurice Jones is the grandson of the Deceased, put him to "strict proof" of that fact and asserted that Maurice Jones had failed to show that he had any locus standi to institute the claim;[10]

(2) admitted that the Deceased was married to Caroline Jones and that prior to his death he was seized of the Land;[11]

(3) stated that "they were not aware of the allegations contained in paragraph 5 of the statement of claim but note[d] annexure C.." and put Maurice Jones to "strict proof" of the date of death of Andrew Jones;[12]

(4) did not admit that Maurice Jones is the son of Carlton Jones even though exhibited to Maurice Jones' claim marked "D" was a copy of Maurice Jones' Birth Certificate showing Carlton Jones as his father and again put him to strict proof of that fact;[13]

(5) admitted however, the dates of the respective deaths of the Deceased and his wife, Caroline Jones;[14]

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[8] Paras. 12, 14 and 15
[9] Para. 16
[10] Para. 1
[11] Para. 2
[12] Para. 3
[13] Para. 4
[14] Para. 5

(6) stated[15] that they had no knowledge of the fact that Luella Mitchell had:

(a) sworn a declaration for the purpose of obtaining a grant of administration claiming to be the only person entitled to the Deceased's estate;

(b) obtained such a grant; and

(c) granted the Land to them by virtue of the Deed of Assent.[16]

(7) At paragraphs 9 through to 13, Reginald Jones raised the defence of limitation and claimed to be in adverse possession in respect of the Land as from 1969. Then rather curiously, Thelma Jones denied that she "has a possessory title" to the Land and put Maurice Jones to "strict proof" of that fact.[17]

The history of the proceedings

[7] Such was the state of the pleadings it appears, when the matter came before the learned master. It is common ground that the master struck out Reginald Jones' defence. Reginald and Thelma Jones appealed the striking out of their defence. It is also common ground that the Court of Appeal varied the master's order to the extent that the matter was to proceed to trial on the issues raised in paragraphs 9 to 13 of Reginald and Thelma Jones' defence namely, whether the claim was statute barred and Maurice Jones' right to possession extinguished by virtue of Reginald Jones' adverse possession of the Land.[18] On this basis the learned judge at paragraph 9 of her judgment stated the issues arising for determination as being in essence:

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[15] At para. 6
[16] Paras. 9, 10 and 11 of the statement of claim
[17] Para. 12 of the defence
[18] See: Skeleton arguments of the appellants and the skeleton arguments of the respondent. See also para. 7 of the judgment

(1) whether Maurice Jones' interest has been extinguished and his right to recovery thereto statute barred; and

(2) whether Reginald Jones was in adverse possession of the Land so as to confer on him a possessory title and bar Maurice Jones' right of recovery.

[8] In my view, there remained a sole issue for determination although formulated as two. This is because the principle of adverse possession is inextricably bound up in the plea of limitation in respect of an action for recovery of land. This involved findings of fact by the trial judge. She concluded at paragraph 12 of her judgment that Reginald Jones had failed to show that he was in adverse possession of the Land for a period of 12 years. Reginald Jones had accordingly failed on his adverse possession/limitation point. That being the only issue which had been left for determination on the pleadings, given the master's ruling and that of the Court of Appeal, judgment was given in favour of the claimant, Maurice Jones.

The grounds of appeal

[9] Reginald and Thelma Jones complain on appeal that:

(1) the learned judge's finding that Reginald Jones was neither in possession nor had the animus possidendi was against the weight of the evidence;

(2) the learned judge failed to make a finding as to who is in actual possession of the Deceased's estate;

(3) the learned judge erroneously ruled that Maurice Jones was a beneficiary of the Deceased's estate as the only issue which was to be determined by the court was whether or not Reginald Jones had been in adverse possession for the statutory period to have extinguished the claim of the claimant and whether the

cause of action was itself barred, it having been commenced after the limitation period;[19]

(4) the learned judge erroneously held that the planting of peas and corn on the Land from 1964 to 2006 and from 1959 to 2006 and his being absent from the Land during the periods 1961 to 1962, 1965 to 1966 and 1978 to 1986 was insufficient to establish adverse possession;

(5) the learned judge erroneously held that the Reginald Jones had failed to prove, on a balance of probabilities, that he was in adverse possession of the property for a period of 12 years before the commencement of the action or at any time; and

(6) the learned judge failed to direct her mind to the principle that periods of adverse possession can be added together for the purposes of the Limitation Act so as to defeat any lawful owner, and that the evidence that Reginald Jones' mother was in occupation of the Land coupled with the fact that taxes were paid for the Land from 1958 to 2006 and his being in possession continuously for the period aforesaid, was sufficient to prove adverse possession.

The issue of Maurice Jones' locus standi

[10] Given that those parts of Reginald and Thelma Jones' defence raising locus standi were struck out and not restored, and also, that both sides agreed that the only issue for determination before the trial judge was the issue of adverse possession and the companion issue of limitation, and having regard to Ground 3.3 of the appeal stating quite clearly that the sole issue before the judge was adverse possession and limitation, I am satisfied that the locus standi of Maurice Jones did not remain a live issue for determination despite the fact that Mr. Robertson,

[19] My emphasis

counsel for Reginald and Thelma Jones, sought to raise it on appeal in direct contradiction to Ground 3 of their appeal, as emphasized above. Further, it is common ground that despite an invitation by the trial judge to address locus standi, counsel having sought to raise it in the court below despite the striking out of that part of their defence, neither side addressed it in their submissions before the learned judge. In my view, it must be taken to have been accepted that Maurice Jones had the requisite locus standi and that accordingly the issue was no longer live.

[11] Assuming, for the sake of argument, that Maurice Jones' locus standi remained a live issue and is accordingly one to be considered on this appeal, I am of the view that he has established locus standi by reason of the following:

(1) At the time of death of the Deceased in 1955, the law governing inheritance on intestacy was the Intestates Estates Ordinance, 1947[20]. Section 16 sets out the persons who became beneficially entitled to the estate of an intestate. It provides that where the intestate leaves a husband or wife and issue, the surviving husband or wife became entitled to a one third interest and the surviving issue entitled to the other two thirds in equal shares.[21] The word "issue" at that time was construed to mean lawful issue, and as such excluded a child born out of wedlock.[22]

(2) Accordingly, on the Deceased's death, his wife, Caroline, became entitled to a one third share of his estate and the two lawful sons namely, Carlton and Andrew, who both survived the Deceased, became entitled to the other two thirds in equal shares. The Deceased's sister, Luella Mitchell, would have been excluded, there

[20] No. 24 of 1947

[21] Section 62 of the Administration of Estates Act Cap. 377, which came into effect after the Intestates Estates Act, incorporated section 16 of the Intestates Estates Act.

[22] Halsbury's Laws of England, Third Edition, Volume 16, para. 763

being the wife and lawful issue who became entitled to the entire estate.

(3) Similarly, even though the Deceased's natural son, Reginald Jones was, to all intents and purposes, treated as a son, he would have been excluded, not being recognized in law as an "issue" of the Deceased having been born out of wedlock. This is so notwithstanding that the Administration of Estates Act ("the AEA"), which sought to codify various bits of legislation, came into force on 27th December, 1989 and is stated to apply "both to persons dying on and after 27th December, 1989, and to persons dying on or after the 1st January, 1926," and contained provisions[23] for the recognition of the entitlement of a child born out of wedlock to inherit from its parents in the same manner and to the same extent as a child born in wedlock. The said provision however, is expressly stated to be applicable only to an intestate dying after 1st January 1970. Accordingly, Reginald Jones was not in a position to take the benefit of this provision, the Deceased having died before 1970.

(4) Maurice Jones however, would have obtained the benefit of section 61(2) of the AEA since his father Carlton Jones, (a lawful son of the Deceased), died after 1970 to wit, in 1991. Section 61(2) of the AEA states as follows:

> "Where either parent of a child born out of wedlock dies intestate, the child born out of wedlock, or if he is dead, his issue, shall be entitled to take any interest in any property to which he or such issue would have been entitled if he had been born legitimate."

[12] Accordingly, Maurice Jones as at the time of death of his father, Carlton Jones, (who by then had succeeded to a beneficial interest in 2/3 of the Deceased's estate in his own right), became entitled to a beneficial interest in his father

[23] Section 61

Carlton's estate who it must be presumed, in the absence of a will, also died intestate. Thus, Maurice Jones became beneficially entitled to an interest in the Land which formed initially the Deceased's estate and which in turn, on the death of his father, became a part of his father's estate there being no evidence of his father Carlton, prior to his death, having divested himself of his beneficial interest in the Deceased's estate. The position would no doubt be different were Carlton Jones still alive as no entitlement could have passed on to Maurice Jones until his father Carlton died intestate.

[13] Based on the foregoing, in my view, Maurice Jones was quite within his right to seek a declaration to the effect that he was a beneficial owner of the Land. The fact that his entitlement may have arisen indirectly is of no moment in respect of his beneficial entitlement as a matter of law. As a person with a beneficial interest in the Land, in my view, it was also open to him to challenge the correctness of the grant of administration to Luella Mitchell and her subsequent vesting of the Land to Reginald Jones; which vesting Reginald Jones pleaded to be unaware of in any event.

[14] Indeed, had Reginald Jones considered himself to be a beneficiary of the Deceased it would be difficult to reconcile such a view with his contention of being an adverse possessor of the Land. However, adverse possession is what he pleaded and what was left to be determined. It is the learned judge's findings in respect of his claim to be in adverse possession (which failed) which is the subject of this appeal. I consider that those grounds may be conveniently dealt with together. However, Grounds 2 and 3 warrant separate comment and I propose to deal with these first as they are short points.

Ground 2 – failing to make a finding as to who is in actual possession of the Deceased's estate

[15] I do not consider that it was necessary for the learned judge to make a finding as to who was in "actual possession" of the Land. It is trite law that the paper owner of Land is deemed to be in possession of it unless his right to possession is lost to

the adverse possessor[24]. The learned judge found, even though no reason for so finding is expressly stated, that Maurice Jones is a beneficial owner of the Land. Accordingly, he would be in the position of a paper owner whether by way of legal ownership or beneficial ownership and would be a person presumed or deemed to be in possession of the Land.

[16] Further, it must be taken to have been accepted by Reginald and Thelma Jones that Maurice Jones was a paper owner in respect of whom they considered themselves entitled to raise the defence of limitation and adverse possession. As I stated recently in an appeal out of the State of Grenada in the case of Celestine v Baptiste[25]:

> "Adverse possession can only arise where it is recognized by the "adverse possessor" that the paper title is vested in someone else. In essence, the adverse possessor seeks to say that he has dispossessed the paper owner."[26]

Ground 3 – The learned judge's ruling that Maurice Jones was a beneficiary of the estate of the Deceased when this issue was not before her.

[17] With the utmost respect to counsel for Reginald and Thelma Jones, I must confess to having some difficulty assimilating this line of argument. A defence based on adverse possession and limitation was raised by Reginald Jones. Given the accepted fact that the Land in question comprised, at least up to the time of Luella Mitchell's treatment of it by purportedly conveying it to Reginald Jones, an un-administered estate, the determination of the question as to whether the paper owner had lost possession and thus his title vis à vis Reginald Jones, as adverse possessor by virtue of the Limitation Act, would have necessarily involved, in my view, a consideration of who is the paper owner. Furthermore, Maurice specifically sought a declaration to the effect that he was a beneficial owner of the Land. The declaration was granted in those terms.

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[24] See: Cheshire's Modern Law of Real Property, 12th Ed. p. 901
[25] Grenada HCVAP 2008/011 (delivered 11th January, 2010), para. 11
[26] A presumption of possession operates in favour of the paper owner.

Adverse possession/limitation

[18] I now turn to consider the grounds of appeal relating to adverse possession and the defence of limitation. At paragraph 10 of her judgment the learned judge recited section 17 of the Limitation Act to this effect:

> "No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or if it accrued to some person through whom he claims, to that person."

She also referred to Part 1 of the Schedule which addresses rights of action to recover land for the purposes of section 17. Paragraph 8(1) of the Schedule states as follows:

> "No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as "adverse possession") and where the preceding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land."

The evidence of adverse possession

[19] Maurice Jones gave evidence on his own behalf and Reginald Jones alone gave evidence as to his acts of user of the Land as pleaded in his defence. The learned judge, at paragraphs 13 and 14 of her judgment, summed up the evidence given by Maurice Jones. At paragraphs 15 and 16, she summed up the evidence of Reginald Jones. She then referred to the principles to be applied for establishing whether a person is in adverse possession distilled from the leading cases of Powell v McFarlane[27] and JA Pye (Oxford) Ltd. and another v Graham and another[28] in essence, whether she was satisfied on the evidence that Reginald Jones had established (i) factual possession of the Land and (ii) the intention to possess – the animus possidendi - (as distinct from owning) the Land.

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[27] (1977) 38 P & CR 452, Ch. D
[28] [2000] 3 All ER 865

[20] The learned judge then returned to a consideration of the evidence of the acts of user and acts from which an animus possidendi could be inferred at paragraphs 22 to 27 of her judgment in her application of those principles to the facts as she found them. At paragraph 24 the learned judge had this to say:

> "…Having seen and heard both the Claimant and the Defendant and having observed their demeanor, I do not find the Defendant to be a credible witness. His evidence as to when he went into possession was conflicting. In his witness statement he stated he went into possession in 1964. Under cross-examination he stated he went into possession and claimed land amounting to two acres in 1959 as his own. At this time Reginald Jones was 15 years old having been born on April 25, 1944."

At paragraphs 25 to 27 she gave other reasons for not accepting Reginald Jones as a credible witness. At paragraph 29 of her judgment the learned judge accepted Maurice Jones to be a truthful witness. She stated thus:

> "I believe his testimony that since the death of Cornelius Jones the land remained unfenced with a few fruit trees. No one farmed it and people in the community tie their animals on the property. It is quite common for people in St. Vincent and the Grenadines and indeed in the Caribbean for people in the community to tie their animals on land that is not fenced."

At paragraph 28 she concluded that Reginald Jones had failed to prove that he was in adverse possession of the Land for a period of twelve years before the commencement of the action "or at any time"[29] and accordingly held that Maurice Jones' right of recovery was not statute barred under section 17 of the Limitation Act.

The approach by an appellate court on an appeal against findings of fact

[21] It is a well settled principle declared by numerous judicial pronouncements that an appellate court, notwithstanding the express power granted under the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act[30] to make findings of fact, will not lightly overturn a trial judge's findings of fact[31]. Mr. Delves, counsel for Maurice Jones, relied on the cases of Grenada Electricity Services

[29] My emphasis
[30] Cap. 18
[31] Watt or Thomas v Thomas [1947] AC 484; Cobham v Frett [2001] 1 WLR 1775 (PC)

Limited v Peters,[32] Elena Collongues v Andrew Lych et al[33] and The Epicurean Limited v Madeline Taylor,[34] all decisions of this court where this principle has been expounded and applied. This principle gives due recognition to the trial judge's unique position of being able not only to hear a witness but also to observe his or her demeanor during testimony and thus being much better placed than an appellate court to assess credibility. This is even more important when credibility is an integral factor in deciding what facts are to be accepted. In the oft cited case of Watt v Thomas, Lord Macmillan put it this way:

> "The appellate court has before it only the printed record of the evidence. Were that the whole evidence it might be said that the appellate judges were entitled and qualified to reach their own conclusion upon the case. But it is only part of the evidence. What is lacking is evidence of the demeanour of the witnesses, their candour or their partisanship, and all the incidental elements so difficult to describe which make up the atmosphere of an actual trial. This assistance the trial judge possesses in reaching his conclusion but it is not available to the appellate court. So far as the case stands on paper, it not infrequently happens that a decision either way may seem equally open. When this is so,…then the decision of the trial judge, who has enjoyed the advantages not available to the appellate court, becomes of paramount importance and ought not to be disturbed. This is not an abrogation of the powers of a court of appeal on questions of fact. The judgment of the trial judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong."[35]

[22] I agree with my learned sister, Edwards J.A., that the instant case was a straight forward conflict of primary facts between the two witnesses. Credibility was accordingly crucial. The trial judge found Reginald Jones not to be a credible witness. She gave her reasons for so finding which in my view cannot be faulted. It was accordingly open to her to find on the evidence that Reginald Jones had failed to prove both elements necessary for establishing adverse possession. No cogent reason has been advanced by Reginald Jones for disturbing the learned

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[32] Grenada Civil Appeal No. 10 of 2002 (unreported)
[33] Territory of the Virgin Islands HCVAP 2007/001 (unreported)
[34] Antigua and Barbuda Civil Appeal No. 4 of 2003 (unreported)
[35] *Supra* n.30 at p. 490-491

trial judge's findings and it is not the function of this court to seek to impose its view for that of the trial judge where the credibility of one witness vis à vis the other witness is critical to the determination of a factual dispute. I would not disturb the learned judge's finding on this question.

Conclusion

[23] For the foregoing reasons, I would dismiss this appeal and would order the appellants, Reginald and Thelma Jones, to pay the respondent's costs of this appeal fixed at two thirds of the sum awarded below in accordance with CPR 65.13.

Janice George-Creque
Justice of Appeal

[24] EDWARDS, J.A.: The respondent/claimant instituted proceedings on 3rd April 2003, against the appellants/defendants, claiming: (i) a declaration that he is a beneficial owner of a parcel of land at Union Island ("the Land"); (ii) revocation of the Letters of Administration No. 22 of 1994 in the estate of Cornelius Jones granted to the appellant/defendant Luella Mitchell; (iii) a declaration that the Deed of Assent No. 3898 of 1994 dated and registered on 8th December 1994 from Luella Mitchell in favour of the 3rd and 4th appellants/defendants, Reginald Jones and Thelma Jones, is null and void; and (iv) the cancellation of the Deed of Assent No. 3898 of 1994.

[25] Among the issues for determination by the learned trial judge were the issues arising from the pleadings in paragraphs 9 to 13 of the defence of the appellants, Reginald Jones and his wife, Thelma Jones. These pleadings alleged that since 1969 Reginald Jones had been in exclusive and uninterrupted possession of the said property paying all the rates, taxes and outgoings on the said property and had the land tax receipts from since that date. The spouses relied on section 17 of

the Limitation Act[36] in their assertions that the respondent/claimant's claim is statute barred. The 1st and 2nd appellant, Luella Mitchell, who is the aunt of Reginald Jones and the sister of Cornelius Jones ("the Deceased"), filed no defence and took no part in the proceedings.

[26] The learned trial judge found that Reginald Jones was not a credible witness. On 28th November 2006, the judge entered judgment for the respondent/claimant and ordered the following:

> "1. A declaration is granted declaring that the Claimant is a beneficial owner of the land situate at Donaldson, Union Island measuring two (2) acres more or less butted on the North by a Road on the South by Donaldson reserve on the East by Lot C36 and on the West by the remainder of the Donaldson Estate.
>
> 2. Letters of Administration numbered 22 of 1994 to the First Named Defendant is hereby revoked.
>
> 3. Deed of Assent numbered 3898 of 1994 and dated 8th December 1994 from the First and Second Defendant to the Third and Fourth Defendants is declared null and void and is hereby cancelled.
>
> 4. Costs to be paid to the Claimant by the Third and Fourth Defendants in the sum of $14,000.00."

The grounds of appeal

[27] The appellants' notice of appeal contains 6 Grounds of Appeal, most of which pivot on the learned judge's findings at paragraphs 28 and 30 of her judgment. There, she found that Reginald Jones had failed to prove on a balance of probabilities that he was in adverse possession of the Land for a period of 12 years before the commencement of the action or at any time and that Reginald Jones did not take adverse possession of the Land. Grounds 3.1 and 3.5 challenge these findings.

[36] Cap. 90 of the 1990 Revised Laws of Saint Vincent and the Grenadines

[28] Ground 3.6 alleges that the learned judge failed to consider that periods of adverse possession can be added together for the purposes of the Limitation Act so as to defeat any lawful owner; and that the evidence that Reginald Jones' mother was in occupation of the Land coupled with the fact that Reginald Jones had paid taxes for the said land from 1958 to 2006 was sufficient to prove adverse possession.

[29] Ground 3.4 in substance contends that the learned judge erred in evaluating the evidence relating to Reginald Jones' occupation, activity and dealings with the land. Grounds 3.2 and 3.3 complain that the learned judge failed to make a finding as to who was in actual possession of the Land comprising the Deceased's estate and erroneously ruled that the respondent, Maurice Jones, was a beneficiary of this estate when the only issues for determination were whether Reginald Jones had been in adverse possession for the statutory period to have extinguished the claim of the respondent; and whether the respondent's claim was statute barred. The appellants ask that the entire order at paragraph 31 of the judgment be set aside, judgment be entered for the appellants that they are entitled to possession of the land in question by virtue of adverse possession, and costs.

Background Facts

[30] Before considering these grounds it is necessary to summarize the essential facts leading up to the commencement of the proceedings and this appeal.

[31] The Deceased, who died intestate on 22nd April 1955, was survived by his wife, Caroline Jones, their 2 sons Carlton Jones and Andrew Jones and his illegitimate son, Reginald Jones, who was born on 25th April 1944. The relationship of father and child patently existed between Reginald Jones and Cornelius Jones before his death; and Reginald Jones was present at his father's bedside when he died. At the time the Deceased died, he owned the land in question which was surveyed in June 1996 at the instance of Reginald Jones, and found to contain 84,827 square feet (1.95 acres). This land was unfenced, no one lived on it, and before the

Deceased's death he planted corn, peas, cotton and a few fruit trees on it and reared a few animals there. The Land remained unfenced, unused and void of administration by his widow and their 2 sons who subsequently left Union Island for Trinidad and elsewhere. The Deceased's son, Carlton Jones, lived and worked in Trinidad and his mother lived with him up to the time of her death on 24th July 1961. Andrew Jones migrated to America.

[32] The respondent, Maurice Jones, who was born on 18th August 1942 is the illegitimate son of Carlton Jones. Maurice Jones grew up in Union Island and subsequently went to England in 1962, remained there for approximately 13 years, and then returned to Trinidad in 1977 to 1978 where he stayed for a period of time. From 1979 to the date of his testimony in July 2006, Maurice Jones, as a professional sailor, operated passenger and cargo boats, plying between Saint Vincent and Union Island and Trinidad. During the course of such operations Maurice Jones remained in contact with Union Island and visited the land in question. Maurice Jones testified at the trial that (from his childhood to manhood), on the occasions that he saw the Land after Cornelius Jones' death only members of the community tied animals on it and it was unoccupied except for the encroachment on it by Obrien Mills, a squatter, which issue I will deal with later. He said that the Land "wasn't worked, it was not farmed, it wasn't anything. It was just there." Maurice Jones also testified that his father, Carlton Jones, gave Reginald Jones money to pay the taxes for the land in question while Reginald and his family was living in his father Carlton's yard in Trinidad for over 5 years from 1977/1978.

[33] On the other hand, Reginald Jones' testimony was that upon his father's death in 1959 at the age of 15 whilst living with his mother he considered the Land to be his. He gave conflicting testimony as to when he entered into possession of the Land. In his witness statement he said that the Revenue Officer came to him and told him that his father's land owed taxes and would be sold if the taxes were not paid. He informed his mother and she began paying the taxes. He began working in 1959 and assisted his mother in paying the taxes from 1958 until her death after

which he continued to make payments until 1966. He entered into possession of the Land around 1964 with the intention of owning same. He planted peas and corn crops on it, kept his animals on the Land, paid taxes in the name of Cornelius Jones from 1967 to 1997, and remained on the Land from 1964 to the date of the witness statement, 30th June 2006. He testified that he presently pays taxes for it in his and his wife's name. He denied ever receiving any money from Carlton Jones as tax payments for the Land.

[34] However, under cross-examination he deposed that in 1959 he began grazing 3 cows that he then owned on the Land. He admitted that he went to Trinidad in 1961 for 14 months, returned to Union for Christmas 1962, returned to Trinidad in 1965 and came back to Union in October 1966 after spending a little over a year. He again returned to Trinidad in 1978 and remained there until 1986, whilst working in the construction industry. He stayed with Carlton Jones and built a house on Carlton's property as his (Reginald's) family home for his 5 children. He never had any discussion with Carlton about the land at Union Island. He testified that Carlton's brother, Andrew Jones, lived in New York and they (Reginald and Andrew) did not correspond. In 2001, Andrew Jones came to Union Island and stayed with him for 1 week, during which they had no discussion about the Land. Prior to Andrew Jones coming to stay with him for the week, he had sent US$3,707.00 by Western Union to Andrew to buy a tombstone and a "chest plate" for their father's tomb. Andrew Jones died in 2003/2004[37] while Carlton Jones died in 1991.

[35] On the death of Cornelius Jones, the law then governing the distribution of real property was the Intestates Estates Ordinance 1947[38] ("IEO 1947"). Section 15

[37] See page 85 lines 10 to 19 of the Transcript of Proceedings

[38] No. 24 of 1947 Saint Vincent which was Proclaimed by SR&O 76 of 1947 as amended by Act No. 3 of 1952 now replaced by the Administration of Estates Act Cap. 377 of the Laws of Saint Vincent and the Grenadines Revised Edition 1990 (Commencement: 27th December 1989). Sections 3, 4 and 16 of the IEO 1947 stated: "3.The Estate to which an intestate was entitled for an interest not ceasing on his death shall on his death devolve from time to time on his personal representatives who shall be deemed in law to be his heirs and assigns within the meaning of all trusts and powers. 4. Where a person dies intestate his estate, until administration is granted in respect thereof, shall vest in the Judge of the Court in the same manner and to the same extent as in similar cases in England such property now vests in the President of

of the IEO 1947 abolished all existing rules and canons of descent. The provisions of the Administration of Estates Act[39], which have replaced the IEO 1947, must be applied to persons dying on or after 1st January 1926 unless provided otherwise in the AEA. Anything done prior to the commencement of the AEA in accordance with the provisions of the IEO 1947 and the Administration of Estates Act 1925 of the United Kingdom ("the U.K") or other rules relating to the administration of estates, shall be deemed to have been done under the corresponding provisions of the AEA.[40]

[36] Sections 4, 31 and 62(b) of the AEA are essentially similar to sections 3, 4 and 16 respectively of the IEO 1947; except that the real and personal estate of an intestate for which no administration is granted now vests in the Chief Justice under the AEA to the extent that it vests in the President of the Family Division in England in similar cases.

[37] The personal representatives of the Deceased's estate who were the persons lawfully entitled to apply for letters of administration in the Deceased's estate were his wife, Caroline Jones, and his sons.[41] Notwithstanding this, in 1994 the first and second appellant, Luella Mitchell, who is a sister of the Deceased, applied for and was granted letters of administration in the Deceased's estate under the Small Estate Ordinance No. 3 of 1941 while the Deceased's lawful son, Andrew Jones, was still alive. In her supporting affidavit sworn to on 17th September 1994, she deposed that she was the only person surviving the Deceased who was entitled to his estate comprising 1 acre of land situate at Union Island valued at $100.00, as his mother had predeceased him.

[38] Luella Mitchell, as administratrix under Letters of Administration registered as Grant No. 22 of 1994, and also as beneficiary, subsequently conveyed the land in

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the Probate Divorce and Admiralty Division of the High Court of Justice. …16. The following persons shall be beneficially entitled to the estate of an intestate dying after the commencement of this Ordinance in the manner following, namely:…(ii) if the intestate leaves a husband or wife and issue the surviving husband or wife shall be entitled to one-third thereof and the issue shall take the other two-thirds in equal shares."

[39] Cap. 377 Act No. 39 of 1989

[40] See section 66 and 68 of the AEA

[41] See sections 3 and 16 (ii) of the IEA and sections 4(2) and 62(b) of the AEA

question to the appellants, Reginald and Thelma Jones, as joint tenants by a deed of assent dated 8th December 1994, and registered as No. 3898 of 1994.

[39] I note that at paragraph 6 of their defence (which was struck out by the court prior to the trial) the appellants, Reginald and Thelma Jones, pleaded that they had no knowledge that: (a) Luella Mitchell had obtained Letters of Administration upon her application stating that she was the only person surviving the Deceased who was entitled to his estate; or (b) that Luella Mitchell had transferred the land in question to them by Deed of Assent, No. 3898 of 1994.

[40] At the trial, Reginald Jones admitted that he has a title deed to the Land which he got from his aunt, Luella Mitchell. He testified that he wanted to have a proper title and the title deed shows his ownership of the Land, but his claim is not based on the title deed, but on the fact that he occupied the Land since 1959 and was in possession of it. He also admitted that he paid the lawyer Mr. Cadette for the deed and that Luella Mitchell had passed the property to him. He testified further that after receiving the deed he saw Andrew Jones in Union Island. He explained that the money US$3,707 that he had sent to Andrew Jones in New York was all of the money (less Western Union charges) that he had received from selling that portion of the land that Obrien Mills had encroached on to Obrien Mills. This transaction with Mr. Mills was done after he received the deed from Luella Mitchell, he said.

[41] Maurice Jones' evidence was that the encroachment of Mr. Mills, "caused the problem with Reginald Jones, my uncle Andrew Jones, Carlton Jones' brother, and Mr. Obrien Mills had…to buy a piece of land that he encroached on for $4,000.00… He paid it to Reginald Jones, [who] send it to Andrew Jones in America."[42] Reginald Jones was the only person there at the time to do that.

[42] At pp. 34 and 35 of the Transcript of Proceedings.

Is the respondent a beneficial owner of the Deceased's estate?

[42] Ground 3.3 effectively raises the matter of locus standi which was raised at paragraph 1 of the appellants' defence. There were conflicting arguments at the trial as to whether paragraph 1 was reinstated by the Court of Appeal after the appellants' defence was struck out by the master on 4th October 2004. At page 78 of the transcript the learned judge directed counsel for the parties to make submissions on the locus standi issue which they never did. In making the declaration at paragraph 1 of her order the learned judge omitted to consider the legal basis for declaring that Maurice Jones is a beneficial owner. Had she considered the legal basis, then clearly she would have had to address this issue of locus standi.

[43] Learned counsel Mr. Robertson submitted that there was no nexus in Maurice Jones' pleadings to show how he is claiming to be a beneficiary of the Deceased's estate as a grandson when he was never appointed as a special administrator; and in the absence of obtaining a grant of Letters of Administration he had no locus standi to bring this claim. Learned counsel Mr. Delves countered that this did not arise as an issue and Maurice Jones did not bring the action as an executor or act otherwise as executor. Mr. Delves argued that as a beneficiary, you can always bring an action at any time.

[44] The issue of locus standi fell for determination in my view because of sections 21 and 32 of the AEA which state:

> "21(1) Where it appears to the Court that a grant [of letters of administration] either ought not to have been made or contains an error, the Court may call in the grant and, if satisfied that it would be revoked at the instance of a party interested, may revoke it.
>
> (2) A grant may be revoked under subsection (1) without being called in, if it cannot be called in."
>
> …
>
> "32 Where administration has been granted in respect of any real or personal estate of a deceased person, no person shall have power to bring any action or otherwise act as executor of the

> deceased person in respect of the estate comprised in, or affected by, the grant until the grant has been recalled or revoked."

[45] The implications arising from these provisions of the AEA are that for actions brought by persons other than an administrator or executor of the deceased's estate, and in the case of a claim where you are seeking to revoke Letters of Administration, the claimant must be able to show that he is a lawful beneficiary or interested party. Otherwise, the court could on a proper application made in accordance with section 16 of the AEA appoint the claimant as administrator though he would not be entitled to a grant, where special circumstances are shown and the court thinks it expedient to do so. By virtue of section 17 of the AEA, where legal proceedings concerning the recalling or revoking of any grant are pending, the court could also grant administration of the estate of the deceased person in question to the claimant as an administrator pending suit who would be subject to the immediate control of the court and act on its direction. No such appointment was apparently made by the court in favour of Maurice Jones.

[46] The question arising from section 21(1) of the AEA is therefore whether Maurice Jones satisfied the learned judge that he was entitled to an interest in the estate of the Deceased. Maurice Jones' claim puts it fully within the scope of contentious probate proceedings governed by Part 68 of the Civil Procedure Rules 2000 ("CPR 2000"). Contrary to CPR 68.2, Maurice Jones' claim was not a fixed date claim; but this would not be fatal to the claim. However, CPR 68.8 which prescribes the contents of the statement of case stipulates at CPR 68.8(2):

> "In probate proceedings in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in that party's statement of case that if the allegations made therein are proved he or she would be entitled to an interest in the estate."[43]

[47] Maurice Jones proved that he was the illegitimate son of Carlton Jones and asserted that he was a beneficiary of Carlton Jones' estate. He did not show the

[43] My emphasis

extent of the interest, and how he would be entitled to an interest in the Deceased's estate. No evidence was led as to whether Caroline Jones died testate or intestate, whether she had renounced her interest in the Deceased's estate; or who would be the beneficiary of her one third interest in the Deceased's estate. No death certificate was produced for Carlton Jones, who it was pleaded died in 1991.

[48] Section 61 of the AEA states that where a parent of an illegitimate child dies intestate after 1st January 1970, the illegitimate child or, if he is dead, his issue, shall be entitled to take any interest in any property to which his/her parent would have been entitled. It was not proven that Carlton Jones died intestate or testate, nor was there any proof of his marital status at the time of his death. We do not know from the evidence if an administrator or executor exists for the estate of Carlton Jones or Andrew Jones; and which persons would be entitled to an interest in their estate.

[49] Maurice Jones testified that his uncle, Andrew Jones, before his death had instructed a lawyer to prepare an instrument of a power of attorney for him in favour of Maurice Jones in order to commence proceedings against the appellants. Any such power of attorney would terminate on the death of Andrew Jones. Maurice Jones brought the claim after Andrew Jones had died. Learned counsel Mr. Robertson submitted that unless Maurice Jones was appointed as administrator pending suit he had no locus standi to institute or continue these proceedings.

[50] It seems to me that the issue of locus standi is a live issue in this appeal. Although it was not dealt with in the court below, this would not prevent the appellants from raising it at this stage of the proceedings. It may be raised even though it has not been pleaded, or as was probably the case, it was pleaded and that pleading was struck out. As long as the evidence in the case discloses that a claimant has no locus standi the court has no discretion.

[51] In Bowler v John Mowlem & Co. Ltd.[44] the defendants contended after the jury had found them guilty of negligence on a claim for damages under the Fatal Accidents Acts 1934 and the Law Reform (Miscellaneous Provisions) Act, 1934 that as the plaintiff was not the administratrix of the estate of the deceased at the date of the issue of the writ, the writ and all the subsequent proceedings were a nullity. The trial judge, Ormerod J., accepted this argument and gave judgment for the defendants. The court of appeal set aside the judgment for reasons which do not detract from the principle that the issue of locus standi may be raised at any stage of the proceedings. It was held that the writ was not a nullity on account of the misdescription in the title as the endorsement on the writ did not suggest that plaintiff was suing in a representative capacity. It was however taken as well settled that if a plaintiff brings an action as administratrix the action is a nullity if she was not then an administratrix with a proper grant.

[52] Maurice Jones brought the action not in a representative capacity or by any order of the court under the AEA or CPR 21.4.[45] He brought the claim purportedly in his own right as a beneficiary of the Deceased's estate when he was disqualified by sections 21, 32 and 62(b) of the AEA from so being. Applying Bowler, this would, in my view, render the proceedings a nullity in the circumstances. I would respectfully conclude therefore, that on the evidence that was before the court the learned judge erred in declaring that Maurice Jones was a beneficiary in paragraph 1 of her order with the effect that Maurice Jones had no locus standi to bring these proceedings.

[53] Though this conclusion would dispose of the appeal in favour of the appellants, prudence dictates that I consider the other grounds on the assumption that the proceedings are not a nullity.

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[44] [1954] 3 All ER 556

[45] CPR 21.4 permits the Court to appoint one or more persons to represent persons who may be interested in or affected by the proceedings concerning the estate of a deceased person where it is proven that such interested persons cannot be ascertained and/or found; or it is expedient to do so.

Should the Grant to Luella Mitchell and the Deed of Assent be revoked?

[54] I do not agree with Mr. Robertson that Luella Mitchell was clothed with the lawful authority to act. There was an abundance of evidence that she obtained the grant as administratrix by making fraudulent declarations. She would be what the law regards as an intermeddler or an executor de son tort (an executor of her own wrong) liable and chargeable in respect of wasting or converting to her own use the estate of the Deceased. As an executor of her own wrong Luella Mitchell could not make any valid disposition of the Deceased's land to Reginald and Thelma Jones.[46] Upon the death of the Deceased, his estate would have automatically vested in the Chief Justice as temporary custodian, pending the grant of Letters of Administration to a person lawfully entitled to it.[47] If and when administration is granted, the land would by virtue of section 47(1)(a) the AEA be held on trust for sale and, subject to administration, would by virtue of section 62(b) of the AEA be held in trust for the wife and issue of the Deceased.

[55] Considering that the old rules and canons of descent under the Inheritance Act[48] and the Real Estate Devolution Act[49] which were repealed by the IEO 1947 and the AEA respectively, it appears to me that by virtue of section 62(b)[50] of the AEA, Reginald Jones, though an illegitimate issue of the Deceased, would also be entitled to an interest in his intestate father's estate. I am of this view because of the absence of any provision in the IEO 1947 and the AEA to signify the exclusion of an illegitimate issue from taking an interest in property owned by his deceased intestate father.

[56] Under these circumstances I would not interfere with paragraphs 3 and 4 of the learned judge's order if Maurice Jones had locus standi to bring the action.

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[46] See section 44 of the AEA

[47] Section 14 of the Law of Property (Miscellaneous Provisions) Act 1994 (U.K.) Chapter 36 states that where a person dies intestate, his real and personal estate shall vest in the Public Trustee until the grant of administration . The vesting of real and personal estate in the Public Trustee does not confer on him any beneficial interest in, or impose on him any duty, obligation or liability in respect of the property. See also Earnshaw v Hartley [2000] Ch 155

[48] Cap 89 of the 1926 Revised Edition

[49] Cap 87 of the 1926 Revised Edition

[50] See paragraphs 12, 13 and footnote 3

Adverse possession

[57] The law and principles governing adverse possession which the learned judge applied were stated at paragraphs 10, 11 and 18 of her judgment. She considered section 17(1) of Limitation Act and paragraphs 1, 2 and 8 and (2) of Part 1 of its Schedule which contains provisions for determining the date of accrual of rights of action to recover land in the cases therein mentioned:

> "17.1. No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

Part 1 of the Schedule provides:

> "1. Where the person brings an action to recover land, or some person through whom he claims, has been in possession of the land, and has while entitled to the land been dispossessed or has discontinued his possession, the right of action shall be treated as having accrued on the date of dispossession or discontinuance.
>
> 2. Where any person brings an action to recover any land of a deceased person (whether under a will or on intestacy) and the deceased person –
>
> (a) was on his death in possession of the land or, in the case of a rent charge created by will or taking effect upon his death, in possession of the land charged; and
>
> (b) was the last person entitled to the land to be in possession of it, the right of action shall be treated as having accrued on the date of his death.
>
> 3 to 7….
>
> 8. (1) No right of action to recover land shall be treated as accruing unless the land is in possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as adverse possession"); and where the preceding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as accruing and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession."

[58] The starting point for this defence of adverse possession under paragraph 8(1) of the Schedule would be first to consider whether the land was in possession of a person in whose favour the period of limitation of 12 years can run. Another way of expressing this issue having regard to the evidence and pleadings would be: (1) whether Reginald Jones can claim title to the land by adverse possession against the other beneficiaries of his father's estate; and if he can: (2) whether he has proven that he was in adverse possession of the land so as to confer on him a possessory title and bar Maurice Jones' right of recovery to the land in question. The learned judge apparently did not see it this way and so pursued only issue (2) in arriving at her decision. Learned counsel Mr. Robertson submitted that Reginald Jones did not plead that he was a beneficiary and so issue (1) would not arise. However he gave evidence that he was the illegitimate son of the Deceased and in the face of this evidence along with his pleading of adverse possession the court should take judicial notice of all relevant provisions of the Limitation Act when applying the law in determining whether Reginald Jones has a possessory title to the land. Where there is evidence that a party is one of the beneficiaries of disputed land owned by a deceased intestate from whose estate he is benefiting, and that party is claiming a possessory title to that land as against other beneficiaries of that estate, the court should not ignore that evidence and its legal implications under the relevant statute law. Issue (1) clearly arose in my view, and the submissions of learned counsel Mr. Delves quite properly dealt with it.

[59] Mr. Delves in his skeleton arguments addressed the issue while relying on several authorities which included Preston and Newsom's Limitation of Actions 4th

Edition and Earnshaw v Hartley[51]. At para 6.3.4 of Preston and Newsom's it is stated that:

> "A beneficiary who is not solely and absolutely entitled in equity can never obtain title against his trustee or against a co-beneficiary. His possession is treated as not being adverse and no right of action accrues to the trustees or other beneficiaries: Limitation Act 1980, para 9 of Schedule 1."

Paragraph 9 of Schedule 1 (UK) is similar to paragraph 9 of Part 1 of the Schedule of the Saint Vincent and the Grenadines Limitation Act which states:

> "9. Where … any land held on trust for sale is in possession of a person entitled to a beneficial interest in the land or in the proceeds of sale (not being a person solely or absolutely entitled to the land or the proceeds), no right of action to recover the land shall be treated for the purposes of this Act as accruing during that possession … to any other person entitled to a beneficial interest in the land or the proceeds of sale."

[60] The decision in Earnshaw v Hartley is instructive as to the implications of paragraph 9 of Schedule 1 of the U.K. Limitation Act 1980. It is important to state the facts of the case appearing in the headnote. In 1948, the father of 4 children – a son and 3 daughters – acquired a farm. The father died intestate in 1965 and his widow became the sole legal and beneficial owner of the property. The widow continued to live on the farm together with the son until her death in 1983. She also died intestate and, in the absence of a grant of letters of administration, her real and personal estate vested by virtue of section 9 of the Administration of Estates Act 1925 in the President of the Family Division of the High Court. The son continued to live on the farm and in 1992 the defendant began living with him and he married her in 1995. The son died in 1995, leaving a will in which he appointed the defendant sole executrix and bequeathed his entire estate to her absolutely. The plaintiffs, the 3 daughters, requested that the farm be sold, claiming that each was entitled to a quarter of the net proceeds of sale. The defendant claimed that the son and she successively had been in adverse possession of the farm since the mother's death in 1983, a period of more than 12 years, and that she had acquired possessory title to the property by virtue of

[51] [2000] Ch 155

section 15(1) of the Limitation Act 1980. In 1998, the plaintiffs obtained a grant of letters of administration to the mother's estate and then sought a declaration as to the beneficial interests in the farm and an order that it be sold. On a preliminary issue, the judge held that the defendants claim to have acquired title by adverse possession was defeated by the provisions of paragraph 9 of Schedule 1 to the 1980 Act.

[61] On appeal by the defendant, dismissing the appeal, it was held: that the effect of the Limitation Act 1980 was to re-introduce the doctrine of non-adverse possession among beneficial co-owners of land, allowance being made for the trust for sale which was an inevitable feature of such ownership; that, although the President of the Family Division was not, while the farm was vested in him, a trustee of it and it was not held on trust for sale during that period, it was presumptively so held, and it would be wrong, for limitation purposes to give a literal interpretation to paragraph 9 so as to make an artificial distinction between the states of affairs existing before and after the grant of administration; that the beneficial interests of the plaintiffs in the un-administered estate of their mother was a sufficient interest for the purposes of paragraph 9 of Schedule 1; and that, accordingly, no right of action accrued to the plaintiffs during the son's and the defendant's possession of the farm and time never started to run against them.

[62] This decision in Earnshaw must be contrasted with the Jamaican case which learned counsel Mr. Robertson brought to our attention: Vida Bowes v Allan Spencer[52]. In the absence of a provision similar to paragraph 9 of Schedule I of the U.K. Limitation Act 1980 in the Limitation of Actions Act for Jamaica, the respondent sought to rely on section 9[53] of that Act which the court of appeal found had no relevance to any question on the appeal. It was held that the appellant having entered into possession of the land which was the subject matter

[52] [1976] 23 WIR 122

[53] "Where any settled land or any land [subject to a trust of land] is in the possession of a person entitled to a beneficial interest in the land (not being a person solely or absolutely entitled to the land), no right of action to recover the land shall be treated for the purposes of this Act as accruing during that possession to any person in whom the land is vested as tenant for life, statutory owner or trustee, or to any other person entitled to a beneficial interest in the land."

of the action, dehors the will of C.T., and not in pursuance of any direction in that will, or of any permission given her by the respondent it was clear that time began to run in her favour from the date of her father's death with the result that by July 1970 she would have acquired a possessory title to the land, the respondent's title as trustee then being barred. The decision in Vida Bowes cannot be followed in Saint Vincent and the Grenadines having regard to the obvious differences between the legislation of this jurisdiction and the Jamaican legislation.

[63] Applying the reasoning in Earnshaw, if Maurice Jones had locus standi, it would have been open to the learned judge to conclude that the land in question is vested in the Chief Justice who presumptively holds it as trustee on trust for sale for the beneficiaries of the Deceased's estate in the absence of any lawful grant of letters of administration in his estate. In that case no right of action would accrue to the presumptive trustee or beneficiaries of the Deceased's estate as against another beneficiary; and any possessory title claimed to the land by any beneficiary of the Deceased's estate while the estate is un-administered must be defeated by reason of paragraph 9 of Part 1 of the Schedule of the Limitation Act.

[64] In light of these conclusions, no useful purpose will be served in considering the remaining grounds of appeal. It is sufficient to state that the learned judge had the opportunity of assessing the demeanour and credibility of Reginald Jones and Maurice Jones and the advantage which she had in seeing and hearing these witnesses must be respected by the appellate court.[54] The evidence was a straight conflict of primary facts between witnesses. Credibility was crucial, and I would not interfere with her other findings of fact on the assumption that Maurice Jones had locus standi and paragraph 9 of Part 1 of the Schedule to the Limitation Act was inapplicable.

[54] Watt (or Thomas) v Thomas [1947] AC 484 HL; Whitehouse v Jordan [1981] 1 All E.R. 267

[65] The result of the appeal therefore, having regard to my conclusion that the respondent had no locus standi to bring these proceedings which are a nullity, would be that the appeal is allowed, the judgment of the court below is set aside, and the claim is dismissed.

[66] This case has presented some unusual circumstances which should bear on the question of whether costs should follow the event in the court below and in this appeal or whether there should be a departure from the general rule pursuant to CPR 64.6. I would direct that the parties file and serve submissions on the question of costs by 31st March 2010 where there is no agreement between them on costs and the matter be set for hearing at the next sitting of the court in Saint Vincent on 31st to 4th June 2010.

Ola Mae Edwards
Justice of Appeal

[67] I have read the judgment of both of my sisters and agree with the reasoning, conclusions and decision of George-Creque J.A.

Davidson Baptiste
Justice of Appeal