

Application seeking determination as to the ownership of a property, by the Children of the Deceased, following the Deceased's estate passing intestate after having left no legitimate issue and having not made a will.

[2021]GRC017

**IN THE ROYAL COURT OF GUERNSEY**

**ORDINARY DIVISION**

**Between:**

- (1) DENNIS SHANE JACKSON
- (2) DAVID FRANK JACKSON
- (3) VALERIE SANDRA REOCH
- (4) CAROLYN ANN JACKSON
- (5) ARRON JACKSON

**Plaintiffs**

**-and-**

- (1) EDNA BARTER (acting herein by her guardian ad litem Amanda Barter, hereunto duly appointed by Act of Court dated the 21st day of April 2021)
- (2) ANDREW THOMAS COOPER
- (3) IAN HUTTON
- (4) MAUREEN RANSOME
- (5) PATRICIA TWINE
- (6) MICHELLE COOPER

**Defendants**

**Application regarding the Ownership of a Building Divided  
into Two Flats and Land formerly known as  
Braye Road Motors**

**Hearing date : 18<sup>th</sup> May 2021**

**Judgment handed down: 24<sup>th</sup> May 2021**

**Before: Sir Richard Collas, Lieutenant Bailiff and  
Jurats: Claire Helen Le Pelley, Joanne Marie Wyatt and David John Robilliard**

**Counsel for the Plaintiffs: Advocate N J Barnes**

**Introduction**

1. In this action, the Plaintiffs (Advocate Barnes acting) are seeking a declaration to confirm that they own a property ("the Property") that formerly belonged to their mother, Doris Irene Alice Jackson (née Cooper) ("Mrs Jackson"), who died on 7<sup>th</sup> January 1992 intestate as to Guernsey Realty. Mrs Jackson was survived by her five children ("the Children") who were born out of wedlock. Having left no legitimate issue and having not made a will, under the Guernsey

inheritance laws of the time, ownership of the Property passed on Mrs Jackson's death to her eight siblings ("the Siblings") who each inherited an undivided one-eighth share. Three of the Siblings subsequently conveyed their shares in the Property to the Children but the other five shares have not been conveyed.

2. The Plaintiffs claim to have acquired title to the Property by reason of having enjoyed twenty years' peaceful possession in good faith. In amended defences filed on their behalf by Advocate Strappini, the First, Second, Fourth and Sixth Defendants put the Plaintiffs to proof on factual issues: (a) whether they entered into peaceful possession of all or only part of the Property; (b) if so, when and how, or did it, continue for twenty years; (c) whether it was in good faith and (d) whether and, if so how, the Plaintiffs acknowledged the Defendants' title to the Property? In addition, the amended defences raised three issues of law: (a) what constitutes "good faith" for the purposes of La Loi Relative à la Prescription Immobilière, 1909 ("the 1909 Law"); (b) can co-owners invoke acquisitive prescription against co-owners: and (c) did the Plaintiffs' acknowledgement of the Defendants' title interrupt the acquisition of prescription? The defences were withdrawn by consent immediately before the start of the substantive hearing on terms set out below. However, the Court proceeded to hear evidence and submissions on behalf of the Plaintiffs in order to be satisfied that it was appropriate to grant the declaratory relief sought.

### **The respective roles of the Lieutenant Bailiff and Jurats**

3. This judgment has been prepared in accordance with the provisions of section 16(5) of the Royal Court (Reform) (Guernsey) Law, 2008:

*"(5) A reasoned judgment in civil proceedings in which the Jurats (and not the Bailiff alone) are sitting shall contain –*

- (a) the Jurats' findings and decisions,*
- (b) any dissenting findings or decisions made by different Jurats,*
- (c) the identity of the Jurats making dissenting findings or decisions,*
- (d) the Bailiff's findings, decisions and directions of law and procedure, and*
- (e) the application of his findings, decisions and directions of law and procedure to the facts.*

*(6) In this section "the Bailiff" means the person presiding over the proceedings."*

4. The Lieutenant Bailiff did not sum up to the Jurats in open Court but instead indicated that the Court would reserve its judgment and retired with the Jurats, as he is permitted to do under section 14(2) of the 2008 Law.
5. The Lieutenant Bailiff reminded the Jurats of their respective roles: the Lieutenant Bailiff remains the sole judge of questions of law and procedure; and the Jurats are the sole judges of questions of fact. The Jurats were directed that they must accept his directions on the law and follow them.
6. The Lieutenant Bailiff directed the Jurats that the burden of proof rests on the Plaintiffs and that the standard of proof is the civil standard of the balance of probabilities. The Lieutenant Bailiff explained that to establish something on the balance of probabilities means to prove that something is more likely so than not so.

7. The Lieutenant Bailiff further directed the Jurats to have regard to the whole of the evidence presented to the Court, and to form their own judgments about the witness, and which evidence they treated as reliable, and which they considered was not. The Lieutenant Bailiff directed that the facts of the case are the Jurats' responsibility and that if at any time the Lieutenant Bailiff appeared to express any views concerning the facts, or emphasise a particular aspect of the evidence, the Jurats were not to adopt those views unless they agreed with them. The Lieutenant Bailiff summarised that position by clarifying that, when it comes to the facts of this case, it is the Jurats' judgment alone that counts.

### **The Property**

8. Mrs Jackson owned premises at Braye Road, Vale, formerly known as Braye Road Motors, which she acquired by conveyance from Nora Watts (née Prior) on 28 December 1965. In 1991, she sold part of it comprising a dwelling, garden and land to the First Plaintiff and his wife for £1,000. Mrs Jackson retained a building containing two flats ("the Upper Flat") and ("the Lower Flat") and adjoining land being the Property which is the subject of this action.

### **Mrs Jackson**

9. Mrs Jackson's marriage to William Jackson ended in divorce and, at all material times, Mrs Jackson was a widow who is described as such both in the conveyance of the Property of 28 December 1965 and on her death certificate. She never remarried but had a long-term relationship with a Mr Holden who was the father of the Children. The Plaintiffs allege that during her lifetime, Mrs Jackson sought advice from the Citizens Advice Bureau as to whether she should make a will but was told that was not necessary as her children would inherit from her. The Children understand that she had failed to mention that they were born out of wedlock so the advice was incorrect. (The advice is mentioned in an internal memorandum dated 24 February 1992 written by Advocate Brelsford (as she then was) to Colin Guilbert, Senior Conveyancing Clerk of Carey Langlois & Co who were instructed by the Children following their mother's death to act in relation to her estate.)

### **The Children**

10. Mrs Jackson was survived by all five of her children, two of whom have since passed away. Three of the Children are Dennis Shane Jackson, David Frank Jackson and Valerie Sandra Reoch (née Jackson), the First, Second and Third Plaintiffs respectively. Another son, Brian Jackson ("Brian Jackson") died on 20 February 2018, without having married and leaving no descendants. He left no will so his estate passed by operation of law to the other four of the Children. The other one of the Children, Robert Jackson, died on 31 January 2021 and his heirs are his widow, Carolyn Ann Jackson, and his son, Arron Jackson, who are the Fourth and Fifth Plaintiffs.

### **The Siblings**

11. Mrs Jackson was one of nine children. Three of the Siblings are still alive: Edna Barter (née Cooper), Maureen Ransome (née Cooper), and Patricia Twine (née Cooper); they are the First, Fourth and Fifth Defendants. Another two of the Siblings survived Mrs Jackson and have subsequently passed away: Nora Hutton (née Cooper) is survived by the Third Defendant who inherited on her death; and Brian Henry Maurice Cooper who died on 25 March 2018 is represented in these proceedings by his children and heirs, Andrew Thomas Cooper and Michelle Cooper, the Second and Sixth Defendants.
12. The other three of the Siblings are not concerned in these proceedings as they have conveyed their shares in the Property to the Children. Lawrence Roy Cooper and Eric George Cooper conveyed an undivided one-quarter share in the Property to the Children on 19 November 1992

for consideration stated to be the payment of two pounds. Mona Grace Paddington conveyed her one-eighth share to the Children on 28 March 1996 for one pound. Both conveyances state “That the Purchasers **shall** enter into possession of the [one quarter/one-eighth] share in the premises” (emphasis added).

## Correspondence

13. Much of the correspondence between the parties and their lawyers over the twenty-nine years since Mrs Jackson died has been disclosed to the Court and was included in a trial bundle which the Court read prior to the short hearing. However, it is not a complete record of the early exchanges as some letters have been lost. The following summary is extracted from the available letters.

14. Following the death of Mrs Jackson on 7 January 1992, Mrs Reoch (the Third Plaintiff) attended with Adv Brelsford who, on 24 January 1992, wrote to the other four of the Children advising that under Guernsey law they would not inherit from their mother. She wrote:

*“The heirs at law will in fact be your late mother’s brother and sisters and it has been suggested by your sister that we should write on behalf of all the children to your aunts and uncles asking whether in the circumstances they would agree to vest their interest in the property in your mother’s children.*

*If you wish us so to do we would be grateful if you would return to us a copy of this letter duly signed.”*

15. All four of the Children duly returned a signed copy of the letter instructing the Advocates “to act on our behalf as suggested above”.

16. On 6 February 1992, the Advocates wrote to Mrs Ransome (the Fourth Defendant) advising her of the inheritance position and asking if she would agree to transfer her share to the Children. The letter explained:

*“From what we are told, there would seem to be no doubt that your sister intended her children to inherit the property but was not aware that under Guernsey law she would have to have made a Will to ensure that this was effected because her children were not legitimate.”*

17. A handwritten note records that Mrs Reoch had telephoned the Advocates on 18 March 1992:

*“She has been to see the bank + they are only prepared to pay the funeral + nothing else. Her aunty in Australia, Mrs Ransome, has told her that she is prepared to give up her share but that the uncle in Australia is not going to sign anything. Also Mrs Barter is apparently not prepared either. She wanted to know what the next step is. Do we write again? Etc.”*

18. The Advocates followed this up on 2 April with a letter to Mrs Ransome enclosing a Power of Attorney to enable the transfer of the property to the Children to take place and they sent a chasing letter on 21 May 1992 when, we assume, no reply had been received.

19. Brian Cooper, the father of the Second and Sixth Defendants wrote from Australia on 25 May 1992 to say: “I have decided not to relinquish my share”.

20. Piers Makin, English solicitors, wrote on behalf of Mrs Twine, the Fifth Defendant, to say she would vest half of her share in the Children and the other half in herself. They sent a chasing letter on 22 July 1992 to which Carey Langlois & Co replied five days later to say that they

were no longer instructed and that the file had been transferred to Advocate Barnes, then of Randell & Loveridge, who was acting "*for the family*". Advocate Barnes has acted for the Children ever since and appeared for them before us.

21. The first available letter written by Adv Barnes dated 14 August 1992 is addressed to the European Commission of Human Rights in Strasbourg ("ECHR") alleging that Guernsey inheritance law on intestacy was unfairly discriminatory in breach of Article 14 of the Convention and claiming compensation under Article 50. In reply, by letter dated 21 August 1992, the ECHR forwarded an application form to be completed and returned within six weeks.
22. In an exchange of letters with Advocate Barnes, Lawrence Cooper and Eric Cooper confirmed their agreement to transfer their shares to the Children and that resulted in the conveyance of 19 November 1992, mentioned above.
23. Bell Pope & Bridgwater (English solicitors) acting for Mrs Hutton (the late mother of the Second Defendant) and Mrs Barter (the First Defendant) wrote to Randell & Loveridge on 14 October and again on 4 November 1992 seeking to ascertain if they were acting for the Children and, if so, what was happening. The second letter stated that Guernsey Electricity had led them to believe that Randell & Loveridge were acting.
24. The ECHR acknowledged receipt of an application form, by fax, on 1 October 1992.
25. Brenton House Estate Agency gave a written valuation dated 28 November 1992 of the Property, describing it as being in poor condition and valuing it at £60,000 "*assuming that there are willing purchasers and vendors and that there are no rentes or other encumbrances*".
26. Advocate Barnes wrote to Bell, Pope & Bridgwater on 15 December 1992. The letter is marked "without prejudice" but at an earlier hearing, Collas LB ruled that the letter is admissible in evidence, for reasons given in a judgment dated 6 May 2021. The letter advised that the net value of the personal estate was nil and asked that one of the Siblings apply for Letters of Administration to enable bills to be paid from the sum of £2,000 sitting in a bank account as the Children had no legal status to make such an application. Advocate Barnes said that in relation to the real property, the Children felt they were giving effect to their mother's wish that the Property be vested in them all. He enclosed the written valuation and explained that the figure of £60,000 was based on the value of the property with vacant possession but one of the Children (Brian Jackson), was a tenant of the Lower Flat. He explained that if agreement could not be reached, the Siblings would have to take *licitation* proceedings to realise the value of their interests and as Brian Jackson had an interest, the Court could not order his eviction so the Property would have to be sold subject to his tenancy which might make it unmarketable. In those circumstances, and given that the Children had limited funds available, he said he was instructed to offer each of their clients (Mrs Hutton and Mrs Barter) £3,000 for their share in the Property.
27. On the same day, 15 December 1992, Advocate Barnes wrote to Brian Cooper in Australia enclosing a copy of the Bell, Pope & Bridgwater letter and offered him £3,000 for his share. He also wrote to Advocate Le Pelley, enclosing the same letter and offering £2,000 for each of Mrs Twine's and Mrs Paddington's shares and £3,000 for Mrs Ransome's share.
28. Advocate Le Pelley replied on behalf of Mrs Twine and Mrs Paddington on 18 January 1993 rejecting the offer, withdrawing their earlier offer to share their interests with the Children and demanding their full one-eighth share each, failing which the matter would have to proceed to a *licitation*. He wrote that they regretted Brian Jackson was using his tenancy to reduce the value of the Property yet he would be prepared to vacate if the Children were to acquire the full ownership. Advocate Le Pelley asked for details of the tenancy including the amount of rent

and to whom it was paid. He also asked for evidence of change of use of the Lower Flat to residential accommodation from what his clients believed had previously been business use.

29. The trial bundle includes a handwritten letter from Mrs Ransome (the Fourth Defendant) to Mrs Reoch (the Third Plaintiff) and her husband. The letter is undated but a reference to Mrs Reoch's birthday the previous Sunday suggests that it was written in mid-March 1993. In the letter, Mrs Ransome gave her condolences, praised Mrs Reoch for the care she had given her mother and described her own heartache at losing a sister with whom she was very close. She said that her brother, Michael (the father of the Second and Sixth Defendants), had withdrawn his offer to transfer his share and would not sign any documents to facilitate the transfer but she did not mention what her intentions were in relation to her own share. The letter ended on a warm and friendly note sending love and finishing with a row of kisses.
30. Meanwhile, in the ECHR, the United Kingdom Government submitted its response to the complaint on 19 March 1993, Advocate Barnes' responded on 13 May 1993 and the First Chamber sat to give its decision on 1 September 1993. Without considering the merits of the complaint, the Commission ruled it was inadmissible because it was submitted more than six months after the date of death of Mrs Jackson.
31. On 31 January 1995, the States of Guernsey Water Board wrote to the five Siblings regarding unpaid water charges. The letter refers to three separate units supplied by a single water service, two flats and a garage. It said that the occupants of two units, including a habitable unit, were paying the charges in respect of those units but the charges for the third unit had accrued unpaid. Enclosed was an account for £429.20. In reply, Mrs Ransome (the Fourth Defendant) on behalf of herself and her brother Brian, explained that the garage had been sold some time ago. She said there were still three dwellings, one occupied by Mr D S Jackson (the First Plaintiff) and a second by Brian Jackson. She said Mrs Jackson had occupied the third flat (the Upper Flat). She said she expected the charges would be paid on completion of the estate. On 31 March 1995, the Water Board replied that because there was a single supply they could not disconnect the Upper Flat but as the estate was complicated, they would allow charges to continue to accrue.
32. On 3 October 1995, Advocate Le Pelley wrote to Advocate Barnes advising that Mrs Paddington was willing to transfer her share to the Children without payment of the sum of £2,000 she had been offered. The offer resulted in the conveyance of her share on 28 March 1996, to which we referred above.
33. On 19 April 1996, the Water Board wrote to Brian Jackson with a copy to each of the Siblings, explaining that the supply had been regularised. A new supply had been laid to the adjoining cottage (owned by the First Plaintiff) which Mrs Jackson had previously sold but the other two units (the Upper Flat and the Lower Flat) were still served by the original supply, in respect of which charges were outstanding. The letter demanded that the current liability be paid whilst the outstanding, accrued, charges could be paid when the estate was finalised. The letter enclosed a Water Supply Agreement Form for completion by Brian Jackson.
34. That concludes our summary of the correspondence available from the period following Mrs Jackson's death. The next letter is dated 5 April 2018, from Advocate Barnes to Mr A Cooper (the father of the Second and Sixth Defendants) advising, incorrectly, that two of the Siblings had transferred their shares to the Children but the other six, of which Mr Cooper owned one, had not been conveyed. He wrote that the Children had had possession for more than twenty years and he was instructed to issue proceedings unless Mr Cooper would transfer his share. To help him do so, Advocate Barnes enclosed a Power of Attorney.

## **Procedural History**

35. The proceedings first came before the Court on 1 June 2018 with an application to serve out of the jurisdiction. Since then, the key events have been as follows.
36. On 27 July 2018, Advocate Strappini appeared in Court instructed by the Second Defendant, Andrew Cooper, the son of Michael Brian Cooper. He informed the Court that Michael also had a daughter, Michelle, who was then added as the Sixth Defendant and leave was given to serve proceedings on her out of the jurisdiction. The Greffe record notes that correspondence had been received from the First Defendant's daughter, on behalf of both her mother and the Fifth Defendant.
37. On 24 August 2018, the Cause was placed on the Cause on the Role des Causes à Plaider as respects the Second Defendant on whose behalf Advocate Strappini filed defences containing an Exception de Fond on 21 September 2018.
38. Following several adjournments, there was a directions hearing on 3 May 2019 at which Advocate Strappini advised he was also instructed by the First and Fourth Defendants and, in respect of them, the matter was placed on the Role des Causes à Plaider. Defences were filed on their behalf on 31 May 2019, also containing an Exception de Fond.
39. On 7 June 2019 the Royal Court (LB Roberts) approved a Consent Order signed by Advocates Barnes and Strappini agreeing that there be a preliminary hearing of the Exception de Fond and giving necessary directions for filing skeleton arguments in relation to it.
40. On 3 October 2019, Bailiff Collas (as he then was) heard submissions on the Exception de Fond from counsel and adjourned after Advocate Barnes raised a fresh point of law which Advocate Strappini needed time to consider.
41. On 24 January 2020, Advocate Strappini was given leave to amend the Exception de Fond. He was then acting for the First, Second, Fourth and Sixth Defendants.
42. The Exception de Fond was heard before Bailiff Collas on 24 February 2020 following which he handed down a reserved judgment on 7 May 2020, dismissing the Exception de Fond.
43. On 5 June 2020 LB Collas (as he then was) refused the Defendants' application for leave to appeal on the ground that the facts needed to be established at a substantive hearing before any appeal should be heard.
44. Amended defences were filed on behalf of the four Defendants represented by Advocate Strappini on 27 November 2020 when the matter was placed on the Role des Causes en Preuve.
45. On 21 April 2021, Lieutenant Bailiff Collas, sitting alone, granted an application under the provisions of the Third Schedule to the Mental Health (Bailiwick of Guernsey) Law, 2010 appointing the First Defendant's daughter to represent her in these proceedings, having read the affidavit of her mother's GP confirming that she was no longer able to manage her affairs.
46. On 6 May 2021, Lieutenant Bailiff Collas handed down a judgment in which he ruled that the letter marked "without prejudice" written by Advocate Barnes on 15 December 1992 was admissible in evidence.
47. Since the beginning of 2021, there have been amendments to both sets of pleadings. In addition to some substantive changes, the Fourth and Fifth Plaintiffs were added following the death of their father, Robert Jackson, the original Fourth Plaintiff.
48. The substantive hearing was due to commence at 9.30 a.m. on 18 May 2021 but immediately before the Lieutenant Bailiff and Jurats entered the Court chamber, counsel handed to the

Deputy Greffier a draft consent order signed by Advocate Barnes for the Plaintiffs and by Advocate Strappini for the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendants, in the following terms:

*“By consent of the Plaintiffs and the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendants and in the absence of the 3<sup>rd</sup> and 5<sup>th</sup> Defendants the Court, having heard submissions from counsel for the Plaintiffs and the evidence of the 2<sup>nd</sup> Plaintiff and upon the Plaintiffs jointly and generally agreeing to pay the 2<sup>nd</sup> Defendant the sum of AUS\$ 2,500 within 7 days of the date hereof hereby orders and declares:-*

- 1. That the property described in the cause namely a building divided into two flats and land known as Braye Road Motors the whole adjoining and situate at Braye Road Vale on Fief St Michel which Doris Alice Jackson purchased (together with other premises) from Nora Watts née Prior by conveyance registered on 28<sup>th</sup> December 1965 is owned by the Plaintiffs as respects the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs in undivided quarter shares and in respect of the 4<sup>th</sup> and 5<sup>th</sup> Plaintiffs in undivided one eighth shares.*
- 2. That there be no order for costs.”*

49. Notwithstanding the presentation of the draft consent order and the subsequent withdrawal from the proceedings of Advocate Strappini, the Court sat to hear evidence from the Second Plaintiff and submissions from Advocate Barnes. After a brief adjournment, the Court reconvened to say that it was minded to grant the declaratory relief sought with reasons that would be delivered in a written judgment at a subsequent date.

### **Oral Evidence**

50. David Jackson, the Second Plaintiff, gave evidence in which he began by confirming the contents of a written statement in the trial bundle dated 8 December 2020.
51. Mr Jackson explained that after their mother died, he, his brothers and his sister believed that they had inherited the Property as her only children and her heirs. They took possession of the keys and believed that they had possession of the property on behalf of the five Children. It was only after they had spoken to an Advocate that they became aware that, by reason of their parentage, they had not inherited.
52. Brian Jackson was already in occupation of the Lower Flat which he had converted from a café and refurbished at his own expense. His mother had allowed him to occupy the flat without paying rent but on the basis that he would maintain it and with the intention that in due course it would be his.
53. The Upper Flat has not been occupied since Mrs Jackson died although one of the Children, Shane, used it for a period of time for storage.
54. The Children have carried out repairs to the property, including repairs to the roof carried out by Shane and his roofing company. After Brian Jackson was taken ill, in about 2015, they replaced the whole of the timber and glass front to the Lower Flat. They have also paid all the bills, including utility bills in respect of the Property.
55. The Siblings, all of whom have been living abroad, have not visited the Property at any time since the death of Mrs Jackson and have not paid for any maintenance nor have they paid any bills even though they were invited to do so.

### **The Decision**

56. The Lieutenant Bailiff directed the Jurats that to be successful, the Plaintiffs had to show an acquisitive title based on 20 years' possession. This possession, in order to qualify, must be *paisible* and in good faith (per Lord Wilberforce in Vaudin v Hamon [1974] A.C. 570, at page 585G). Good faith is presumed unless the contrary is shown, the burden of so showing resting upon the Defendants in this case. If the Defendants wished to make any allegations of lack of good faith, they had to do so in precise terms with full and clear particulars of the matter relied on (applying the speech of Lord Wilberforce at page 586C).
57. The Jurats accepted the evidence of Mr David Jackson and they took account of the history of the matter as disclosed in the correspondence produced to the Court and they are unanimous in their findings.
58. When Mrs Jackson died, the Children believed they had inherited the property and it was as owners that they took possession of it. Once they became aware that the Siblings had inherited, they did not attempt to conceal that fact but instead they instructed their Advocates to write to the Siblings explaining that they were the owners. Ever since then, they have been responsible for repairs and maintenance and have paid all the outgoings, including utility bills in respect of it. They have received no help or contribution from any of the Siblings other than that three of them have conveyed their shares to the Children for nominal consideration. The other Siblings have done nothing to help despite being invited to contribute and they did not even apply for Letters of Administration of Mrs Jackson's estate even though they were told that they were the people with the legal right to do so.
59. The two conveyances of the shares from three of the Children together with the possession clause in the future tense (quoted above) are evidence that the Children recognised the Siblings as the legal owners, they were not attempting to usurp their rights but were acting perfectly properly.
60. The amended defences sought to place reliance upon the statements in the without prejudice letter of 15 December 1992 that Brian Jackson was a tenant of the Lower Flat and that fact would have impeded any attempt by the Siblings to realise the value of their shares had they wished to do so. The allegations were that it amounted to an *empêchement d'agir* and that it gave rise to an estoppel such that the Plaintiffs are now estopped from denying the truth of the statement because it was a misstatement on which they were intended to act and did, in fact, act.
61. Notwithstanding that those defences were withdrawn immediately prior to the hearing when the draft consent order was signed by the two Advocates, the Lieutenant Bailiff directed the Jurats to consider whether the letter did prevent the Siblings from asserting their rights of ownership. If the defences had not been withdrawn, there might have been an issue as to whether the fact that Brian Jackson was not paying a monetary rent indicates that he was an occupier rather than a tenant, but it is not now necessary to decide that question. Instead, taking the statement at face value, the very least the Siblings could have done would have been to demand that the rent be paid to them, thereby asserting their rights as owner but they did not do so. There was nothing to prevent them initiating a *licitation* either at that time or at any time subsequently, but they have not done so.
62. If it were the case that Advocate Barnes advice as to the effect of the tenancy on any *licitation* was incorrect, a copy of the letter was sent to Advocate Le Pelley who would have advised his clients of the procedure.
63. The submission in the defences that co-owners cannot invoke prescription against co-owners was addressed in the judgment of 7 May 2020. If the defences had not been withdrawn,

Advocate Strappini might have made further submissions to persuade LB Collas to alter his view. In the absence of further submissions, the Lieutenant Bailiff directed the Jurats that in these circumstances, if they were satisfied that the Defendants have neglected their shares in the Property, there is no need for them to consider this issue.

**Were the Children acting *de bonne foi* and did they enjoy the Property *paisiblement*?**

64. In the judgment of 7<sup>th</sup> May 2020 dismissing the Exception de Fond, at paragraph 61, the Bailiff held that for the purposes of La Loi Relative à la Prescription Immobilière, 1909, the characteristics of “*bonne foi*” include the requirement that possession of the property shall have been enjoyed *paisiblement* or that it shall have been *nec vi, nec clam, nec precario* and that it will not have been pursuant to a *titre vicieux* and furthermore that it shall not have been interrupted by the person claiming good title.
65. On the evidence of Mr David Jackson and having considered all the available correspondence between the parties, the Jurats are satisfied that the Children entered into possession of the Property on the death of their mother believing they were the owners of it. Once they realised that was not the case, they disclosed the fact to the Siblings thus they have not hidden anything from them and it cannot be said that they have done so with *precario*, that is to say with permission from the Siblings (other than of the three who transferred their shares to them by conveyance).
66. The overwhelming fact is that Mrs Jackson died more than 29 years ago and for all but one month of that time the Defendants have known of their interest in the Property but the only action on their part has been the defences entered by four of the Defendants to these proceedings. The Defendants have done nothing to take possession of the Property nor to maintain it nor even to pay any bills in respect of it.
67. The Jurats are therefore satisfied that the Plaintiffs have acted in good faith and have enjoyed the Property *paisiblement*. It is sad that the dispute could not have been resolved sooner within the family. The Jurats consider it most unfortunate that the ownership of the Property has been unresolved for so long only for the defence to collapse on the steps of the Court.

**Conclusion**

68. In conclusion, the Court declares that the Property is owned by the Plaintiffs as respects the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs in undivided one quarter shares and in the 4<sup>th</sup> and 5<sup>th</sup> Plaintiffs in undivided one eighth shares, they having acquired three undivided eighths by conveyance from three of the Siblings and having acquired the other five undivided eighths by acquisitive prescription having been in possession of the Property for more than 20 years *de bonne foi*.