

**IN THE PRIVY COUNCIL**

**ON APPEAL FROM THE COURT OF APPEAL OF THE PITCAIRN ISLANDS**

**BETWEEN**

**STEVENS RAYMOND CHRISTIAN  
LEN CALVIN DAVIS BROWN  
LEN CARLISLE BROWN  
DENNIS RAY CHRISTIAN  
CARLISLE TERRY YOUNG  
RANDALL KAY CHRISTIAN**

**Appellants**

**AND**

**THE QUEEN**

**Respondent**

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**CASE FOR LEN CALVIN DAVIS BROWN, DENNIS RAY CHRISTIAN  
AND RANDALL KAY CHRISTIAN**

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The Honourable Adrian Cook QC  
Norfolk Island

**IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON  
APPEAL FROM THE COURT OF APPEAL OF THE PITCAIRN  
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**CASE FOR THE APPELLANTS**

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**RECORD**

- 1 1. This is an appeal jointly by Len Calvin Davis Brown, Dennis Ray Christian and Randall Kay Christian ("the Named Appellants") from the judgments of the Court of Appeal of the Pitcairn Islands dated 5 August 2004 and 2 March 2006 dismissing their appeals from the determinations of the Supreme Court of the Pitcairn Islands dated 19 April 2004 and 24 May 2005 on their pre-trial applications objecting to the jurisdiction of the said Supreme Court to try them or to convict them on abuse of process grounds in respect of various sexual offence indictments brought against them. Following upon the judgment dated 5 August 2004 of the said Court of Appeal, a Petition by way of Special Leave to Appeal was brought before the Judicial Committee of the Privy Council. Special Leave to Appeal was granted by the said Judicial Committee on 11 October 2004. The Named Appellants were each convicted on a number of charges and their appeal is also brought against their said convictions on grounds generally applicable to all of the appellants on this appeal.

1-125 to 166  
2-917 to 980  
1-61 to 122  
2-801 to 895

2-443 to 446

2. This appeal raises the following issues:
- (i) Whether the Court of Appeal erred in finding that throughout the relevant period (1790 to 2006) Great Britain did lawfully acquire and did have, lawfully, sovereignty and jurisdiction in any form over Pitcairn Island;

- (ii) Whether the Court of Appeal erred in finding that Pitcairn Island during the said period fell within the definition of a "British Settlement" under the British Settlements Act 1887 (Imp.) and that the said Act was applicable to it and that all Orders in Council purported to be made by virtue of and pursuant to the said Act were intra vires, valid and not exceeding the powers and authority delegated to the Sovereign by the said Act; 1
- (iii) Whether the Court of Appeal erred in finding that the description of and reference to Pitcairn Island being a "British Settlement" in the 1898 Instruction of Joseph Chamberlain and the 1952 and 1970 Orders in Council were "Acts of State" which effectively prevented the Courts of Pitcairn Islands from determining this question of fact and law; 10
- (iv) All other issues set out in the Petition and the Statement of Agreed Facts to be filed herein. The "divisions of labours" which has been agreed upon by all Counsel acting for the appellants, subject, of course to the approval of the Judicial Committee, has resulted in the preparation and filing of separate Cases by Counsel for different appellants. Each of these Cases contain particular submissions as to the various Issues set out in the Petition and the Statement of Agreed Facts to be filed herein. In so far as those issues relate to the Named Appellants generally with all other appellants, leave is sought to rely on all such issues and grounds of appeal as are contained in the Cases filed herein on behalf of the remaining appellants. Such leave is sought to avoid any possible confusion, repetition or duplicity in these Cases and the due presentation of submissions on these said grounds. Counsel for the Named Appellants is accordingly prepared to accept and adopt the said Cases and due presentation of submissions based and founded upon those Issues appearing in the said Petition and Statement of Agreed Facts to be filed herein. Counsel for the Named Appellants is prepared, if called upon by the Judicial Committee, to make submissions on all or any of the said Issues to be placed before the said Judicial Committee. 20 30

**DIVISION OF CASE INTO TWO SECTIONS**

- 3. It is convenient in the setting out of the Named Appellants' Case to divide it into 2 sections so as to assist its best presentation. The first section is intended to comprise skeleton submissions on the issues of sovereignty and jurisdiction. The second section relates to the adoption of submissions on all

- 1 other issues in other Cases filed particularly those involving promulgation and publication of laws, abuse of process/generic issues and Human Rights issues.

**SOVEREIGNTY AND JURISDICTION**

- 10 4. Leaving aside, at this stage, the Court of Appeal's findings regarding "Acts of State", it is clear from consideration of these issues both by the Supreme Court of Pitcairn Islands and the Court of Appeal of Pitcairn Islands that these Courts found, in effect, that Pitcairn Island was lawfully acquired by settlement by the mutineers from HMAV Bounty and their companions upon and after the arrival of that vessel at the Island in January 1790. The primary basis for these findings was that the mutineers were, at all relevant times up to and after their arrival, British subjects. Both Courts accepted that the issue of the acquisition of the territory on behalf of England involved the entry into and the occupation of uninhabited lands by British subjects under allegiance to their Sovereign. Both Courts would appear to have determined that this acquisition by settlement had persisted throughout the relevant period of 1790 to 2006.
- 20 5. The Named Appellants do not challenge the basic principles that acquisition of territory by settlement requires the entry into and occupation of uninhabited lands (terra nullius) by nationals of the claimants to "possession" of such territory. The bare fact of discovery was not sufficient to found a proper and valid claim of acquisition. The said nationals were either authorised by their Sovereign to acquire the said territory prior to entry and occupation on behalf of their Sovereign or such entry into and occupation by such nationals of the said territory could later be ratified or accepted by the said Sovereign as being on the Sovereign's behalf. In Public International Law the other acquisitions of territory which were recognised were by way of cession or conquest. The lawful acquisition of territory by settlement therefore requires the pre-requisite that, at all relevant times, clear and cogent evidence must
- 30 establish the nationality of the "settlers".
6. Before both of the Courts below the Named Appellants had claimed that, by reason of their mutiny and acts of piracy, the nine sailors on board HMAV Bounty on its arrival at Pitcairn Island were not British subjects. Despite, particularly, the submissions that the crime of piracy clearly occurred at the time of the taking and running off with the Bounty, the Courts below found that the mutineers were still "nationals" of Great Britain on their arrival at Pitcairn Island.

**RECORD**

7. It is a key submission on this appeal that both, in fact and at law, the mutineers had committed the crime of "Piracy Jure Gentium" in their violent and forceful taking of the Bounty, in their running off with that vessel, in their use of her to find a haven out of the reach of British justice, in their stripping of the vessel of all her cargo, fittings and contents and in their destruction, by burning, of the vessel immediately after their arrival at Pitcairn Island. The skeleton submissions contained in this Case necessitate brief references to both the facts and the law, which strongly support this contention of the Named Appellants. Counsel for the Named Appellants will have available to hand up to Your Lordships a reliable factual accounts of the events which occurred on HMAV Bounty on the 27<sup>th</sup> April 1789, the date of the mutiny on that vessel. In so far as the Named Appellants require the leave of Your Lordships to rely on such of that material as presently does not form part of the Record of this appeal already filed, that leave will be sought. It is therefore not intended to refer to such records in detail but at this stage, to identify them. Authorities and writings to be relied upon on this issue will, of course, be included in those filed on behalf of the Named Appellants before the hearing. 1  
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8. The most reliable account of the events of 28 April 1789 is the contents of the log of Captain Bligh kept by him daily after he and others of his crew were set adrift in the launch of HMAV Bounty. In this very detailed account, in his own handwriting, the crime of "Piracy Jure Gentium" is clearly established against the nine mutineers who later arrived on Pitcairn Island. This account was later relied upon by Captain Bligh at his Court Martial for the loss of his ship. He was honourably acquitted of the charges before that Court Martial and it is clear that his account was accepted as true and reliable. Later on it was presented as part of his evidence at the Court Martial of such of the mutineers who stood trial in respect of the charges of mutiny on HMAV Bounty. Again, it was not found to be unreliable or untrue. In further examination of the facts relating to the alleged crime of "Piracy Jure Gentium" Counsel will refer Your Lordships to the book written in 1831 by Sir John Barrow, then a Second Secretary of the Admiralty, entitled "The Eventful History of the Mutiny and Piratical Seizure of HMS Bounty: Its Cause and Consequences". This book, it is submitted, is a valuable and reliable source of factual information relating to the said Mutiny as its author had for very many years, over a period from about 1815 until its publication, been a public servant with responsible positions in the Admiralty. For the purposes of its use on this Appeal, it constantly refers to the events on HMAV Bounty as amounting to "Piracy" and the mutineers being "Pirates". Captain Bligh, in his 20  
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1 log referred to above, also describes the mutineers as "Pirates". It will be necessary, in due course, to take Your Lordships to relevant portions of these two sets of materials.

9. As to the legal consideration relating to the crime of Piracy Jure Gentium and the consequences of that crime so far as they are involved in this Appeal, Counsel for the Named Appellants will rely on principal authorities including therein In re Piracy Jure Gentium (1934) A.C.586, U.S. v Smith 18U.S.153 (1820) and The Ambrose Light 25 Fed Rep. 408. These last two authorities were discussed, and approved, by the Judicial Committee in In re Piracy Jure  
10 Gentium. The crime of piracy was regarded, under the Law of Nations as the most despicable crime against all humanity and formed part of the common law of England. When a member of the civilised nations of the world became aware of the commission of the crime of piracy by its nationals or the nationals of other civilised governments then there was a clear and abiding duty and obligation to capture and to punish (with death) those who were pirates.

10. From these authorities it emerges:

(i) Immediately upon commission of the crime of piracy, the perpetrators cease to be nationals of the country to which they belonged and became "hostes humani generis" or enemies of the human race;  
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(ii) Such perpetrators have no title, right or claim to all property, moveable and immoveable, acquired by, or as a consequence of their piratical acts;

(iii) No claims to possessory titles can be made validly by those acquiring property through such perpetrators where there is knowledge in such claimant that the said property was taken into possession by such perpetrators by or during acts of piracy;

(iv) The crime of piracy may be committed by a "one-off" set of events and the practice of depredation of other vessels upon the High Seas,  
30 is not an essential ingredient or factor in such crime.

11. Counsel will also rely on various writings on Piracy Jure Gentium including Blackstone's Commentaries on the Laws of England (4<sup>th</sup> Book) and Grotius (English Translation) "On the Law of War and Peace". These writings will be included in the materials to be placed before Your Lordships prior to the hearing of the Appeal. In addition to and in amplification of the principles derived from the authorities quoted in clause 9 above, these writings deal

- extensively with the consequences of the commission of the crime of Piracy Jure Gentium. 1
12. Blackstone in his Commentaries Book 4 p. 67 dealing with the Law of Nations states:
- "...but since in England no royal power can introduce a new law, or suspend the execution of the old, therefore the law of nations (wherever any question arises which is properly the object of its jurisdiction) is here adopted in its full extent by the common law, and is held to be a part of the law of the land".*
- Later, on p.68 he states:
- "But where the individuals of any state violate this general law, it is then the interest as well as the duty of the Government under which they live, to animadvert upon them, with a becoming severity, that the peace of the world may be maintained. For in vain would nations in their collective capacity observe these universal rules, if private subjects were at liberty to break them at their own discretion, and involve the two states in a war. It is therefore incumbent upon the nation injured, first to demand satisfaction and justice to be done on the offender, by the state to which he belongs, and if that be refused or neglected, the sovereign then avows himself an accomplice or abettor of his subjects crime, and draws upon his community the calamities of foreign war".* 10
- Of course, this statement in its last part appears not to be directly related to the situation relating to the taking of HMAV Bounty but, nevertheless, it reveals the heavy duty and responsibility upon a Sovereign not to neglect to take action upon the perpetrators of a crime against the Law of Nations. The author then deals with Piracy Jure Gentium at pp 71-73 and Your Lordships will be taken to this reference more fully in argument. 20
13. It is submitted that the British Government, by neglecting, or positively deciding, to take any or no action against John Adams from the time it was first aware of his presence on Pitcairn Island until his death, was in breach of its duties and obligations under the Law of Nations dealing with Piracy Jure Gentium. This failure to act against a known and prima facie perpetrator of the crime of Piracy Jure Gentium was unlawful and contrary to the law of the land. It operated strongly against any claims of the British Government that it had lawfully acquired Pitcairn Island by settlement at any relevant time prior to the death of John Adams. It is appropriate to submit that, in accordance 30

1 with long established principles of law and equity such failure prevented any such claim being validly made later.

14. This last submission finds support in another writing to be placed before Your Lordships namely "International Law" by Professor D.P. O'Connell (2<sup>nd</sup> Edition) Volume 1 and in particular chapter 15 thereof. This Chapter deals with "Acquisition of Territory" and at p. 417 the author states:

10 *"If the basis of title is the exercise of sovereign jurisdiction it follows that acquisition of territory can take place only at the sovereign's instance. Accordingly only authorised persons are competent to perform the relevant acts of proclamation and administration. In an award given by the King of Italy in the Brazil-British Guiana Boundary dispute in 1901 the arbitrator stated that "to acquire the sovereignty of regions which are not in the dominion of any State, it is indispensable that the occupation be effected in the name of the State which intends to acquire the sovereignty of those regions."*

Professor O'Connell then proceeded to quote from Judge McNair's judgment in the Anglo-Norwegian Fisheries case as follows:

20 *"Another rule of law that appears to me to be relevant to the question of historic title is that some proof is usually required of the exercise of State jurisdictions, and that the independent activity of private individuals is of little value unless it can be shown that they have acted in pursuance of a licence or some other authority received from their Governments or that in some other way their Governments have asserted authority through them".*

Later His Honour stated:

30 *"When citizens or subjects of one nation, in its name, and by its authority or with its assent, take and hold actual, continuous and useful possession (although only for the purpose of carrying on a particular business such as catching and curing fish, or working mines) of territory unoccupied by any other Government or its citizens, the nation to which they belong may exercise such jurisdiction and for such period as it sees fit over territory so acquired."*

These important principles as to the acquisition of territory are in no way whatsoever met by the settlement and occupation of Pitcairn Island by persons who undoubtedly, had committed the crime of Piracy Jure Gentium with the intention of undertaking such settlement and occupation to escape due punishment for their crime. At p. 431 the author states that it is a specific



rule of international law that a state is estopped from asserting facts brought about in consequence of its own illegal acts. It is submitted that the forbearance, neglect and failure to take action against John Adams in respect of his part in the crime of Piracy Jure Gentium committed on HMAV Bounty amounted to an unjust and unlawful breach of the Law of Nations and as such effectively prevents Great Britain from claiming the acquisition of Pitcairn Island by settlement.

15. Further support for this submission is found in the work of Hugo Grotius (English Translation) "On the Law of War and Peace." It is not possible in these skeleton submissions to quote at length relevant portions of this work, particularly as to Piracy Jure Gentium and a full copy of this work will be available to Your Lordships at the hearing of the Appeal. However, it is necessary to refer to some passages briefly in these submissions. In Chapter 4 of Book 2 in Section IX it appears:

*"Perhaps it may reasonably be said, that this matter does not rest upon assumption only, but that it is a rule introduced by the voluntary Law of Nations, that uninterrupted possession against which no claim has been asserted, will entirely transfer such property to the actual possessor. For it is most likely that all nations by consent gave their sanction to such a practice, as conducive to their common peace."*

Certainly the Tahitian women and their children actually possessed Pitcairn Island without any claim against them until some 100 years later. The learned author in the same Book Chapter 20 on Punishments at section XL states the obligations upon a Sovereign to punish offences against the Law of Nations. In the same Book, Chapter 21 on The Communication of Punishment in Section ii the learned author states the law as to forbearance. Dealing with the responsibility of a Sovereign for the acts of his subjects, it is stated:

*"As to forbearance, it is an acknowledged point, that when he knows of a delinquency, which he neither forbids nor punishes, when he is both able and bound to do so, he becomes an accessory to the guilt thereof."*

In Section iii he again states the obligation to punish crimes such as Piracy Jure Gentium and the consequences of not doing so. In Book 3 Chapter 20 Section XXX it is stated:

*"If subjects have committed any act of hostility without authority and commission from the State, it will form a proper subject of inquiry whether the*

1        *State can be judged responsible for the acts of individuals, to constitute which responsibility, it is evident that a knowledge of the fact, power to punish it, and having neglected to do so, are requisite. A formal notice given to the sovereign of the offending subjects is supposed to amount to a knowledge of the fact, and it is presumed that every sovereign is able to control and punish his own subjects, unless there be some defect in his authority: and a lapse of time beyond what is usually taken for the punishment of civil offences in every country, may be construed into wilful neglect. And such neglect amounts to a sanction of the offence".*

10        Finally, in this context in Book 3 Chapter 22 Section (iii) it is stated:

*"On the other hand, a charge of injustice may fairly be brought against those who condemn an engagement, yet retain the advantages which they could not have had without it".*

If the perpetrators of the crime of Piracy Jure Gentium intended in and by their piratical acts to find on Pitcairn Island a haven from British justice, it is clearly unjust for England, in asserting sovereignty over Pitcairn Island by reason of such actions, to retain the advantages of such sovereignty arising from those actions.

16.        The considerations arising out of the materials referred to in the 4 paragraphs  
20        above are, it is respectfully submitted, important and significant in the whole question of whether Great Britain ever lawfully acquired the territory of Pitcairn Island by settlement such as satisfies the provisions, the purpose and the intent of the British Settlements Act 1887. The Named Appellants, mindful of the aphorism that "Bad History makes Bad Law", respectfully urge Your Lordships to find that Your Lordships are not satisfied that, at any time, prior to or after the British Settlements Act 1887 became law, Pitcairn Island had been lawfully acquired by settlement by Great Britain. While it has been deemed necessary to deal with this issue at some length in this Case, it is submitted that even more extensive examination and analysis of all relevant  
30        materials authorities and writings support these contentions of the Named Appellants.

17.        The time at which acquisition by settlement is determined to have occurred is required to be fixed with some precision because of the common law rule laid down by the Privy Council in 1722 as to the applicability in a new settlement of English common and statute law. Where possession is taken of uninhabited lands under authority of the Sovereign it occurs upon arrival and after some ceremonial procedures are taken such as reading the authorising

proclamation, turning a sod of turf and hoisting a flag. Where there is no prior authorisation a reasonably demonstrable and "effective" occupation by nationals of a State is required to take place. This "effective" occupation or planting of a colony usually takes the form of the original "settlers" building houses, clearing and tilling the land and showing overall the actuality and intention of long time residence within and development of the new territory. If Your Lordships find that the mutiny and piratical acts of the 9 crew of HMAV Bounty did not cause a loss of their status as British subjects then it is submitted that, at an early date after the arrival of the vessel 7 of that crew were dead and almost all of the inhabitants of Pitcairn Island were Tahitian women and their children, none of which said inhabitants were British subjects. This material change of circumstances does not permit of such a settlement being called a British settlement as the effective occupation by these nationals was incomplete and was no longer a factor in proof of acquisition.

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18. Even if this submission is not accepted then some positive and clear declaration of the acceptance and ratifications of the settlement of Pitcairn Island as a British settlement is required. This was never the case until, perhaps it could be said, Joseph Chamberlain in 1898 by his Instruction notified such acceptance and ratification. This was 108 years after the arrival of the vessel and some 90 years after the British Government received reliable information of the presence of people on Pitcairn Island who had come there in HMAV Bounty. It is an important principle in International Law that a very long term failure to take appropriate actions to claim possession by a ratification and acceptance of an unauthorised settlement brings about the loss of rights to claim an acquisition by settlement of such a territory. The assistance given from time to time to the Pitcairn Islanders by the British Government mainly at the time or consequent upon visits by warships did not amount to the formal ratification and acceptance required. It may have laid the ground in some way to establish a different form of acquisition but not that of settlement which the British Settlements Act 1887 dealt with.

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19. Far from any formal notification of such acceptance and ratification there were from time to time positive disavowals of an essential recognition and approval of Pitcairn Island as a British settlement. It cannot have been the case that the authorities were unaware, or unappreciative, of the acts of piracy and the consequences thereof. The failure to deal with John Adams according to the Law of Nations cannot have been other than a distinct embarrassment and concern to successive governments. Above all England was proud of her reputation as the "Ruler of the Seas" and yet she had failed

4-1681 to 1682

- 1 by neglect or deliberate choice to implement, as a most significant deterrent and earnest of the universal condemnation of Piracy Jure Gentium, appropriate punishment of an undeniable breach of the Law of Nations. Certainly Sir John Barrow, a high official in the Admiralty in his book referred to above, raised these matters in 1831.
20. The actions of Captain Elliott of the "Fly" on his visit in 1838 and the involvement earlier in that decade of British warships in the removal of Joshua Hill from Pitcairn Island perhaps caused perceptions in the international community that Great Britain was about formally to ratify or accept Pitcairn Island as a British Possession. Denials as to such a situation having occurred, or about to occur, came from Secretaries of State for the Colonies in 1842 and in 1846. Lord Stanley and William Gladstone emphatically rejected any suggestions that Pitcairn Island was or ever could become a British Colony. It is clear that William Gladstone and those in high positions of power regarded the involvement of Great Britain with Pitcairn Island as a distinct nuisance and difficulty which should be solved by the removal of all its inhabitants to other places. Indeed when the Pitcairn Islanders sought some confirmation of their status and relationship with Great Britain this was denied to them. A letter dated 6 October 1854 from the British Consul Nicholas Toup does no more than assure them of the interest of Great Britain as to their welfare. Not long after, in 1856, all of the inhabitants were removed to Norfolk Island. The majority of the Islanders who had suffered grievously from a prolonged drought accepted this removal but a significant number did not and only left with the majority because of threats that if they did not they would not be visited by British warships. So for a number of years Pitcairn Island was intentionally abandoned and remained deserted and vacant. It cannot be said in the light of the plans to resettle the whole population on Norfolk Island, that this dereliction was merely a hiatus or an inconsequential break in the continuous effective occupation of Pitcairn Island. The British intention in 1856 was to bring the occupation to its final conclusion and to leave nothing in its place which could indicate a resolve to maintain possession of the Island by England.
21. The relatively brief time, some 3 years, which elapsed until the return of a group of Islanders to Pitcairn does not it is submitted interfere with or terminate their long term continuous occupation of the Island. This group basically comprised those who initially had refused to leave the Island but had been prevailed upon to do so. It had evinced at all times its concerns that Norfolk Island was not a desirable or suitable place for it to live. None of this group, as also was the case with the next group to come back to Pitcairn
- 3-1231 to 1244
- 3-1225 to 1230
- 3-1309 to 1311
- 3-1385 to 1392
- 3-1393 to 1396

RECORD

Island, were British Subjects. They came into Norfolk Island as denizens and accepted allegiance to the Queen of England accordingly. When they withdrew from that Island that allegiance ceased. The descendants of those two groups have effectively occupied Pitcairn Island since that time as a separate and distinct community to those who have remained on Norfolk Island.

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3-1469 to 1480

22. Great Britain's continuing refusal to accept Pitcairn Island as having been acquired by settlement is best evidenced by an intra-governmental memorandum in January 1882 which answered the query "*is Pitcairn Island a Colony?* By the reply "*No, it is not though the natives own allegiance to Her Majesty*". The author of this reply was a Government Official in a high level position and this reply may be accepted as a reliable statement of Pitcairn's status so far as, at that time, the British Government was concerned.
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23. It is submitted that when the British Settlements Act 1887 passed into law Pitcairn Island had not at any time before that date been a British possession acquired by settlement within the clear meaning and intent of that Act. Neither at the time of arrival of HMAV Bounty or at any later time had it been or become such settlement. It was essential to the exercise of powers and authority given to the Queen under that Act that the facts and evidence which justified and supported such exercise were clearly and lawfully established. It is the contention of the Named Appellants that neither then nor at any time has this been proved to be the case as regards Pitcairn Island.
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4-1681 to 1682

24. The Instruction of Joseph Chamberlain of 1898 was invalid, null and void and inoperable as a declaration of sovereignty over Pitcairn Island. It described Pitcairn Island as a "British Settlement" and this was untrue and incorrect as a fact essential to the said validity and nature of this Instruction. In addition the Secretary of State had acted upon wrong and inaccurate statements as to the status of Pitcairn Island. For the Instruction to be valid the advices to the Secretary of State were required to be correct and legal and if these advices were erroneous in fact and in law the Instruction based on them was necessarily invalid. Further the authority delegated to the Secretary of State could not permit such a re-defining of the limits of the Western Pacific Order in Council 1893 as amounted to an amendment by him of that Order in Council. The object and purpose of the Instruction coming into being was solely concerned with and directed to the trial of Harry Christian for an alleged murder taking place on Pitcairn Island in 1897. The powers and responsibilities of the civilised government then in place on Pitcairn Island to deal with this situation were clearly and illegally usurped and taken away by
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4-1634 to 1642

- 1 this Instruction. It cannot form the basis legally of a claim that the British Government was thereby asserting its authority appropriately over a "British Possession" or was establishing by it a claim of sovereignty over Pitcairn Island.
25. The hallmark of an independent sovereign power is that it has reserved to itself the right to manage its own internal affairs. For over 150 years until the 1952 and 1970 Orders in Council (and even after those times to the beginning of the 21<sup>st</sup> Century) Pitcairn Island effectively and actually managed its own internal affairs. From 1838 when universal suffrage came into being on Pitcairn Island and the whole community acted thereafter as a legislative body in voting upon and passing laws to govern and control their internal affairs. Until by the Orders in Council of 1952 and 1970 when Governors were appointed over them as legislators, the Pitcairnians so managed their own internal affairs. At different times visiting captains of warships, not expressly directed by the British Government to do so, offered advices as to suitable laws and processes of administration. On occasions, actual proposals for such laws and administrative changes were offered to the Islanders by these officers who had drafted them. But this was always on the basis that it was for the Islanders to decide whether they would pass these proposals into law. No statutes were passed in England directed to the management of their internal affairs neither were any Statutes which could affect or control such management extended to apply to their community. What was done by Captain Elliott, Captain Rookes, Consul Simons and last of all, Mr Maude did not take from them this right of management. Indeed an examination of the telegram dispatched to Mr Maude in 1940, giving him instructions as to helping the Islanders to introduce new and comprehensive laws into their community reveals the extent to which the rights of the Islanders to manage their own internal affairs were to accord entirely with their own wishes and customs. The whole community voted into law the proposals eventually drafted by Mr Maude after extensive consultations with the leaders of the community. Here again, the fact that the Islanders were prepared to give visiting ship's captains the power to determine difficult questions of law does not amount to a surrender of sovereignty but a wise recognition of the education and experience of such men to assist in and maintain the highest possible level of administration of justice. It is not unusual for relatively advanced and sophisticated communities to seek the help of outside judicial officers and arbitrators finally to resolve difficult legal questions arising in those communities.

26. A close examination of voluminous material – too large to be considered in this case – supports the continuing and sustained efforts of the Islanders to manage their own internal affairs with determination and dedication. From the very earliest days of religious instruction by John Adams through the wholesale adoption of the strict tenets of the Seventh Day Adventist faith the Islanders were aware of and responsive to the essential need of preserving harmony and order in the isolation of Pitcairn Island. They were inspired by their religious beliefs to act with real responsibility and caring towards each other. Certainly no administrative or judicial officials were stationed amongst them by Great Britain to control and direct their affairs on a day to day basis. Even after the 1952 and 1970 Orders in Council there was little or no attempt by Great Britain to provide such administrative and judicial controls until complaints of sexual misconduct emerged which brought about, as described by a member of the Court of Appeal of Pitcairn Islands, a "snowstorm" of legislation dealing with such matters. 1  
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27. The promulgation and publication of laws touching on these matters is properly the subject of other submissions yet to be made in the Cases. But the allegations of non-existent or ineffective administration of Pitcairn Island by the British Government over a very long period are a matter demonstrable by historical records and correspondence and it is intended to take Your Lordships to such materials somewhat more extensively in oral submissions. As submitted earlier the constant and consistent failure to provide and maintain proper judicial and administrative controls within the Pitcairn community by Great Britain militate against and deny by law to her, recognition of her rights of sovereignty and jurisdiction over Pitcairn Island. 20
28. Both the Supreme Court of Pitcairn Islands and the Court of Appeal of Pitcairn Islands relied upon the Orders in Council of their Majesties Queen Victoria and Queen Elizabeth II and the Instruction of Joseph Chamberlain as "Acts of State" behind which the Courts were unable to go. It is respectfully submitted that both Courts fell into serious error on this issue. It has been said that the doctrine of "Acts of State" does not apply between a subject and the Queen. Essentially examination is permissible of whether what, in effect, is a delegated power to legislate has been exercised in accordance with the Act granting such delegated powers and authorities. All the necessary requirements set out in the Act as pre-conditions to the exercise of such powers and authorities must be found to be satisfactorily established. In the recent decision The Queen and anor. v. Commonwealth Affairs (2006) EWHC 1038 (Admin) it was held that the Queen acting on advice of her ministers is, in effect, carrying out executive action. It is submitted that the doctrine of 30

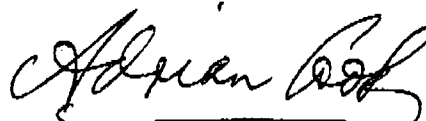
1 "Acts of State" in the form in which it is presently understood could not and should not prevent or deny an effective historical presentation and appreciation relating to the important and vital questions of sovereignty and jurisdiction.

29. It is the concluding submission on behalf of the Named Appellants humbly made to Your Lordships that the good and complete history supplied to Your Lordships will enable Your Lordships to find that good law prevents and prohibits the validity and legality of Great Britain's claims of sovereignty and jurisdiction over Pitcairn Island being proven and established.

10 **SUBMISSIONS UPON ALL OTHER GROUNDS OF APPEAL**

30. By memorandum filed in the office of the Privy Council on 8 May 2006 Counsel for the Named Appellants indicated some amendments to the Statement of Issues in the Petition filed herein by the Public Defender. Counsel also indicated that as experienced Senior Counsel he was most concerned to avoid the making of repetitious or duplicitous submissions. With this concern clearly to mind it is the intention of Counsel for the Named Appellants to adopt the submissions as to these issues made by Counsel for other appellants if permission to do so is granted by Your Lordships. Counsel seeks the leave of the Judicial Committee to very briefly address them as to  
20 any of such submissions if requested or if careful consideration renders this necessary or essential.

Dated this 31 day of May 2006



**The Honourable Adrian Cook Q.C.**