Privy Council Appeal No. 20 of 1988

Edward Rothnie Ebanks and Edward Rothnie Ebanks (as joint administrator of the Estate of Henry London Ebanks - Deceased) *Appellant*

v.

Hope Glidden Borden (as joint administratrix of the Estate of Henry London Ebanks - Deceased) *Respondent*

FROM

THE COURT OF APPEAL OF THE CAYMAN ISLANDS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JANUARY 1990

Present at the hearing:-

LORD KEITH OF KINKEL
LORD BRANDON OF OAKBROOK
LORD TEMPLEMAN
LORD GOFF OF CHIEVELEY
LORD LOWRY

*[Delivered by **Lord Templeman**]*

Henry London Ebanks ("the testator") who died on 3rd December 1933, was entitled to several parcels of land in the Island of Grand Cayman. Two parcels of land, known as Elmslies and Little Tom Cliff, fell into residue which was directed to be held by his executors and trustees, his widow Martha and his sons Charles and Donald, upon trust for the testator's six named sons including the appellant Edward Rothnie Ebanks. In 1934 probate of the will of the testator was granted to Charles. In these proceedings the appellant gave oral evidence that there was an informal family arrangement about the year 1934 when the appellant, then about eleven, received the allotment of Elmslies and Little Tom Cliff as the whole or part of his share of the residue. Alternatively the appellant claimed that he went into adverse possession of Elmslies and Little Tom Cliff and acquired title by adverse possession. Charles died on 22nd January 1958 and the respondent Hope Glidden Borden is his personal representative. The testator's widow Martha died in 1973. To enable title to be made to a purchaser of Elmslies and Little Tom Cliff the appellant and the respondent, on 28th August

1981, took out letters of administration of the estate of the testator with the will annexed.

In these proceedings the appellant claims that he is absolutely entitled in equity to Elmslies and Little Tom Cliff and the respondent claims that those properties are part of the unadministered estate of the testator. The dispute was tried by Sir John Summerfield C.J. in the Grand Court of the Cayman Islands. The Chief Justice did not believe the appellant's oral evidence of an informal family arrangement and decided that the evidence of adverse possession was too vague and illusive. The Chief Justice granted an order that the appellant and respondent be registered as proprietors of the two pieces of land in their capacity as administrators of the estate of the testator. The Court of Appeal (Zacca P, Telford Georges and Kerr JJ.A) upheld the Chief Justice. The appellant, who now appeals to the Board, is faced with concurrent findings of the Chief Justice and the Court of Appeal and, in accordance with the principles set forth in the advice of the Board given by Lord Thankerton in *Srimati Bibhabati Devi v. Kumar Ramendra Narayan Roy* [1946] A.C. 508, must satisfy the Board that there was no evidence on which the court below could arrive at their findings which essentially dealt with matters of fact,

Mr. Scharschmidt, who put the case for the appellant very persuasively, drew attention to a conveyance dated 17th December 1949 by Martha the widow of the testator. The conveyance was of land known as Absalom Yard and the western boundary of Absalom Yard was stated in the conveyance to be "the land of Edward Rothnie Ebanks" the appellant. Mr. Scharschmidt informed their Lordships that the western boundary of Absalom Yard was in fact the land known as Elmslies. The testator's son Charles attested this conveyance and is said to have prepared it. Mr. Scharschmidt also drew attention to an agreement of 1971 to which three of the testator's sons were parties and which recited that Charles had "informally partitioned" the land of the testator and granted the lands comprised in the agreement to David and Harvey. Both these documents, it was submitted, supported the claim of the appellant that there was an informal division of the lands of the testator and that Elmslies and Little Tom Cliff had been allotted to him. But by claims under the Land Adjudication Law 1971, supported by a voluntary declaration dated 28th October 1972, the appellant became registered as sole owner of Elmslies and Little Tom Cliff on the basis that Elmslies had been given to the appellant by his mother Martha in 1948, that Little Tom Cliff had been inherited by his mother from the testator and she had given Little Tom Cliff to the appellant in 1948.

In these proceedings the appellant in cross-examination had said that he was not familiar with the

wording of the voluntary declaration and that there may have been some mistake in the deed. Mr. Scharschmidt submitted that the voluntary declaration was drafted by professional advisers who were unacquainted with the facts and were only attempting to obtain a legal title to the land which the appellant had inherited and had occupied. So far as adverse possession is concerned the evidence was that the appellant went to sea at the age of twenty one, only returning to Grand Cayman for a month or two every three or four years and lived in New York and latterly Miami. The acts of possession seemed to consist of marking the boundaries of undeveloped land from time to time and such actions were carried out either by the appellant or by somebody on his behalf or by the testator's widow whilst she was alive. Several witnesses were called by the appellant and were cross-examined. The Chief Justice was not impressed by the oral evidence of the appellant. From the very full notes of evidence kept by the Chief Justice it is clear that both the issues of title and adverse possession were thoroughly investigated. The appellant failed to make out his case on either issue to the satisfaction of the Chief Justice and there was ample evidence from which the Chief Justice was entitled to reach his conclusion. The Court of Appeal took that view after another examination of the evidence and this appeal must therefore fail. Their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed. The appellant must pay the respondent's costs.