Privy Council Appeal No. 50 of 2002

Myra Wills *Appellant*

v.

Elma Roselina Wills *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

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

Delivered the 1st December 2003

Present at the hearing:-

Lord Bingham of Cornhill
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Sir Martin Nourse
Sir Philip Otton

*[Delivered by **Lord Walker of Gestingthorpe**]*

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1. This appeal raises issues as to the acquisition and extinction of title to land under the Limitation of Actions Act of Jamaica. The issues arise in an all too familiar context, that is where property is owned by a husband and wife as joint tenants and there is a breakdown of the marriage leading to separation and divorce. It is however a very unusual context, so far as reported cases go, for a dispute as to whether one co-owner (in this case, the husband) acquired title by possession from the other co-owner (his first wife).

2. The proceedings were commenced by originating summons and were heard on affidavit evidence without cross-examination, even though the affidavits revealed severe conflicts of evidence on a number of points, and other matters which called for further elucidation. This presented the trial judge (Chester Orr J) with a difficult task in making findings of fact, although it must be said that he may have increased the difficulty of his task by reserving

judgment for over two years. The Court of Appeal (Rattray P, Bingham JA and Langrin JA (Ag)) did not disturb any of the judge's rather limited findings of fact, and the Board has been urged not to depart from concurrent findings in the courts below.

3. Their Lordships would, in accordance with their normal practice, be very reluctant to depart from concurrent findings of fact, even though the judge did not (as there was no cross-examination) have the advantage of seeing and hearing the witnesses. But in the course of the hearing before the Board it became apparent that although there are some strong conflicts of evidence, and although there are several points which could usefully have been explained, the most salient events are largely common ground. The following summary sets out matters of common ground except where otherwise indicated. For clarity, the parties' first names are used; this does not of course convey any disrespect.

The Facts

4. Mr Alexander George Wills ("George") married his first wife, Mrs Elma Roselina Wills ("Elma") in 1935, when he was aged 24 or 25. They had three children, two daughters and a son, born between 1935 and 1941. George worked for all his adult life as a building contractor. He and Elma owned various homes, pooling their resources and building their houses themselves. The two properties relevant to this appeal are 84 Sunrise Crescent, Kingston ("Sunrise Crescent") and 6 Newleigh Avenue, Kingston ("Newleigh Avenue"). Sunrise Crescent was transferred to George alone, as a vacant plot, on 25 November 1964 but on 22 February 1966 it was transferred into the joint names of himself and Elma. On 14 September 1966 it was mortgaged to secure £2,600, probably to finance the construction of what became the matrimonial home (although it also contained a flat which was let out). The mortgage was paid off in 1972; there is a dispute, which need not be resolved, as to who made the final payment. Newleigh Avenue was transferred to George and Elma as joint tenants on 17 December 1957. It contained three separate units which were let out.

5. By the 1960s the three children of the marriage were grown up. All the family seem to have had a propensity for travel, but the evidence leaves many loose ends about the details (one very loose end is an unidentified four-year period during which George is said by Elma to have left Jamaica and travelled to Aruba). However, it is clear that the elder daughter, True, married and settled in the United States. The son, Laurell, married and settled in Canada, where George visited him in 1974 or 1975. In or about 1964 Elma left

Jamaica to stay with her daughter in the United States. She said that this was with her husband's consent. But in a letter written much later (on 18 June 1983) she wrote to him:

> "From I leave there in '64 I haven't receive [d] any [support] after so much ill treatment."

Mr Dingemans QC, appearing for George's second wife, Mrs Myra Wills ("Myra") relied on this as evidence that George had not accounted to Elma for any rental income after her departure from Jamaica.

6. Elma's departure for the United States in or about 1964 was not permanent. In 1966 she became a joint tenant of Sunrise Crescent and joined in mortgaging it as already mentioned. Elma has deposed that she went to the United States again in 1967. But it was not suggested that she was permanently separated from George until the early years of the 1970s. (The divorce petition presented in 1984 specified 5 January 1974 as the date of Elma's desertion, or alternatively the beginning of their permanent separation.)

7. By then Myra had come into George's life. He was now in his 60s and suffering from leukaemia, although there is evidence that he managed to work, at least intermittently, despite his illness. Myra first deposed that she went to Sunrise Crescent in 1973 at George's request "in order to nurse, take care of him and be his companion". Later (again, the timing is unclear) George and Myra began to live as man and wife. In a later affidavit Myra said that she had met George in 1971 and had stayed at Sunrise Crescent to look after the property for part of 1971 and 1972, while George was away in the United States (where he too had acquired residential status). Elma deposed that she stayed at Sunrise Crescent for 9 months in 1971. There seems to be a conflict here but it cannot and need not be resolved.

8. It is common ground that Elma visited Jamaica and stayed at Sunrise Crescent in 1976, when George and Myra were living there as man and wife (though Elma says she was unaware of their intimacy). According to Elma she stayed there for a period of 9 months; Myra's version is 3 weeks. Myra says that Elma was treated as a guest and that she (Myra) ran the household; Elma says that Myra kept house because that was what she was paid to do. Myra says (with some support from a neighbour's household helper who has made an affidavit) that Elma was violent to George on one occasion, and frequently quarrelled with him and swore at him. Elma admits some disagreements. Again, these conflicts cannot and

need not be resolved. The important point is that Elma does not claim to have set foot in Sunrise Crescent after 1976. She visited Jamaica in 1991 but says that George did not invite her to the house.

9. There is however one telling point of detail which deserves mention. In her third affidavit sworn on 30 June 1994, Myra deposed that in 1971 she:

> "did not find any of [Elma's] possessions there not even a single piece of clothing save and except her wedding ring which she left behind ..."

Elma had evidently seen this affidavit in draft but in a rather different form (in her affidavit sworn on 26 May 1994 she refers to Myra's third affidavit as having already been sworn, but the paragraph numbers do not correspond exactly). Elma did not in her affidavit make any positive case about having left any of her possessions at Sunrise Crescent, either in 1971 or at any later date.

10. Myra deposed that she and George managed the rented property (that is the flat at Sunrise Crescent, and Newleigh Avenue) and there was a good deal of documentary evidence (in the form of rent receipts, a rental agreement and a summons for possession) to support this evidence. In some of the documents Myra was named as co-owner with George. They did not account to Elma for any of the rental income. Elma deposed that the rents

> "were used by George but this was because I permitted it because he was up to 1985 my husband and was the father of my children and I wished him to have an income from which he could meet the properties' expenses and his needs. I say further that to the best of my knowledge and belief the income from the said properties was sufficient to maintain the said properties and to provide George with a source of funds for his own needs."

Elma said that this was in accordance with an arrangement between them under which George would pay the property taxes and outgoings. There was also some evidence about the management of properties belonging to the children, but it is not necessary to go into that matter.

11. On 18 June 1983 Elma, writing from her daughter's house in New Jersey, sent George the letter already mentioned. It provides confirmation that Elma was not receiving any rental income (or any other support) from George. It shows that Elma was thinking of

taking legal advice. George must have done the same because he had a formal notice published in a newspaper (the Daily Gleaner for 16 February 1984) disclaiming liability for any of Elma's debts. On 3 April 1984 he petitioned for divorce on the alternative grounds of desertion and five years' separation (on or from 5 January 1974). A decree absolute (on the ground of five years' separation) was granted on 24 May 1985. George and Myra were married in Jamaica on 22 January 1986.

12. On 20 January 1987 Elma's attorney wrote to inform her that George had through his attorney offered $25,000 "to satisfy your claims to premises at 84 Sunrise Crescent and 6 Newleigh Avenue". The attorney advised Elma not to accept the offer, as it was too low. Elma did not accept the offer. After taking further legal advice (as to the prospect of her becoming entitled by survivorship) she

> "decided that it would be better to leave things as they were because I did not wish to deprive George of the roof over his head or adequate funds with which to live."

13. George died on 28 December 1992, aged 82. Elma (who seems to have travelled to Jamaica for his funeral) gave notice to the tenants that they should in future pay rent to her. This precipitated the commencement of proceedings by Myra, whose originating summons was issued on 22 February 1993. George had died intestate. Myra did not at that time have a grant of letters of administration, but she raised her entitlement to a grant as an issue in the originating summons, and she has recently (after a long and unexplained delay) obtained a grant of letters of administration.

The Law

14. The Limitation of Actions Act of Jamaica (Cap 222) was enacted in 1881. Its provisions correspond very closely to those of the English Real Property Limitation Act 1833 (3 & 4 W IV C27) ("the 1833 Act") as amended by the Real Property Limitation Act 1874 (37 & 38 Vict C57) (which reduced the statutory period from 20 years to 12 years). The 1833 Act simplified the law by (among other things) abolishing the highly technical doctrine of adverse possession (and the converse notion of non-adverse possession) and changing the law as to the possession of co-owners. The most relevant provisions of the Limitation of Actions Act are sections 3 and 4(a) (12 years from first accrual of cause of action, corresponding to sections 2 and 3 of the 1833 Act); section 14 (co-ownership, corresponding to section 12 of the 1833 Act); section 16 (acknowledgement, corresponding to section 14 of the 1833 Act);

and section 30 (extinction of title, corresponding to section 34 of the 1833 Act). Section 4(b) (accrual of cause of action on death) and section 9 (tenancy at will) were also referred to in the courts below but are not relevant. Section 14 is in the following terms:

> "When any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons or any of them."

15. The significance of the changes made by the 1833 Act was explained by Lord Upjohn giving the judgment of the Board in *Paradise Beach and Transportation Co Ltd v Price-Robinson* [1968] AC 1072, 1082-3:

> "Onto the Statute of James the common law engrafted the doctrine of 'non adverse' possession, that is to say, that the title of the true owner was not endangered until there was a possession clearly inconsistent with its due recognition, namely, 'adverse possession'; so that there had to be something in the nature of ouster. But in practice it was very difficult to discover what was sufficient to constitute adverse possession; thus the possession of one co-tenant was the possession of the rest though undisputed sole possession for a very long time might be evidence from which a jury could presume ouster. *Doe* d *Fishar & Taylor v Prosser* (1774) 1 Cowp 217. All this was swept away by the Act of 1833 as was explained in an illuminating judgment of Denman C.J. in *Culley v Doe* d. *Taylorson* (1840) 11 Ad & E 1008, 1015 et seq. After pointing out that at common law the possession of one tenant in common was possession of all and that there must be an ouster he continued:
>
> > 'The effect of this section [No. 2] is to put an end to all questions and discussions, whether the possession of lands, &c, be adverse or not; and, if one party has been in the actual possession for twenty years, whether adversely or not, the claimant, whose original right of entry accrued above twenty years before bringing the ejectment, is barred by this section.'

> He then went on to point out that this section standing alone would not have affected the possession of co-tenants for at common law the possession of one was possession of the other and the position would have remained to be determined by the rules of common law.
>
> He then quoted section 12 and held that the effect of the section was to make the possession of co-tenants separate possessions from the time that they first became tenants in common and that time ran for the purposes of section 2 from that time."

This explanation was recently approved by the House of Lords in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419, 433-4 (in the speech of Lord Browne-Wilkinson, with which the rest of the House agreed).

16. The laws of Jamaica and England have since diverged in some important respects. Under the English 1925 property legislation every type of co-ownership of land must now take effect behind a trust for sale. The effect of that is (broadly speaking) that co-owners hold the legal estate as trustees and cannot obtain title by possession against one of themselves (or any other beneficiary who is not a trustee): see *In re Landi decd* [1939] Ch 828. Moreover the English Limitation Acts of 1939 and 1980 have brought back the label (but not, as the House of Lords has made clear in *Pye*, the substance) of the old doctrine of adverse possession. In that case Lord Browne-Wilkinson observed [2003] 1 AC 419, 434, para 35 that the reintroduction of that phrase was unfortunate, but that

> "the references to 'adverse possession' in the 1939 and 1980 Acts did not reintroduce by a side wind after over 100 years the old notions of adverse possession in force before 1833."

17. Despite the abolition of the technical doctrine of adverse possession the phrase continued to be used as a convenient shorthand for the sort of possession which can with the passage of years mature into a valid title – that is, possession which is not by licence and is not referable to some other title or right. So in *Moses v Lovegrove* [1952] 2 QB 533, 539, Sir Raymond Evershed MR, speaking of the Limitation Act 1939, said,

> "The notion of adverse possession, which is enshrined now in section 10, is not new; the section is a statutory enactment of the law in regard to the matter as it had been laid down by the courts in interpreting the earlier Limitation Statutes."

Those observations were cited with approval by the Board in *Ramnarace v Lutchman* [2001] 1 WLR 1651 in which Lord Millett said, at para 10

> "Generally speaking, adverse possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse if it is enjoyed by a lawful title, or with the consent of the true owner."

18. In the passages quoted in the last paragraph the expression "adverse possession" is not being used in any very technical sense. However, both in England and in Jamaica the courts did, in the second half of the last century, display some tendency to give the expression a more technical meaning and to require proof that the squatter used the land in a manner inconsistent with the owner's intentions. In England the beginning of the tendency can be seen in the decision of the Court of Appeal in *Williams Brothers Direct Supply Ltd v Raftery* [1958] 1 QB 159. But the more important English case is the decision of the Court of Appeal in *Wallis's Cayton Bay Holiday Camp Ltd v Shell Mex & BP Ltd* [1975] QB 94, in which the leading judgment was given by Lord Denning MR, with a strong dissent from Stamp LJ. In Jamaica the most important decision is that of the Court of Appeal in *Archer v Georgiana Holdings Ltd* (1974) 21 WIR 431. All three decisions relied heavily on the well-known but now controversial decision of the Court of Appeal in *Leigh v Jack* (1879) 5 Ex D 264.

19. All those decisions may have been correct on their special facts. All of them rightly stressed the importance, in cases of this sort, of the Court carefully considering the extent and character of the land in question, the use to which it has been put, and other uses to which it might be put. They also rightly stated that the Court should not be ready to infer possession from relatively trivial acts, and that fencing, although almost always significant, is not invariably either necessary or sufficient as evidence of possession. Nevertheless, the decisions must now be read in the light of the important decision of the Court of Appeal in *Buckinghamshire County Council v Moran* [1990] Ch 623 and the even more important decision of the House of Lords in *Pye*.

20. In *Moran* each member of the Court approved the following passage from the dissenting judgment of Stamp LJ in *Wallis's* case [1975] QB 94, 109-110:

> "Reading the judgments in *Leigh v Jack* 5 Ex D 264 and *Williams Brothers Direct Supply Limited v Raftery* [1958] 1 QB 159, I conclude that they establish that in order to determine whether the acts of user do or do not amount to dispossession of the owner, the character of the land, the nature of the acts done upon it and the intention of the squatter fall to be considered. Where the land is wasteland and the true owner cannot and does not for the time being use it for the purpose for which he acquired it, one may more readily conclude that the acts done on the wasteland do not amount to dispossession of the owner. But I find it impossible to regard those cases as establishing that so long as the true owner cannot use his land for the purpose for which he acquired it, the acts done by the squatter do not amount to possession of the land. One must look at the facts and circumstances and determine whether what has been done in relation to the land constitutes possession."

21. In *Pye* Lord Browne-Wilkinson [2003] 1 AC 419, 438, para 45, after quoting from Bramwell LJ in *Leigh v Jack* (1879) 5 Ex D 264, 273, said this:

> "The suggestion that the sufficiency of the possession can depend on the intention not of the squatter but of the true owner is heretical and wrong. It reflects an attempt to revive the pre-1833 concept of adverse possession requiring inconsistent user. Bramwell LJ's heresy led directly to the heresy in the *Wallis's Cayton Bay* line of cases to which I have referred, which heresy was abolished by statute. It has been suggested that the heresy of Bramwell LJ survived this statutory review but in the *Moran* case the Court of Appeal rightly held that however one formulated the proposition of Bramwell LJ as a proposition of law it was wrong. The highest it can be put is that, if the squatter is aware of a special purpose for which the paper owner uses or intends to use the land and the use made by the squatter does not conflict with that use, that may provide some support for a finding as a question of fact that the squatter had no intention to possess the land in the ordinary sense but only an intention to occupy it until needed by the paper owner. For myself I think there will be few occasions in which such inference could be properly drawn in cases where the true owner has been physically excluded from the land. But it remains a possible, if improbable, inference in some cases."

The statutory abolition mentioned by Lord Browne-Wilkinson was effected by section 15 of and Schedule 1, para 8(4) to the Limitation Act 1980. There was no parallel legislation in Jamaica. But it seems clear that the heresy, if not abolished by statute, would not have survived the House of Lords' decision in *Pye*.

22. The facts of all the cases considered in the last few paragraphs were a very long way away from those of this appeal. Their Lordships have thought it right to deal with them at some length because of a far-reaching submission made by Mr Codlin (appearing for Elma). Mr Codlin submitted that the principles stated by the House of Lords in *Pye* should not be extended to Jamaica because of the different social conditions in Jamaica. Their Lordships cannot accept that submission. The decision of the Court of Appeal of Jamaica in *Archer* was based entirely on a careful analysis of eleven English authorities, the earliest decided in 1846 and the most recent in 1966. These authorities included *Leigh v Jack* and *Williams Brothers Direct Supply Ltd v Raftery*. They would no doubt have included *Wallis's* case if it had been decided shortly before *Archer*, rather than shortly afterwards. As to geographical factors, Jamaica still contains much undeveloped land (such as the woodland on the slopes of the Blue Mountain considered in *Green Valley Estates Ltd v Lazarus* (1991) 28 JLR 399, and areas of marginal land which are intermittently grazed or cultivated in an informal manner); but so, still, does England and Wales. Equally both contain many highly-developed urban areas. Their Lordships see no reason why the decision of the Court of Appeal of Jamaica in *Archer* ought not to be qualified, in future, by the clear guidance which the House of Lords has given in *Pye*. There is another point about the present state of Jamaican society (that is, the importance to its economy of Jamaicans who work abroad in order to support their families at home) to which their Lordships will return.

The proceedings below

23. The judge made only sketchy findings of fact. He said of Elma no more than that she:

> "... left for the United States of America either in 1964 or 1967 to reside permanently. She visited Jamaica on a number of occasions and lived at 84 Sunrise Crescent."

The judge also stated,

> "The deceased collected the rental from both premises. The respondent [Elma] did not receive any but states that he

> collected as her agent pursuant to a family arrangement. There is no evidence to support this assertion."

By this the judge appears to have meant no contemporaneous documentary evidence. After summarising counsel's submissions (and referring to *Paradise Beach* and *Archer*) he concluded,

> "From the available evidence it is clear that the respondent has not abandoned her claim to an interest in the properties. The correspondence between the respective attorneys indicates that this claim was recognised by both parties. Her decision to await the death of the deceased in order to benefit as survivor of the joint tenancy is further proof of her intention not to discontinue possession."

The judge went on to reject the suggestion that Myra was ever a tenant at will of Sunrise Crescent. He dismissed Myra's application.

24. On Myra's appeal to the Court of Appeal all three members of the Court of Appeal gave separate judgments. Rattray P analysed the evidence at considerably greater length and quoted the judge's conclusion (as set out in the last paragraph). He said that the judge could not be faulted for these findings. The President then said, incorrectly, that section 14 of the Limitation of Actions Act was irrelevant and that Myra was claiming on her own behalf. He seems to have overlooked the prayer in the originating summons for Myra to be entitled to letters of administration and the judge's comment (at the end of his judgment) that that part of the claim was not in dispute before him. The President concluded that the appeal should be dismissed, apparently on two grounds: first that the judge found (or could or should have found) that George had through his attorney given an acknowledgement of Elma's title; and secondly, that George's "separate possession" (the expression adopted by Lord Upjohn in *Paradise Beach* from Denman CJ in *Culley*) had not been established.

25. Bingham JA agreed that the appeal should be dismissed. He took the view that because (as appeared from the correspondence) Elma had not abandoned her claim, she could not have abandoned the properties in question. He concluded (for reasons which are rather obscure) that time could not start to run until George's death in 1992. He also agreed with both the other judgments.

26. Langrin LJ (Ag) also went into the facts at some length. He referred to *Paradise Beach* and to *In re Hobbs, Hobbs v Wade* (1887) 36 Ch D553. In that case a father (who was absolutely

entitled to a half share of some land at Whitstable, and was also entitled to a further quarter of the income after his wife's death intestate, his sons – one adult, the other a minor – being entitled to share the other quarter) retained the whole income for himself. After twelve years his adult son's title was extinguished, but the father was held accountable "as a bailiff" for his younger son's share (Mr Dingemans pertinently suggested that the simple explanation was that the younger son was under a disability; but the decision goes beyond that, since North J held at p 557 that the father's status, having started as that of a bailiff, must have continued to be that of a bailiff even after the younger son attained full age). Building on *Re Hobbs*, Langrin JA (Ag) stated that there was a fiduciary relationship between George and Elma which prevented time running until their divorce in 1985. He said,

> "Breach of a fiduciary obligation in equity's eyes strikes against the very nature of equity itself. If the law were otherwise a number of families in Jamaica would lose their co-ownership in lands unfairly. A dishonest spouse who remains on the property while the other spouse goes abroad to increase the family welfare could easily claim an interest under the Limitation Act after a lapse of twelve years."

He also agreed with the judge that it had not been shown that Elma had abandoned her interest and been dispossessed. He too, therefore, considered that the appeal should be dismissed.

Conclusions

27. It will be apparent from the above summary that the judgments in the Court of Appeal raised several points which had not been considered by the judge (nor had they been raised in any respondent's notice). It is possible to dispose of some of these points quite shortly.

(1) Although deponents on both sides asserted or accepted that Myra was at some stage a tenant at will, it was conceded before the Board that that was misconceived. Myra lived at Sunrise Crescent first as a licensee and then as George's wife. Section 9 of the Limitation of Actions Act has nothing to do with the case.

(2) Elma did not before the judge contend that George had given a written acknowledgement within section 16 of the Limitation of Actions Act. In the Court of Appeal (and especially in the judgment of the President) this point appears to have been

raised, although without being clearly distinguished from the broader argument that Elma had not abandoned her claim, and so had not abandoned her possession. So far as acknowledgement was a separate issue, the attorney's letter of 20 January 1987 was not signed by George (or his attorney) and it was not a basis for inferring that there must have been an acknowledgement signed by George. Recognition of the existence of a disputed claim is not the same as acknowledgement that the claim is a good one.

(3) The observations of Langrin JA (Ag) as to fiduciary duty also seemed to have originated from the judge himself. They were not based on any submissions of counsel or on any findings of fact (the judge's reference to Elma's "prodigious efforts", in particular, would have been highly controversial). In their Lordships' view this point ought not to have been raised at all, and is misconceived. There is no general presumption that a husband stands in a fiduciary relationship towards his wife. Such a relationship might become material if pleaded and proved on the particular facts, but there was nothing to justify its being raised in this case.

28. Shorn of these accretions, the issue does in the end come down to reasonably simple terms. It was established by the evidence that Elma never set foot in Sunrise Crescent after 1976. She never received any rental income, either from the flat at Sunrise Crescent or from Newleigh Avenue, for a longer period. From 1976 at latest, Myra was living with George at Sunrise Crescent, and joining with him in managing the rented property, to all appearances as if they were co-owners as man and wife. In 1991 Elma visited Jamaica but did not go to Sunrise Crescent because George did not invite her. She never positively challenged Myra's evidence that none of her possessions (except her abandoned wedding ring) was to be found at Sunrise Crescent after 1971. In the Court of Appeal counsel for Elma conceded (as recorded in the judgment of Langrin JA (Ag)) that George had been in exclusive possession since 5 January 1974. Was there, in these circumstances, any possible basis for the conclusion that Elma had not discontinued her possession, or been dispossessed, more than 12 years before the issue of the originating summons?

29. In their Lordships' opinion the courts below reached that conclusion only because they proceeded on what Lord Browne-Wilkinson in *Pye* called the "heretical and wrong" supposition that it was Elma's state of mind, and not George's, which (together with

George's actions) was decisive. Elma no doubt wished to maintain her claim to co-ownership, not least because she expected to outlive George and hoped to take by survivorship. But such an intention, however amply documented, cannot prevail over the plain fact of her total exclusion from the properties. After 1976 at the latest George occupied and used the former matrimonial home and enjoyed the rents from the rented properties as if he were the sole owner, except so far as he chose to share his occupation and enjoyment with Myra. The judge's conclusion was wrong in law, and the Court of Appeal was wrong to uphold it. Neither court had the benefit of the full and clear guidance which the House of Lords has since given in the *Pye* case. But that decision was not making new law; it was clarifying what has been the law in England since the 1833 Act, and in Jamaica since the Limitation of Actions Act of 1881.

30. It is not in these circumstances necessary to consider the alternative contention (also unpleaded and raised for the first time) that there was a severance of the joint tenancy.

31. Their Lordships think it right (especially in view of the observations at the end of the judgment of Langrin JA (Ag)) to emphasise that this appeal turns ultimately on its own facts; and although separation and divorce are sadly commonplace, the facts of this case are quite unusual. Elma began to live apart from her husband in 1964 and (apart from some disputed evidence about occasional co-habitation in the United States) she lived completely apart from him from 1976 at the latest. She consulted lawyers in 1984 but she never seems to have taken action either to have the properties sold, or to rearrange their ownership by an exchange of beneficial interests, or even to obtain a proper written acknowledgement of her title (which could no doubt have been obtained if the alternative had been the threat of more drastic action). And yet Elma seems, from some of the evidence, to have been an independent-minded and forceful lady. So it is an exceptional case.

32. Their Lordships do not therefore see the outcome of this appeal as likely to cause trouble for the large number of Jamaican citizens who work overseas and contribute to their families' welfare and the Island's economy. Most of them will come home on a fairly regular basis, will retain the bulk of their possessions at home, and will not (on coming home) be treated as guests in their own houses. But if (as must sometimes happen) a Jamaican working overseas forms new attachments and starts a new life, and entirely abandons the

former matrimonial home, he or she will (within the ample period of 12 years) have to consider the legal consequences of that choice.

33. For these reasons their Lordships will humbly advise Her Majesty that this appeal should be allowed with costs here and below and that there should be a declaration that the appellant, in the capacity of her late husband's personal representative, is solely and exclusively entitled to the two properties identified in the originating summons. The parties are at liberty to apply to the Supreme Court, if necessary, for any consequential relief, including a direction under section 158 of the Registration of Titles Act (Cap 340).