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5, 1952

No. 29 of 1950.

31356

# In the Privy Council.

<p><b>ON APPEAL</b></p> <p><i>FROM THE SUPREME COURT OF THE COLONY OF BERMUDA.</i></p>	<p>UNIVERSITY OF LONDON W.C.1.</p>
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IN THE MATTER of the ESTATE of JAMES NELMES LAMBE  
deceased.

ADVANCED  
STUDIES

Between HERBERT LAMBE WILLIAMS (Defendant) *Appellant*

and

EDGAR RODERIC WILLIAMS (Plaintiff) . *Respondent.*

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## Case for the Appellant

1. This is an Appeal by leave of the Supreme Court of the Colony of Bermuda from a judgment of the Supreme Court of Bermuda delivered on the 30th January 1950 upon the hearing of an Originating Summons for the determination of a question arising in the administration of the Estate of James Nelmes Lambe deceased on the construction and effect of his Will. p. 13.  
p. 1.

20 2. The facts are not in dispute and the only question in the case is that set out in the Originating Summons, namely whether upon the true construction of the Will of the said James Nelmes Lambe deceased (hereinafter referred to as "the Testator") Clause 3 thereof gave to the Respondent Edgar Roderic Williams a participation in the capital of the firm of J. E. Lightbourn and Company in the proportion that £5,000 bore to the total capital of the partnership firm at the death of the Testator or a sum of £5,000 to be paid from the capital account of that firm. p. 1.  
p. 4.

3. The facts shortly stated were as follows :—

30 By a Deed of Partnership dated the 21st July 1924 made between John Emilio Lightbourn of the one part and the Testator of the other part the Testator entered into partnership with the said Lightbourn in the business of Wine and Spirit Merchants under the style of J. E. Lightbourn & Company. On the 30th September 1927 the Testator made his Will. On the 2nd April 1929 the said Lightbourn died and shortly afterwards the Testator pursuant to the provisions of the said Partnership Deed, purchased all the share and interest of the said Lightbourn in the said partnership firm for the sum of £32,800 and thereafter until his p. 19.  
p. 4.  
p. 19.

p. 5. death continued to carry on the said business on his own account under the firm name of J. E. Lightbourn & Company. The Testator died in Bermuda on the 25th March 1936 and on the 20th August 1936 Probate of his said Will was granted by the Supreme Court of Bermuda to the Respondent Edgar Roderic Williams as sole surviving Executor. The Appellant Herbert Lambe Williams is one of the residuary legatees under the Testator's said Will. At the date of the Testator's death the capital of the said business was £20,000 or thereabouts. The Respondent as Executor continued to carry on the said business after the Testator's death for the benefit of his Estate and a Balance Sheet of the said business as at the 30th June 1949 showed the net value of the business at that date to be £161,765 18s. 3½d. 10

p. 4. 4. The following are the material provisions of the Will of the Testator.

(A) Clause 3 of the Will was as follows :—

“ I give and bequeath to my nephew the said Edgar Roderic Williams the sum of Five thousand pounds of the capital I have invested in the partnership business carried on in the said Islands under the firm name of J. E. Lightbourn and Company.” 20

(B) Clause 5 of the Will was as follows :—

“ I give and bequeath all the rest and residue of my personal estate unto and equally between my brother the said Thomas Youghlet Lambe, my nephew the said Edgar Roderic Williams and my great nephews Herbert Lambe Williams and Joseph Donald Shanks.”

p. 1. 5. On the 21st October 1949 the Respondent as the Executor and a beneficiary under the said Will instituted the present proceedings against the Appellant and other persons interested in the Testator's residuary personalty (namely Dorothy Vivien Williams on her own behalf and as guardian of the estate of Harold Allan Williams a minor and Joseph Donald Shanks) by Originating Summons in the Probate Division of the Supreme Court of Bermuda whereby the question was raised whether upon the true construction of the said Will the gift in Clause 3 thereof to the Respondent entitled him to participate in the capital of the said firm of J. E. Lightbourn & Company in the proportion that £5,000 bore to the total capital of the firm at the date of the Testator's death or was a gift of a sum of £5,000 to be paid out of the capital account of the firm. 30

p. 16. 6. The said Partnership Deed dated the 21st July 1924 was not put in evidence before the Supreme Court of Bermuda nor was any evidence adduced as to the capital of the said firm of J. E. Lightbourn and Company at the date of the said Will or as to the nature or extent of the Testator's interest in the said firm at that date. 40

p. 12. 7. The originating Summons was heard before the Supreme Court of Bermuda (His Honour Sir Brooke Francis, C.J.) on the 14th December 1949 and judgment was reserved.

8. On the 30th January 1950 the Chief Justice delivered judgment <sup>p. 13.</sup> holding that the intention of the Testator was that a participation in the capital of the firm of J. E. Lightbourn & Company in the proportion that £5,000 bore to the total capital of the partnership firm at the date of the death of the Testator was to be given to the Respondent. The learned Chief Justice gave no reasons for his decision.

9. The Appellant applied to the Supreme Court of Bermuda by motion for leave to appeal to His Majesty in Council and on the 28th February 1950 the Supreme Court granted the Appellant such leave <sup>p. 14.</sup>  
10 subject to security for costs.

10. The Appellant subsequently petitioned the Right Honourable the Lords of the Judicial Committee of the Privy Council for leave to adduce further evidence in these proceedings and on the 26th February <sup>p. 18.</sup> 1951 their Lordships made an order granting leave to the Appellant to adduce evidence of the said Deed of Partnership dated the 21st July 1924, and of further facts and matters mentioned in the Petition, namely:—

(A) That the balance sheet of the said partnership as at the <sup>p. 25.</sup> 31st July 1927 showed the sum of £37,105 1s. 5d. standing to the credit of the capital account of the said Lightbourn and the sum  
20 of £20,191 6s. 5d. standing to the credit of the capital account of the Testator.

(B) That at the date of the Will of the Testator the said partnership was still subsisting and that it continued until the death of the said John Emilio Lightbourn on the 2nd April 1929.

(C) That by his Will dated the 26th February 1926 the said John Emilio Lightbourn gave all his estate to his wife Antoinette Lightbourn.

(D) That Letters of Administration with the said last-mentioned Will annexed of the personal estate of the said John Emilio Lightbourn were on the 13th July 1929 granted by the Supreme  
30 Court of Bermuda to the said Antoinette Lightbourn.

(E) That pursuant to a provision in that behalf contained in <sup>p. 19.</sup> the said Deed of Partnership the Testator purchased from the said Antoinette Lightbourn the share of the said John Emilio Lightbourn in the partnership firm. The purchase price of £32,800 with interest thereon was secured to the said Antoinette Lightbourn by a Mortgage dated the 30th June 1930 whereof Heads of Mortgage were duly registered in the Registry of the Supreme Court of Bermuda on the 3rd July 1930.

40 (F) That the said Mortgage was still outstanding at the death of the Testator.

11. The Appellant humbly submits that the said Judgment of the Supreme Court of Bermuda dated the 30th January 1950 was erroneous and should be reversed and that it should be declared that Clause 3 of

the Will of the Testator gave to the Respondent a legacy in the sum of £5,000 to be paid from the capital account of J. E. Lightbourn & Company for the following amongst other

### REASONS

- (1) BECAUSE upon the true construction of the Will of the Testator the gift contained in Clause 3 thereof was the gift of a sum certain of £5,000 and not of any share or interest in the business of J. E. Lightbourn & Company.
- (2) BECAUSE the construction placed upon Clause 3 of the said Will by the Supreme Court of Bermuda involves the inclusion in the said gift of a share of the goodwill of the firm of J. E. Lightbourn & Company and of the Testator's share of any undrawn profits of the said firm at the date of his death contrary to the express terms of the said gift which contain no reference to goodwill or to undrawn profits or to any other assets of the said firm. 10
- (3) BECAUSE the Supreme Court of Bermuda construed the Will of the Testator upon the basis of inadequate or inaccurate evidence of the surrounding circumstances at the date on which the Testator made his said Will ; and in the light of such surrounding circumstances and in particular the terms and provisions of the then existing Deed of Partnership it is clear that the Testator cannot have intended the construction placed upon his said Will by the Supreme Court of Bermuda. 20
- (4) BECAUSE the judgment of the Supreme Court of Bermuda is wrong and ought to be reversed.

ANDREW CLARK.

JOHN MILLS.

**In the Privy Council.**

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**ON APPEAL**

*from the Supreme Court of the Colony  
of Bermuda*

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IN THE MATTER of the Estate of  
JAMES NELMES LAMBE, deceased

BETWEEN

**HERBERT LAMBE WILLIAMS**

(Defendant) - - - *Appellant*

AND

**EDGAR RODERIC WILLIAMS**

(Plaintiff) - - - *Respondent*

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**Case for the Appellant**

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