

"Bassett and Bassett" and "Walker and Walker" provide us with a broad band of matters to take into account in considering how we should arrive at our judgement and we have taken those broad matters into account. In "Walker and Walker" Lord Justice Geoffrey Lane says this on page 556:

"What seems to me to be the question the Court has to decide is this What is, in all the circumstances of the case, fair, just and reasonable and if it is fair, just and reasonable that a husband should be excluded from the matrimonial home then that is what must happen. Before one can come to a conclusion all the circumstances have to be regarded; first of all the behaviour of the husband, the behaviour of the wife, the effect upon the children if the husband stays there, the effect upon the children if he does not, the husband's own personal circumstances, the likelihood of injury to the wife or to the husband, their health either physical or mental; all these things must be taken into account."

Well of course "Walker and Walker" has not in anyway over-ruled "Bassett and Bassett"; it has added to it. That is quite clear from what Lord Justice Ormrod says at page 539 in the same judgement.

He says this:-

"Those in my judgement are the guide lines together with those mentioned by Geoffrey Lane, L.J., just now which Court should adopt in dealing with this type of application"

and of course the Lord Justice cited with approval from page 86 of the judgement of Mr. Justice Cumming-Bruce, as he then was, in "Bassett and Bassett" and it is interesting that in that passage to which Lord Justice Ormrod refers occurs the following:-

"Equally obviously the Court must be alive to the risk that a spouse may be using the instrument of an injunction as a tactical weapon in the matrimonial conflict."

Well that can't arise here at all because the matrimonial conflict has been resolved by the Decree Nisi. Looking at the matters I recited by Lord Justice Geoffrey Lane when considering the behaviour of the husband we are satisfied that the wife has proved her allegations and therefore he has behaved in the way alleged in the Order of Justice. There has been no suggestion that the behaviour of the wife has in anyway contributed to the strain in the household. The effect upon the children if the husband stays there is relevant but the eldest girl clearly is capable of looking after herself although it was apparent to us that she also is subject to some strain.

It is also clear that the child has been subjected to strain that is not attributable to the ordinary difficulties in the family but can be directly attributable to the behaviour of the husband under the present circumstances. As regards the husband's own personal circumstances, I have said that clearly somebody who is illiterate has a great handicap and indeed he is going to find it difficult if he lives somewhere else without his wife's care to look after his books. The wife has said that she will be prepared temporarily to help him if he moves out and he must learn to stand on his own feet difficult though that may be. The likelihood of injury to the wife or to the husband has to be considered and we have little to indicate that there is likely to be great injury to the wife but nevertheless her health clearly is not going to be improved by the continuous residing of the husband with her. It does seem to us that really the nub of the husband's objection to moving is not so much that he doesn't realise that he is going to have to move from the house in due course when the ancillary matters are settled between himself and his wife, but he is worried that as he moves out so somebody will move in and not so much replace him in his wife's affections because those affections are gone, the marriage has finished as regards that side of it, but replace him as regards his proper proprietary rights in the equity of the house. We have noted that Mrs. A has this afternoon said that she would never wish to deprive her husband of the equity of his share in the equity of the house and therefore we think that that fear of the husband is unjustified. Therefore applying the tests which we think we are right to apply as set out in the three cases "Bassett v. Bassett", A v B (1997) and, to a limited extent, in "Walker v. Walker" we think that it would be right, just and reasonable to grant the prayer of the plaintiff in this case but since this is a difficult time of the year for persons, even a single person, to find accommodation, although we are going to grant the prayer, we will give the husband until the 16th September to find other accommodation and I will say this that in granting the prayer, that he is to leave the house by that date, we are also granting the second part of the prayer and I read it so that Mr B may hear it. It is an injunction restraining him from molesting, disturbing or interfering with either the plaintiff or the children of the marriage except by way of the exercise of his right to such access to them as may be reasonable. It must follow, and I am sure your client will realise this, Mr. Birt, that while he remains in the house and indeed afterwards, although the risk of it afterwards is

probably less once he has gone, but whilst he remains in the house certainly the risk may be greater, he must remember that if he does molest, disturb or interfere with either Mrs. . ^A . or any of the children, strictly speaking of course Miss (DAUGHTER) is now an adult, but at any rate causes trouble in the house he will be in contempt of this Court's order. We think it right that the wife should have her costs.