

In the year 1980, the 17th day of March.

1980/3/17

Before the Judicial Greffier

BETWEEN

A  
v  
B

PLAINTIFF

AND

DEFENDANT

Advocate S.A. Pearmain for the plaintiff.

Advocate G.R. Boxall for the defendant.

The defendant applied for the remitting of arrears of maintenance payable under a Court Order made by the Judicial Greffier on the 14th December, 1978, in respect of the plaintiff's illegitimate child of which the defendant admits to being the father. The Inferior Number referred to the Greffier the determination of the issue of whether the Court had jurisdiction to remit outstanding arrears of a "pension alimentaire" in such a case.

An examination of the Jersey and English cases, particularly *W. v. W.* (No. 4) (1962) P.131, *McDonald v. McDonald* (1964) P.1, *Delgaty v. Falle* (1958) 13 C.R. 151, 157, and *Wilson v. Le Mottee* (1978) J.J. 167, shows that the power of a Court to remit accrued arrears of maintenance awarded in Divorce or Separation and Maintenance Proceedings is based on statute. In Separation and Maintenance proceedings there is a specific power to remit (Separation and Maintenance Orders (Jersey) Law 1953, Article 8(3); Magistrates' Courts Act, 1952, Section 76); in divorce proceedings the power is an implicit extension of the Court's explicit power to discharge an order or suspend the provisions thereof (Matrimonial Causes (Jersey) Law, 1949, Article 32; Matrimonial Causes Act, 1950, Section 28).

An order for the payment of a "pension alimentaire" for an illegitimate child is based not on any statutory provision but on the common law duty of a father to maintain his child. When payment of such maintenance has been ordered there is little doubt that the

Court has power to vary, by subsequent order, the amount payable, though the fact that specific provision has at times been made in the original order for future variation (*Hands v. Sweeney* (1956) 250 Ex. 252; *Watson v. Priddy* (1978) 264 Ex. 492) indicates that this may not always have been certain; when an amount payable has fallen due, the person in whose favour the order was made has at common law an accrued right to that amount, and in the absence of any statutory provision it is doubtful whether the Court has jurisdiction to refuse a claim for it.