10th November, 1988.

IN THE ROYAL COURT OF JERSEY

Matrimonial Causes Division

Before: Mr. V.A. Tomes, Deputy Bailiff
Jurat M.G. Lucas
Jurat J.J.M. Orchard

Between	H	Petitioner
And	O	Respondent
And	C	Co-Respondent

Advocate J.A. Clyde-Smith for Petitioner
Advocate S. Slater for Respondent

The petitioner and the respondent were married on the 30th July, 1969. They lived and co-habited together at various addresses and finally at in the Parish of St. Helier, where the petitioner still resides (the matrimonial home). There are two children of the marriage, namely SP born in September, 1971, and SC, born in February, 1974. On the 11th July, 1986, the petitioner filed a petition for divorce on the ground of the respondent's adultery with the co-respondent; an association had been formed between them in or about November, 1985, and the respondent had left the matrimonial home on the 7th June, 1986, because of his relationship with the co-respondent.

On the 30th September, 1986, the petitioner gave notice of her intention to apply to the Court for an order that 1) she be granted sole custody, care and control of the children of the marriage; 2) that the respondent's share in the matrimonial home be transferred to her free of any consideration; 3) that the respondent be ordered to make to the petitioner such periodical payments, secured provision and lump sum or sums as might be just; 4) that the contents of the matrimonial home be transferred to her; and 5) that the respondent pay the costs of the application. The notice required an affidavit of means from the respondent. On the same day, the petitioner filed an affidavit of means.

A decree nisi of divorce was granted to the petitioner on the 15th October, 1986; the respondent and co-respondent had admitted an adulterous association since about November, 1985, and co-habitation from about June, 1986. All the ancillary matters were left over.

On the 5th December, 1986, the respondent filed an affidavit of means.

On the 11th November, 1987, on a summons brought by the petitioner, the Greffier Substitute, by consent, made an order that the respondent arrange for the contents of the matrimonial home to be valued; that the respondent arrange for the matrimonial home to be valued; that the respondent produce, verified by affidavit, (a) accounts for every business in which he had a direct or indirect interest for all years until the most recent financial year end; (b) copies of all tax returns for the past three years, together with copies of his personal bank account statements for the last three years and copies of his personal and business credit card statements for the last three years; and (c) details of all insurances effected by him; the petitioner was also required to produce, verified by affidavit, copies of her personal bank statements for the last 3 years and details of her precise earnings for the year, 1986; the costs of and incidental to the application to be costs in the cause.

On the 25th January, 1988, the petitioner, pursuant to the order of the 11th November, 1987, swore a further affidavit containing the additional information required by the order.

On the 5th February, 1988, the respondent filed a supplemental affidavit of means.

On the 9th February, 1988, we heard the parties on the application of the 30th September, 1986. The parties had agreed that they should have joint custody, and the petitioner care and control, of the children of the marriage, with access to the respondent and educational arrangements to continue as before; we made a consent order accordingly. Thus all the other ancillary

matters fell to be decided by us. Evidence was heard from the petitioner, the respondent and Mr. Graeme Le Rossignol, the Chartered Accountant who had drawn up the accounts relating to M Limited and N Guest House, businesses in which the respondent has an interest, and both Counsel were heard. We reserved judgment.

The facts:-

The matrimonial home is in the Parish of St. Helier. The property comprises a large Victorian town house of some historical significance and of sufficient importance to be a "listed building" with a protected front elevation. In recent years, considerable interior refurbishment has taken place including the creation of a basement two bedroomed flat. The flat is, apparently, unrestricted in terms of occupancy control, and is let periodically to holiday makers through a holiday or travel agency. The petitioner claims that the lets are irregular; that the flat is let for seventeen weeks in the summer, through the agents, to produce £3,300 per annum; that for the remainder of the year she lets it as best she can to lodgers on a weekly basis to produce, say £3,200 per annum; and that the total annual income from the flat is thus some £6,500.

At the front of the property are nine car-parking spaces which, let at £6 per week on a 50 week per year basis, produce £2,700.

The petitioner occupies the remainder of the property, rent free, with the children.

The ownership situation is an unusual one. The property is owned by both parents of the respondent, the petitioner and the respondent, jointly and for the survivor of them. This was done not so much as a gift from the respondent's father but because he wanted the property to be in the joint names of the four members of the family; he wanted it to be the family home.

for all time, and it would, in due course, pass to the children of the marriage. The respondent's parents would not live there unless a need arose in old age for either the respondent's parents or the petitioner's parents to be housed there.

It follows that all four owners have an interest, contingent on survivorship, in the whole of the property. If the property is not sold, compulsorily or otherwise, during the lifetime of the joint owners, it will devolve exclusively on the last survivor of the four. On the law of averages the respondent's parents, who are some 69 years of age, are likely to predecease the petitioner and the respondent, with the result that the latter would become joint owners of a valuable property. The property was purchased on the 21st November, 1980, for a consideration of £103,000 for the realty and £2,000 for certain contents. However, on the 25th November, 1983, the four joint owners sold the outbuildings and land to the rear of the property to M Limited, a property development company owned jointly by the respondent and his father, for £30,000. Apparently, each of the four owners were entitled to £7,500. There was a conflict of evidence about the use of that money. The respondent said that he left his £7,500 in M Limited. He also said that the petitioner re-invested £5,000 with the company at 10% for one year. The petitioner said that she took the children to London and then to Tenerife, she bought a fur coat and the respondent bought a B.M.W. motor car, and she spent the balance of her share on the matrimonial home.

The property is valued by Mr. George Gothard, F.R.I.C.S., at £200,000 or, including fitted carpets, curtains and light fittings, at £210,000.

The petitioner earns £308 per month from Barclays Bank plc., or £3,696 per annum; this is for a five hour day in order to return home in early afternoon; the children of the marriage are aged 17 and 14 and she wishes to be at home when they return from school; the petitioner has no academic qualifications and works as an auxiliary bank clerk. In order to earn more, she

would have to be qualified and graded. She could not be graded even if she worked full-time because school leavers who come in with O and A level qualifications are preferred.

Accordingly, the petitioner's income in 1987 was approximately £13,000.

The petitioner claims that in the period between September, 1986, and January, 1988, her savings were depleted by some £4,500 - £5,000 in order to make up her income to the £17,500 or so spent on general living and household expenses; the petitioner receives no maintenance from the respondent although she did so in the not very distant past; the respondent gives money directly to the children of the marriage - £40 per month to SP and £30 per month to SC - for their personal use; he also pays the school fees; the children are at Victoria College and the Jersey College for Girls respectively; it was agreed between the parties that the children should continue to be educated there.

It is much more difficult to ascertain the earning or income capacity of the respondent and it is necessary to review the background of this marriage and the progress or otherwise of both parties.

The parties met when the petitioner was about 14 years, and the respondent about 16 years, of age. They became engaged some four years later and were married two years after that when the petitioner was 20 and the respondent 22. At the time of their engagement the respondent was a labourer and the petitioner was an NCR accounting machine operator. Whilst they were engaged, the respondent became an apprentice glazier in order to try to obtain a trade. When the parties were first married they occupied a rented furnished flat.

After some six months of marriage the parties purchased a property in St. Helier, for £3,500. The deposit of £350 was loaned to them by the respondent's mother and was repaid within one year. The parties secured a loan from the States of Jersey under the Building Loans Law which enabled

them to cover the costs of the initial purchase and the costs of renovation of this near derelict property. The petitioner was able to purchase all materials at trade discount prices because she was employed as an accounting machine operator by a firm of builders' merchants. The house had five bedrooms and, at that time, the petitioner worked in the afternoons as a shop assistant, took-in paying guests during the summer and lodgers during the winter. The respondent did evening work as a barman in addition to his work as a glazier. Both worked equally hard.

In 1980, the respondent started to work for his father who was building two warehouses on land that he owned in Bellozanne Valley. Those warehouses were sold by the respondent's father to the States of Jersey on the 11th July, 1980, for £275,000. From then on the respondent's father was a reasonably wealthy man and the whole family's life style changed. The respondent's father is a generous man and he gifted £20,000 to the respondent or to the respondent and petitioner. We shall refer to this gift later. Thereafter, the current property was purchased in the manner we have described already. The whole of the initial purchase price was paid by the respondent's father but when the petitioner and respondent sold the former property, in July or August, 1981, for £36,000, this amount less fees was paid to the respondent's father as their contribution towards the amount paid. Thus they contributed about one third of the purchase price to obtain a one half proprietary benefit and the entire occupation. The respondent's parents receive no benefit from that joint ownership, since they allowed the respondent and his family and now allow the petitioner and the children to live there, free of rent.

In 1983 the respondent and his father formed M Limited to which we have referred already and its first project was the development of the buildings and land to the rear of the property bordering Dummy Lane. On the 13th July, 1984, No.1, Dummy Lane was sold for £51,500; on the same date No.2, Dummy Lane was sold for £50,000; one week later, No.4, Dummy Lane was sold for £51,500; and on the 14th September, 1984, No.3, Dummy Lane was sold for £50,000. On the 16th

August, 1985, the Company further sold its rights to the wall and 'relief' bordering Dummy Lane and any right to the roadway that the Company might have been entitled to claim, to the Public of the Island for £2,000 plus legal fees of £105.

In the meantime, on the 31st August, 1984, the Company purchased 52, Stopford Road, St. Helier, for £44,000; that property was conveyed on the 21st June, 1985, by deed of gift, cession and transfer to "52, Stopford Road Limited", with an estimated value of £50,000. The property had been converted into three flats and the transfer was to enable the sale of the flats by means of share transfer.

On the 18th October, 1985, the Company purchased the property known as "Zella Villa", Bon Air Lane, St. Saviour for £88,000; it developed this property into two substantial houses and these were sold on the 28th November, 1986 and the 20th February, 1987, for £180,000 and £175,000 respectively.

On the 21st August, 1987, the Company purchased No.18, Pomona Road, St. Helier, for £26,500. The respondent explained that the activities of the Company had been reduced substantially; it was intended to develop the Pomona Road property jointly with a neighbour; two new houses would be built of which one would devolve upon the Company for re-sale; however, a meeting was still to be held with the Island Development Committee and there was a sitting tenant until 1989; accordingly the Company would have to negotiate or wait for possession. There were no other projects; the respondent denied that this was connected with the divorce; he had never sat down with his father to consider what would happen to the Company and had never discussed the effect of the divorce on the Company; it was not relevant that the petitioner would have a claim against the Company; circumstances had been such that the Company had been unable to purchase further development property. We have no reason to disbelieve the respondent.

On the 2nd March, 1984, the respondent's father bought 19, Columbus Street, St. Helier, for £14,000 and re-sold it on the 14th September, 1984, to the Public of the Island for £22,500 plus legal fees. We heard no evidence to suggest that the respondent was involved in these transactions or derived any benefit.

On the 25th April, 1986, the respondent's father purchased "Brookside", St. Martin; under the terms of the contract he was to demolish and rebuild the property and was bound to complete all works within nine months of passing the deed of purchase. The respondent was cross-examined about this transaction; he denied any involvement, did not know the property and had never been there. We accept his denials.

On the 31st July, 1987, the respondent's father purchased "Sous l'Eglise", 4, St. Luke's Cottages, for £65,000. He financed this purchase by means of a loan from Barclays Bank plc. in the full amount of the purchase price and the respondent told us that he had no involvement. By the terms of the purchase, the respondent's father had to suffer the tenants to continue in occupation in accordance with the terms of the lease and they were still there at the date of the hearing. We are quite unable to involve the respondent in his father's transactions unless there is clear evidence to enable us to do so.

The respondent and his father are partners in the business of the N Guest House, St. Helier, the lease of which is held by the father. The Guest House had lost its grade A status and, in the early stages, all the members of the family, including the petitioner's mother, worked to improve it. The respondent and his father carried out all necessary building work. The petitioner and her mother carried out the initial cleaning operation before the start of each season, after lodgers had been accommodated for the winter season. Thereafter they did the cleaning, washing and shopping. The extent of the petitioner's participation in the running of the guest house is disputed.

The respondent now lives in the manager's one bedroom rear flat at the N Guest House, with the co-respondent. The business is managed by the co-respondent. The lease will expire on the 25th December, 1990; it is envisaged that the occupation could continue on a quarterly or yearly basis; the owner is in her late eighties; the premises are very old and need substantial expenditure. The business makes between £3,000 and £6,000 per annum depending on the expenditure required on maintenance. The respondent receives one half of the profits after all expenses have been met.

On the 18th December, 1987, the respondent's father purchased a property , which adjoins N which he would hope one day to purchase for joint development. He paid £152,000, which the respondent considers to be excessive. If the property were to become a joint enterprise his father would have to be reimbursed. Again, the purchase of this property is not relevant to the matters we have to decide.

Both parties agreed that their life-style changed substantially after the sale to the States in July, 1980. They each criticized the other in matters of expenditure but we think it is a case of the "pot calling the kettle black". The petitioner said that the respondent's attitude was that they had plenty of money, that she should stop worrying and that money was there to be enjoyed. He purchased champagne, expensive restaurant dinners and they went on holidays to America, Switzerland and Cheltenham and on skiing holidays. The petitioner informed us that the children had been on skiing holidays on five occasions. She also complained that the respondent had been away on nine occasions since they had separated and was about to go away again to attend the Cheltenham Gold Cup

The respondent's credit card expenditure on restaurants and hotels was also criticized.

The schedule of annual expenditure attached to the petitioner's affidavit of means shows total outgoings of £24,930 which the petitioner claims takes no account of entertaining and social expenditure although the schedule does

include holidays, hobbies and meals out. She also claims that some of the figures are based on those for 1985 which would need to be increased by the rate of inflation since that time. Many of the figures cited are unrealistic or out of date and were varied by the petitioner under cross-examination.

It is unnecessary for us to go into the details of the expenditure claimed, but it included parish rates paid by the respondent or his father, domestic oil for two years rather than one, school fees now paid by the respondent, a claimed annual expenditure of £3,000 on holidays consisting of two skiing holidays with the children and the clothing of the children for those holidays, £570 per annum on veterinary fees and dog food, £960 for the gardener paid by the respondent, £1,350 for insurances which appear to be paid by the respondent on bank standing orders; and £120 or more per week on food for three people, plus £1020 per annum on meals out, and £3,559 per annum on clothing for three people.

We have no doubt that in the year or two of maximum earnings from property development, both parties were extravagant. Both must now "cut their suits according to the cloth" and we have no doubt that they now realise it. The petitioner now says that she can afford to live on her present income of about £13,000 per annum on the basis that she could increase her income each year to match inflation and could let an empty room at the side of the house for storage.

It is very difficult for us to establish what the respondent has earned and is likely to earn in the future from M Limited. The respondent was paid a wage and he also participated in the profits; he could not tell us how much he had received over the years. The respondent did not accept the petitioner's assessment of total outgoings in 1985 and 1986 at £24,930 each year as an accurate assessment; he would not have thought that even in 1985 he earned sufficient to meet that kind of expenditure; he described the Schedule as "grossly inflated"; he denied living above his means; he admitted that from January, 1985, onwards he made regular use of a bank

credit card for restaurants and hotels but this was genuine business expenditure. In November, 1985, the respondent commenced an affair with the co-respondent as a result of which his life-style changed again in 1986 and he could no longer afford to use his bank credit card.

We had the valuable assistance of Mr. Graeme Le Rossignol, Chartered Accountant, on the matter of the accounts of M Limited and the N Guest House; the accounts of the N Guest House are prepared on a calendar year basis; the first accounts of M Limited were for a thirteen month period from the 30th September, 1983, the date upon which the Company commenced trading, to the 31st October, 1984; thereafter the accounts were drawn on a twelve month basis expiring on the 31st October of each year; allocation of fees did not prove an expendable income because such fees could be credited to a director's loan account. However, for our purposes we could take the income of the respondent from both sources to be 1983 - £8,750; 1984 - £19,200; 1985 - £12,400; 1986 - £11,800. No figures were available in respect of the N Guest House for 1987. Draft accounts were available for M Limited for the twelve month trading period to 31st October, 1987; no directors' remuneration had been provided for and the respondent had drawn only £3,150 from the Company in total for that year. The accounts show a considerable fluctuation in the respondent's director's loan account. At the 31st October, 1984, his loan account stood at £15,000; at 31st October, 1985, at £13,211; at 31st October, 1986, at £7,958; and in the draft accounts at £4,780. It is clear, therefore, that the respondent had drawn against his director's loan account to supplement his income. The respondent, in his affidavit of means, assesses his total taxable income for the year 1985 at £13,414. We are satisfied that the figures we have cited can serve as an approximate guide for our purposes. The 1986 accounts show an expenditure of £4,004 on entertainment expenses, compared with £281 in 1985 and £93 in 1984. In the draft 1987 accounts the figure is £2,169. It may be that some part of that expenditure benefited the respondent. The 1985 bank statements indicate a total receipt by the respondent from M Limited of £2,900 but he received his

salary in cash by means of a weekly cash drawing. Both the respondent and his father could draw cash from the Company on a sole signature. In the same way sub-contractors were generally paid in cash and when temporary labour was employed the wages would be paid in cash and no details were kept. As the respondent put it "the Company has to rely on my honesty". Similarly, on one occasion the petitioner received £1,000 from M Limited as a design fee because she had done design work in respect of the Zella Villa development. We are satisfied that Mr. Le Rossignol presented a true picture so far as he was able; figures can be adjusted, legitimately, for tax purposes; he had to rely on information given by the directors; but he would not abet any fraudulent presentation of accounts.

We are satisfied that the respondent has not been guilty of deliberately distorting the figures of his earnings. M Limited made very substantial profits over a relatively short period but the whole of the respondent's father's loan account, from whence the working capital had come originally, had been repaid. The information available to us is sufficient to form a rough guide. Equally, we are satisfied that the petitioner has exaggerated the amount of expenditure necessary to maintain herself and the children.

The contents of the matrimonial home are valued at £22,343. We have already referred to a gift by the respondent's father of £20,000. According to the respondent, this comprised two gifts of £10,000 each to him; the first was used to re-wire the property and install a new kitchen; the second was used to purchase the furniture for the home. The petitioner says that the contents of the home were purchased by the respondent and herself for £9,000 to £10,000 out of monies gifted to them both by the respondent's father. We have little doubt that, having regard to the respondent's father's generous disposition, he intended his gifts to be to both spouses jointly and that we should regard the contents of the home as jointly owned.

We do not propose to pay much regard to the peripheral matters of motor vehicles and bank accounts.

Finally, because the activities of M Limited have been wound down, the respondent works as a van driver/foreman for a building contractor and earns £160 per week.

The Law

Mr. Clyde-Smith told us at the outset that there was agreement between the parties on the issue of conduct. The respondent is the guilty party; his adultery was the cause of the breakdown of the marriage; but his misconduct had not been gross and obvious as understood under English law. Counsel had agreed, therefore, to avoid evidence of the history of the marriage and the conduct of the parties. What the Court was required to determine was all financial matters between the parties, including the question of maintenance for the children. Mr. Slater advised us that although the parties were agreed as to conduct, it had not been agreed that this marriage was ever a happy one - it was not.

The law to be applied in this case is to be found, firstly, in Articles 28, 29 and 29A of the Matrimonial Causes (Jersey) Law, 1949, as amended. The relevant parts are as follows:-

"Article 28

(1) Where a decree of divorce....has been made, the court may, having regard to all the circumstances of the case including the conduct of the parties to the marriage and to their actual and potential financial circumstances....order:-

(a) that one party to the marriage transfer to the other party to the marriage or to any child or children of the marriage, or to such person as may be specified in the order for the benefit of such child or children, any property whether real or personal to which the first mentioned party is entitled;

(b) that a settlement of any property whether real or personal to which one party to the marriage is entitled be made to the satisfaction of the court for the benefit of the other party to the marriage or of any child or children of the marriage.

Article 29

(1) Where a decree of divorce....has been made, the court may, having regard to all the circumstances of the case including the conduct of the parties to the marriage and to their actual and potential financial circumstances order:-

(a) that one party to the marriage shall pay to the other party to the marriage during their joint lives or for such other term as may be specified in the order such annual or other periodic sum for the maintenance and support of that other party as the court may think reasonable;

(b) that one party to the marriage shall pay to the other party to the marriage such lump sum or sums as the court may think reasonable whether or not any sum is ordered to be paid under sub-paragraph (a) of this paragraph;

(c) that security be given for the payment of any sum or sums ordered to be paid under sub-paragraphs (a) and (b) of this paragraph;

(d) that where security is given under sub-paragraph (c) of this paragraph, the order of the court by which such security is given shall take effect upon registration in the Public Registry as a judicial hypothec upon the real property of the person against

whom such order of the court has been made as if it were an act or judgment of the Royal Court to which Article 13 of the Loi (1880) sur la propriété foncière applied.

(2) Without prejudice to the generality of paragraph (1)(b) of this Article, an order under this Article that one party to the marriage shall pay a lump sum to the other party to the marriage - .....

(b) may provide for the payment of that sum by instalments of such amount as may be specified in the order.

Article 29A

(1) Subject to the provisions of paragraph (7) of this Article, where the Court makes an Order under Article..28 or 29 of this Law, then, on making that order or at any time thereafter, the court may make a further order for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion.

(2) Any order made under paragraph (1) of this Article may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision, may include

(a) provision requiring the making of a payment out of the proceeds of sale of the property to which the order relates; and

(b) provision requiring any such property to be offered for sale to a person, or class or persons, specified in the order.

(3) Where an order is made under paragraph (1) of this Article on or after the grant of a decree of divorce...the order shall not take effect unless the decree has been made absolute.

(4) Where an order is made under paragraph (1) of this Article, the court may direct that the order, or such provision thereof as the court may specify, shall not take effect until the occurrence of an event specified by the court or the expiration of a period so specified.

(5) Where an order under paragraph (1) of this Article contains a provision requiring the proceeds of sale of the property to which the order relates to be used to secure periodical payments to a party to the marriage, the order shall cease to have effect on the death or remarriage of that person.

(6) Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under paragraph (1) of this Article in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order.

(7) The provisions of paragraph (1) of this Article shall not apply in the case of an order made under sub-paragraph (a) of paragraph (1) of Article 29 of this Law unless in such case an order is also made under sub-paragraph (c) of paragraph (1) of Article 29 of this Law.

(8) In this Article a reference to property shall be construed as a reference to property whether real or personal".

The tests to be applied by the Court are set out in F -v- W (J.J. 8 June 1987, as yet unreported) as follows:-

"The ratio decidendi of Urquhart -v- Wallace (1974) 2 J.J. 119, is that as, in Jersey, divorce is still based substantially on the concept of the matrimonial offence, a stronger emphasis is placed by the Court on the conduct of the guilty party when apportioning the assets. Conduct must be taken into account, whether or not it is obvious and gross".

"In Urquhart -v- Wallace the Royal Court approved the matters to which the courts shall have regard in exercising their powers. These were as set out in section 5(1) of the Matrimonial Proceedings and Property Act 1970, as follows:-

"It shall be the duty of the court....to have regard to all the circumstances of the case including the following matters, that is to say:-

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and the duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) the contributions made by each of the parties to the welfare of the family, including any contribution made by looking after the home or caring for the family;

(g) in the case of proceedings for divorce or nullity of marriage, the value to either of the parties to the marriage of any benefit (for example, a pension) which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

and so to exercise those powers as to place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations towards the other." (The underlining is ours)".

After referring to a number of cases the Court, in F -v- W said this:-

"The overriding principle, in all these cases is that set out by Lord Denning M.R. in Wachtel -v- Wachtel, at page 842:-

"'In all these cases it is necessary at the end to view the situation broadly and see if the proposals meet the justice of the case'

"To summarise, therefore, we have to have regard to all the circumstances of the case, both financial and personal, and including conduct, viewing the situation broadly in the exercise of our discretion, and attempt to do justice to both parties."

Mr. Clyde-Smith referred us to Jackson's Matrimonial Finance and Taxation, 3rd edition, at page 155 section 22 entitled 'Prospective assets and liabilities: money or property likely to be inherited':-

"Section 25(1) requires the court to have regard not only to the financial resources and financial needs, obligations and responsibilities which the parties have at present, but those which each of them 'is likely to have in the foreseeable future'. Accordingly, prospective assets have to be taken into account, and these have included a lump sum payable on retirement, capital due to be received under settlements, and gratuities payable on discharge from the services. Where the husband has such prospects they may affect the size of the immediate lump sum which he is ordered to pay to the wife; or they may justify an order which provides the wife with some capital now and further

capital on the happening of a future event; or they may make it appropriate to adjourn her application until that event occurs. Reference has already been made to the deduction of actual and notional liabilities; because of the duty to have regard to the foreseeable future, it is necessary to take into account not only the liabilities which already exist but also those which are likely to be incurred. The prospective assets and liabilities of the wife have to be taken into account just as much as those of the husband.

"In many cases, the prospective asset consists not of something in which the party already has a vested or contingent interest but simply something which he or she is likely to inherit. This is a prospect which may have to be taken into account, but problems can arise because of the uncertainty as to whether and, if so, when the asset will in fact be received and because of the difficulty of ascertaining its value." In Morgan -v- Morgan (1977) 2 All E.R. 515 the wife was likely to inherit most if not all of her father's assets and the husband obtained subpoenas requiring him to give evidence about them. It was held that the evidence would be relevant and admissible, but that it would be oppressive to force the father to give it, and accordingly the subpoenas were set aside."

In Overland (née Stanaway-Ivey) -v- Overland (1980) J.J. 233 at pages 240 and 241, the Court said this:-

"Two other matters need be mentioned here. First it is clear that the wife made no contribution from the financial point of view towards the husband's substantial assets which he inherited. Her contribution was confined to looking after her own children and running the household. She conceded in her evidence that the husband throughout the marriage had been extremely generous and we may therefore infer that had the marriage continued that generosity likewise would still have been shown to her by the respondent. Secondly, our law removes from a divorced wife her expected right of legitim and dower from her husband's estate. There is a paragraph in Jackson's Matrimonial Finance and Taxation 2nd edition at page 78 and which we think is

relevant in this context. It is as follows "21. Good days coming. The standard of living when the parties lived together does not remain the sole standard by which payments are to be assessed. As it was put in one case, a wife may be right "when she tells the court that throughout the married life the expectation was held out to her that good days were coming when they would be in a far better situation than they were at the time": when those days come she is entitled to the benefit of them. Quite apart from the "breakthrough", she is entitled to the advantage of an increase in salary, general or particular. A balanced view must be taken." Again, we have approached this case in the light of the observations of the author of this work."

Mr. Clyde-Smith also referred us to Rakusen and Hunt's Distribution of Matrimonial Assets on Divorce 2nd edition Part 2 Chapter 4 at page 43:-

"It will be suggested in Chapter 5 that one of the greatest factors influencing the distribution of matrimonial assets is the very large emphasis that is to be placed by the courts on the provision of homes. However, if there is one consideration which is more than emphatic and might be said to be paramount, it is the need to consider what are herein described as the 'overriding requirements of dependent children'. Accordingly, it may safely be stated that in nearly every case which comes before the courts where there are children, there is a simple and unalterable starting point. It is that the availability of the house as a home for the wife and children should ordinarily be ensured while the children are being educated. The reason for this clear policy is self-evident. But as well as the desire to protect children as much as possible from the consequences of divorce, there may also be seen to be a desire on the part of many courts to protect and compensate the party (usually the wife) who is left with the financial, mental and physical burden of caring for the children of the family".

Jackson deals with 'property adjustment and the matrimonial home' in Chapter 9 p.211 of his 'Matrimonial Finance and Taxation'. At page 215 he says this:

"In Wachtel -v- Wachtel Lord Denning M.R. went on to comment on the situation in which it is the husband who leaves:-

'Conversely, suppose the husband leaves the house and the wife stays in it. If she is likely to be there indefinitely, arrangements should be made whereby it is vested in her absolutely, free of any share in the husband; or, if there are children, settled on her and the children. This may mean that he will have to transfer the legal title to her. If there is a mortgage, some provision should be made for the mortgage instalments to be paid by the husband, or guaranteed by him. If this is done, there may be no necessity for a lump sum as well. Furthermore, seeing that she has the house, the periodic payments will be much less than they would otherwise be'.

"The implication of this passage in the judgment is that there should generally be an outright transfer to the wife without any compensation to the husband except a possible relief from paying the mortgage and a reduction in periodical payments. Difficulties may arise in a case where the wife cannot pay the mortgage, or needs the full amount of periodical payments, or where the value of the property is such that the order would deprive the husband of what is in effect the only substantial asset. Subsequent cases have shown that there is a variety of possible situations which may have to be met with a variety of orders. In one such case the above passage was quoted, with the following observation:-

'I think one may make this observation about judgments given in this court as to the application of the provisions of the Matrimonial Proceedings and Property Act 1970: they must be studied in the light of the particular circumstances of the case before the court. It would, I believe, be unfortunate if the very flexible and wide-ranging powers conferred on the court by the 1970 Act should be considered by the profession to be cut down or forced into this or that line of decision by the courts. I have no doubt that the passage that I have quoted from the judgment of Lord Denning M.R. is valuable guidance for a large number of cases; but, for reasons associated with the particular finances

of this family, I do not think the passage is helpful to resolve the problem with which we are in the present case confronted' (Chamberlain -v- Chamberlain (1974) 1 All E.R. 33, C.A., per Scarman L.J. at p.38)."

In Mesher -v- Mesher (1980) 1 All E.R. 126 C.A., the wife remained in the matrimonial home with the one child: she intended to remarry. The husband was also going to remarry, and he and his intended wife had bought a house on mortgage. The matrimonial home, which was in joint names, was on mortgage, but had a substantial equity. The court ordered that it was to be held on trust for sale in equal shares, but was not to be sold until the child was seventeen, or until further order.

Jackson's Matrimonial Finance and Taxation at p.216 says:-

"It has been said that the Mesher -v- Mesher type of order, as it is often called, was never intended to be a general practice, and that in a great many cases it is not a satisfactory way of solving them, but there are cases in which it is appropriate.

In Chamberlain -v- Chamberlain (supra) the wife and three children remained in the matrimonial home, which was in joint names, and it was agreed that they should live there until the wife remarried or co-habited with another man, when it was to be sold and the proceeds divided equally. The husband lost his job and defaulted on the mortgage, and the wife had to compromise proceedings by the mortgagees and to pay the mortgage arrears and current payments. It was held that because of the change of circumstances the wife was entitled to a greater interest than that agreed and it was ordered that the property be held on trust for sale in the proportions of two-thirds to the wife and one-third to the husband, sale not to take place until every child of the family had ceased to receive full-time education, or thereafter without the consent of the parties or order of the court.

In Hector -v- Hector (1973) 3 All E.R. 1070 C.A. the matrimonial home was in the husband's name but was already held in equal shares beneficially. The wife remained there with four of the children. There was a maintenance order of £1 a week for the wife and £2 a week for each child. The wife was working, and since the husband left she kept up the mortgage, rates, and other outgoings. The equity was about £4,000. The court ordered the husband to transfer his interest to the wife, reduced the wife's maintenance to a nominal sum, and gave the husband a charge on the house for £1,000 to be paid on the death of the wife, or on the sale of the property or on the youngest child reaching sixteen.

Mr. Clyde-Smith sought to rely on Smith -v- Smith (1975) 2 All E.R.19. In that case both parties had equal beneficial interests in the house. There was no conduct aspect to be taken into account. The wife remained in the house with the child of the marriage who had suffered from serious kidney trouble since infancy. There was a likelihood that the child would need the wife's continuing help and care even after leaving school. The wife was unable to work full-time because of the need to look after the child during the school holidays. There was a maintenance order of £1 a week for the wife and £3 a week for the child and the husband did not have very much to spare. Latey, J. ordered the husband to transfer his interest in the house to the wife, in which event he would be relieved of any obligation to pay rates, repairs or mortgage. The maintenance order was left as it was. After considering Wachtel -v- Wachtel, Mesher -v- Mesher, Chamberlain -v- Chamberlain and Hector -v- Hector, Latey J. said:-

"In applying to the facts of a particular case the provisions of ss 4 and 5 of the Act of 1970 what further guidance is there from those decisions? In my view the following emerges. Where the house is the sole or principal asset and the wife and children are living in it: (1) The court's approach should remain flexible, and, with the provisions of the sections in mind, it should suit its decision and order to the particular facts of the particular case (Mesher, Hector and Chamberlain). In many cases the Wachtel orders are appropriate

but that decision does not lay down any universal or general rule binding on the court. (2) The availability of the house as a home for the wife and children should ordinarily be ensured while the children are being educated. (3) When the children have ceased to be educated and the house is to be sold the husband and wife should ordinarily receive their shares absolutely. (4) If the wife has remarried or is going to remarry her financial position on remarriage must be considered. If it is guesswork whether she will or will not remarry prospective remarriage should be ignored.

"With that guidance in mind as well as the provisions of the sections and not least the overriding consideration in the words at the end of s 5(1) what should be the order in this case? There is no evidence to suggest a likelihood of the wife remarrying. With her daughter in fragile health the wife in unlikely to be able to embark on full-time employment for several years to come. The wife like so many wives when there are children has come off worse as the result of the breakdown of the marriage. It is a sad fact of life that, where there are children, both husband and wife suffer on marriage breakdown, but it is the wife who usually suffers more. The husband continues with his career, goes on establishing himself, increasing his experience and qualification for employment - in a word, his security. With children to care for a wife usually cannot do this. She has not usually embarked on a continuous and progressing career while living with her husband, caring for their child or children and running the home. If the marriage breaks down she can only start in any useful way after the children are off her hands and then she starts from scratch in middle life while the husband has started from youth".

Having referred to the terms of s 5(1)(a) and (b),((a) and (b) in Urquhart -v- Wallace, supra) Latey J. continued:-

"All that I have just mentioned concerning many wives applies with the fullest force in this case. The wife will be 36 or more before she can begin to forge any real career with prospects of continuity and perhaps some pension rights. The only real security for her future is to be found in this house

Counsel for the husband contended that this is a case which should fall into the Mesher category. I do not think it does. In Mesher the central fact was that on the wife's remarriage the two families were going to be similarly placed and she had every prospect of security in the future regardless of the house. And there are other substantial points of distinction as counsel for the wife urged. In the present case short of remarriage the wife on the long view is going to be much worse placed than the husband. I have considered too counsel for the husband's contention that the husband should be left with part of his half share. But in my view in this case that would do less than justice to this wife because I do not think that anything less than the whole equity would meet the requirement at the end of s 5(1). What Lord Denning M.R. said in Hector about the position of the wife had the marriage not broken down is very much to the point in the present case. If the marriage had not broken down in 1969 the husband and wife would have remained together in the house with the children. She would have had the benefit of his earnings, payment of the outgoings, mortgage instalments and the like. She would have been secure. All that has gone. Furthermore in this case there is the important factor of the child's state of health. It does not at all follow that when she leaves school - at 17, say - she will not thereafter need a home with her mother and continuing help and care. With only half the equity, or indeed with anything less than the full equity, and no settled full-time employment, she would find it very difficult if not impossible to get a new home with a new mortgage in the Bournemouth area which is where her and the child's roots are. The husband with a record of full employment since youth giving him a strong position in the labour market would be far better placed if he wanted to start buying a house on mortgage. For all those reasons in my judgement in this case the right order is that the whole of the husband's half share in the house should be transferred to the wife."

The husband appealed. The Court of Appeal dismissed the appeal and Latey J's comments were cited with approval. (1974) Bar Library transcript 74.

An approach similar to that in Chamberlain -v- Chamberlain was adopted in Alonso -v- Alonso (1974) 118 Sol.Jo. 660 C.A. where there was an order vesting the house in independent trustees, one nominated by the husband and one by the wife, on trust for sale as to two-thirds for the wife and one-third for the husband; the trust not to be executed (unless by agreement or by order of the court) until the wife's death, the end of each child's full time education or the youngest child attaining twenty-one; the wife to be able to reside there till sale.

Jackson, at page 217, comments on Chamberlain -v- Chamberlain and Alonso -v- Alonso as follows:-

"This type of order has certain advantages. From the wife's point of view it is preferable to the basic 'Mesher -v- Mesher' type of order because although it provides for a sale it also means that she will have a larger sum with which to buy another property. From the husband's point of view it is preferable to an outright transfer because it gives him the prospect of receiving some of the capital which is tied up in the house. However, the effect of any order in relation to the matrimonial home has to be considered together with other questions of ancillary relief. If the interests in the house are varied, this can be done in whatever proportions may be appropriate. Similar results can be achieved by means of a deferred charge".

Mr. Clyde-Smith also referred us to Martin -v- Martin (1977) 3 All E.R. 762 C.A. However, we do not think it assists us. That case decided that it is of primary concern that the parties should, if possible, have a roof over his or her head, whether or not there be children of the marriage, that needs can far outweigh resources in importance and that the court must weigh each individual case on its merits, weighing up each side's resources and trying to ensure that neither party is rendered homeless.

Counsel for the petitioner also relied on Rakusen and Hunt Chapter 10 p.219 'The Clean Break'. In particular, he relied on Hanlon -v- Hanlon (1978) 2 All E.R. 889 C.A. which Rakusen and Hunt report under the sub-heading of 'Desirability of crystallising parties' interests in former matrimonial home once and for all', at p.222, 10-102 as follows:-

"The matrimonial home had been purchased in the sole name of the husband, although during the 14 years of the marriage the husband and wife had contributed equally in money and work to the family. The parties had now lived apart for over five years. The wife remained in the house with the four children while the husband, a police officer, now lived in a flat provided rent-free by his employers. The judge at first instance ordered that the house be transferred into joint names on trust for sale in equal shares, the sale to be postponed until the youngest child, then 12, had attained 17.

"Ormrod L.J. said that it was not right to regard the interests of the husband and wife in the house as being equal because the wife had, in the five years since the separation, maintained it and looked after the family and would continue to do so until they left home, and had therefore made a very large contribution to the family. As one half of the equity on the eventual sale of the house could not produce a sum sufficient to enable the wife to buy another home for herself and such of the children as were still with her, it would be wrong to make an order which would have the result of forcing the wife to leave the house when the youngest child attained the age of 17. As she was willing to forego any further periodical payments for the two children, who were under 17, the proper order was to transfer the house to the wife absolutely.

"Ormrod L.J. said (at page 895):....It was suggested that this might be the kind of case which could be met by postponing the sale indefinitely until further order, and then distributing the proceeds of sale, not necessarily on a 50/50 basis, but I do not think that that, in this case, would be at all satisfactory. It would leave the wife in a state of perpetual uncertainty and

neither party would know where ultimately they were going to be. It seems to me far better that the parties' interests should be crystallised now, once and for all, so that the wife can know what she is going to do about the property and the husband can make up his mind about what he is going to do about rehousing".

Whilst not disagreeing with the general approach Mr. Slater stressed the need for the Court to consider the provision of a home or accommodation for the respondent. He referred us to Ostroumoff -v- Ostroumoff (née Martland) (1979) J.J.125 at page 132, where the Court said this:

"We agree with respect, with the observations of Ormrod L.J. in Browne (formerly Pritchard) -v- Pritchard (1975) 3 All E.R. 721 at page 725 (although the parties here are of much more substantial means than those in the case cited) that property rights are ancillary to the family. The learned Lord Justice also said on the same page:-

"It is therefore to the provision of homes for all concerned that the court should direct their attention in the first place."

We summarise the principles to be applied:- We must have regard to all the circumstances of the case, both financial and personal, and including conduct, viewing the situation broadly, in the exercise of our discretion, and attempt to do justice to both parties. We must have regard to financial resources and needs, obligations and responsibilities which each of the parties is likely to have in the foreseeable future. Thus we must take the prospects of inheritance into account. A very large emphasis must be placed on the provision of homes, but the paramount consideration is the requirements of the dependent children. The Court has very flexible and wide-ranging powers. If it is guess work whether the petitioner will or will not remarry, prospective remarriage should be ignored. It is generally better to allocate shares in the matrimonial home rather than to give a spouse a fixed amount which might be eroded by inflation when it comes to be realised. In appropriate cases the

whole of one spouse's interest in the matrimonial home should be transferred to the other spouse. A 'clean break' whilst attractive and to be encouraged, is not appropriate in all circumstances, especially where the interests of the children are paramount. Decisions of the courts can never be better than guidelines. They are not precedents in the strict sense of the word; there are no rigid categories, and the aim must always be to meet the justice of the particular case.

Submissions

Mr. Clyde-Smith sought an order that the whole of the respondent's interest in the matrimonial home, both property and contents, be transferred to the petitioner. The petitioner seeks "a bigger slice of the capital" because of special factors of which, it is urged, there are five 1) The matrimonial home is a large house, owned by four parties jointly and for the last survivor of them; 2) a substantial income is produced by that asset; 3) the erratic earnings and economic position of the respondent make it difficult for the Court to make any kind of meaningful order as to maintenance; 4) the wealth of the respondent's father and his close business relationship with the respondent; and 5) the petitioner's very limited earning power. It was also urged upon us that the children reacted dreadfully to the divorce - they were devastated - both have suffered emotional problems and, therefore, it is desperately important that the matrimonial home be secured for them until the daughter, SC , is twenty-one years of age. If the respondent's property rights were to be transferred to the petitioner, she would abandon her other claims. Her share of the matrimonial home should be increased to compensate for the loss of inheritance prospects. If the petitioner receives the home and contents, and retains the income from the flat and car-parking, she would be prepared to live on it, without maintenance for the children. The 'clean break' principle has merit in this case.

However, Mr. Clyde-Smith accepted that there are what he called 'technical' difficulties in this case: 1) The joint ownership by four people; he suggested that as between the petitioner and the respondent there should be no sale until SC was twenty-one years of age and that then their share of the proceeds of sale should devolve to the petitioner; 2) Because the respondent's parents could demand a sale, a share of rents, or occupation, there should be a nominal order for maintenance of the petitioner until SC attains twenty-one years of age, with liberty for the petitioner to apply for the order to be varied or for a lump sum to be paid should the respondent's parents so act; 3) The possibility that the respondent could die before SC had attained twenty-one years, with the result that upon a sale, the petitioner's share would be reduced to one-third, could be adequately dealt with by means of insurance. Mr. Clyde-Smith went on to propose a complicated insurance arrangement involving assignment and re-assignment of an existing policy and the creation of a further new insurance policy for seven years.

Finally, the whole of the contents should be included with the transfer of the property.

Mr. Slater argued that if the Court were to make an order which transferred the whole of the respondent's capital to the petitioner and if, after that, the relationship with the respondent's father were not to continue, then this would result in considerable injustice to the respondent.

He proposed that the petitioner and the respondent's share in the matrimonial home should be realized; this would release capital of approximately £100,000, which would represent an accumulation of capital to the parties to the marriage. This sum would be available to purchase a suitable alternative property and leave some capital over. Mr. Slater submitted estate agents' particulars of three and four bedroomed properties available on the market at less than £100,000. Therefore, he argued, the proceeds of sale should be made available to purchase a property for the petitioner and SC until SC attained the age of eighteen years or left home, whichever would

be the earlier, the property to be purchased in joint names. Mr. Slater accepted that in those circumstances there would have to be an order for payment of maintenance. But the petitioner should obtain full-time employment. Mr. Slater invited us to put the petitioner's income at £5,000 per annum and the respondent's at £15,000, a total of £20,000. He submitted that the respondent should pay one third of the £20,000 by way of maintenance for the children, i.e. £6,666. Also, he should pay maintenance to the petitioner to bring her income up to one third of the joint earning capacity. In an attempt to achieve a clean break the maintenance to the petitioner should be capitalised and paid as a lump sum. If it were possible to obtain a suitable alternative house for less than £100,000 the lump sum would be paid out of the difference; if not, the respondent might raise it by way of a loan.

Mr. Slater argued that the benefit of his proposals over others was quite simply that they did not depend on the continued goodwill of other parties, nor did they seek to impose upon the parents of the respondent any obligation to continue to subsidise the petitioner and respondent.

As to the contents of the matrimonial home, Mr. Slater argued that the home was much larger than required, that if an alternative property were found it would be a smaller property which could be furnished with perhaps half the contents and, therefore, that there should be an equal division between the parties.

In reply, Mr. Clyde-Smith pointed out that the Court had no power to order the purchase of an alternative property, which could be overcome only by a consent order, which would be fraught with difficulty, since the respondent would want the cheapest house possible to be bought. He claimed that the only alternative would be to allow the petitioner one half of the proceeds of sale of the entire property now so that she might buy another property. The authorities were in favour of protecting the home in order to provide stability for the children. He cited Clarke -v- Clarke (D., 16 December 1987,

unreported) in which the Court had apportioned the proceeds of sale of the matrimonial home as to two-thirds for the wife and one-third to the husband, with a view to going a long way towards providing each of the two parties with a secure home.

Conclusions

It is very sad that this matter has to be decided by the Court because it is impossible to do so, with justice to all, without consideration of the position of the parents of the respondent who were not convened by either party. This is a matter which should have been dealt with by negotiation between the parties, their respective legal advisers, and with full participation of the respondent's parents.

As Mr. Clyde-Smith said, in his opening remarks, the Court will have no control over the respondent's parents in the future.

It seems that both Counsel envisaged a sale of the whole property at some stage. The approach of Mr. Clyde-Smith was confusing. On the one hand he sought an order to require the respondent to transfer the whole of his interest in the matrimonial home to the petitioner now. We observe that that would not be a transfer of an undivided quarter share in the property so that the petitioner would own a half share and the respondent's parents the other half share; it would be a transfer of property rights - the right to enjoy the property jointly with three - as the result of transfer, two - other co-owners, with a contingent right to the whole by survivorship. On the other hand he asked for the status quo to be maintained until SC is twenty-one years of age, when the property would be sold and the petitioner would receive one half of the proceeds, i.e. her share and that of the respondent. Mr. Slater sought an immediate sale of the property, although he did not say so - he asked only that the petitioner's and respondent's contingent share in the property should be realized now - to release capital of approximately £100,000. The only way in which the interests of the petitioner and respondent could be realized would be

require the respondent's parents to join in the sale. Such a step is, of course, possible having regard to the decision of the Court in Le Sueur (née Luce) -v- Le Sueur (1968) J.J.889. In that case the Court held -

"That the words giving rise to the right of survivorship are words of limitation only and in no way inhibit either joint owner from putting an end to the indivision".

The judgment in Le Sueur -v- Le Sueur was considered in "In re dégrèvement Bonn - Representation of Judicial Greffier." (1971) J.J. 1771, where, at page 1783, the Court interpreted the judgment:-

"The judgment was to the effect that either joint owner could put an end to the indivision, not that the Plaintiff could sell her undivided share to a third party, which would still have left the defendant in a state of indivision with that third party.

"The only ways in which Mr. and Mrs. Le Sueur could end the indivision were by one disposing of his interest to the other, or by both selling the property to a third party, or by their physically dividing the property between them.

"Our conclusion is, as we have said, that a joint owner of real property in Jersey does not have an interest which he can alienate without the participation of his co-owner."

But neither Counsel drew our attention to, nor addressed us upon, the provisions of paragraph (6) of Article 29A of the Matrimonial Causes (Jersey) Law, 1949, as amended, which provides that where a party to a marriage has a beneficial interest in any property and some other person who is not a party to the marriage also has a beneficial interest in that property, then before deciding whether to make an order for the sale of the property, it is the duty of the court to give that other person an opportunity to make representations with respect to the order.

Here, the respondent's parents do have a beneficial interest in the property. They are "some other persons who are not parties to the marriage". Therefore, we cannot make an order for the sale of the property until we have given to the respondent's parents an opportunity to make representations to us.

The problem which we face here is, so far as we know, unique. In all the authorities cited to us, and which we have reviewed at some length, the property was jointly owned by the spouses alone, or owned by one of the spouses alone. Here the property is owned by the spouses and by two other persons, not in equal shares, but jointly and for the last survivor of them.

We accept that this was a long marriage, lasting some seventeen years before the breakdown and that the cause of the breakdown lies with the respondent who committed adultery and left home. That conduct must be taken into account and the petitioner must be compensated for her care of the respondent and of the children, for her work in the establishment of the matrimonial home, for her work in the guest house and for the loss of potential inheritance.

No evidence has been put before us as to prospective remarriage or cohabitation of the petitioner. Therefore, because it would be guesswork whether the petitioner will or will not remarry we ignore prospective remarriage (v. Smith -v- Smith supra).

Furthermore, we accept that the needs of the children are paramount. We have no doubt that the children suffered from the divorce and we can well accept that the damage to teenaged children can be greater than that to very young children. The children have been housed in some degree of luxury. As the petitioner put it in her evidence "We have all mod. cons; luxury items; every modern gadget you could hope for." The retention of the matrimonial home for the benefit of the children is important and although in many of the reviewed cases the arrangements have been terminated upon the youngest child attaining the age of eighteen years we believe that there is a good case [illegible]

for maintaining the matrimonial home until SC attains the age of twenty-one years or until she leaves the matrimonial home, whichever shall be the earlier.

However, we are not persuaded that the petitioner could not now take up full time employment. The petitioner says that it is really necessary for her to be at home by about two o'clock p.m. because there have been emotional problems with the children and SC returns home at about 3.45 p.m. Whilst we do not wish to encourage the idea of "latch-key" children, we observe that SC is nearly fifteen years of age, at which age many children leave school and take up employment. We do not believe that SC would suffer hardship if her mother were employed full-time, provided the home and its contents are preserved and protected for the benefit of the petitioner and the children.

We accept that, on the authorities, the provision of a home to both parties to the marriage has now reached a stage of some considerable emphasis and that it is of primary concern that the parties should, if possible, each have a roof over his or her head. But the respondent is housed, albeit in a one-bedroom rear flat in the guest house, the continued occupation of which beyond the 25th December, 1990, is uncertain. The fact that the respondent does not enjoy the same luxury as the petitioner cannot weigh heavily with us, having regard to his conduct and the paramount needs of the children. We have little doubt that if he should lose the occupation of the flat, he will be rehoused in other accommodation belonging to his father or be otherwise assisted by him.

There is no doubt that the 'clean break' principle is an attractive one. The law encourages spouses to avoid bitterness after family breakdown and to settle their money and property problems. An object of the modern law is to encourage each to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down. Certainly, where the parties can afford it a clean break is desirable, but we have no hesitation in saying that there cannot be a clean break here. The respondent must

continue to contribute to the maintenance of the children, e.g. the school fees and the allowances that he presently pays. The right of the petitioner to claim periodical payments must be kept alive, in case the respondent's parents, or the survivor of them, were to force a sale of the matrimonial home, demand a share of rents or require occupation, with consequential loss to the petitioner of the income from the flat and parking-spaces, or part of it.

We must take into account the prospect that the respondent is likely to inherit further assets from his father. The petitioner described the respondent's father as an "extremely wealthy man". The respondent did not deny that his father is wealthy. But wealth is comparative and we have no evidence of extreme wealth, and, under the authority of Morgan -v- Morgan it would be oppressive to force the father to give evidence about his means. We know that he sold a property for £275,000. Of that amount he has some £70,000 invested in the matrimonial home, from which he derives no benefit. He has a half share in M Limited which owns 18, Pomona Road, St. Helier, which cost £26,500. He owns 8, Hope Street, St. Helier, acquired as long ago as 1962. He owns land at Trinity Hill, St. Helier, purchased in 1982 for £25,000 - we have judicial knowledge of the fact that he is unlikely to obtain the necessary consents to develop that land which is probably of little value except as a long-term speculation. He owns 'Brookside' St. Martin which he purchased for £41,000 but no evidence was put before us about the intended development. The respondent said it was a partnership with somebody else. He purchased "Sous l'Eglise", 4, St. Luke's Cottages, for £65,000 but on the same day gave registered charge upon it for the full amount to Barclays Bank plc. On the 18th December, 1987, he purchased St. Moritz, 64, The Esplanade, St. Helier, for £152,000 which the respondent considered to be excessive. It may be that his total assets do not exceed by very much the £275,000 that he received for his property in Bellozanne. We do not know and because of uncertainty we cannot go beyond the evidence available to us.

Should we, then, order the respondent to transfer the property [illegible] the matrimonial home to the petitioner now? We think not. Such a transfer would not make her the owner of an undivided half share in the property [illegible]

would leave the petitioner as one of three co-owners of the property, with a potential right to the whole, contingent upon survivorship. She would be dependent entirely upon the continued goodwill of the respondent's parents. If she lost that goodwill and the property were sold, she would be entitled to one third of the proceeds of sale and would be in the same position as if the respondent were the first of the four co-owners to die, which, if such event occurred before SC attains the age of twenty-one years, would disadvantage her. On the other hand, if that goodwill remained and both the respondent's parents died before SC attains the age of twenty-one years, the petitioner would become the sole owner of the entire property and, effectively, the respondent would be deprived of his inheritance in that property. The legislature has provided, at Article 26 of the Matrimonial Causes (Jersey) Law, 1949, for the cessation of all successoral rights and interests on the dissolution of marriage. It is true that what might happen in the present case would not be inheritance by the petitioner from the respondent, but, yet, it would in effect be tantamount to the inheritance by the petitioner from the respondent's surviving parent of what he, the respondent, might otherwise have inherited, albeit jointly with the petitioner. We do not think that the respondent's conduct, which it is agreed has not been gross and obvious, should disentitle him to any part of his father's investment in the matrimonial home.

Accordingly, we must look for another solution. We believe that, in the special circumstances of the case, the solution is to be found in the decisions in Chamberlain -v- Chamberlain and Alonso -v- Alonso (supra).

But, because of the provisions of Article 29A(6) which requires the respondent's parents to have the opportunity to make representations with respect to the order before we make it, this will be by way of a draft of the order which we would be minded to make subject to those representations which, if any are made, we would take fully into account and which might cause us to revise our draft order. We would be minded to make an order on the following lines:-

1) The matrimonial home,

should be sold; this would require the co-operation of the respondent's parents or, in default of such co-operation, proceedings in "licitation" by the petitioner and the respondent against the respondent's parents.

2) The sale ordered to take place under paragraph (1) of the Order should be deferred until the daughter of the marriage, SC , shall have attained the age of twenty-one years or until she shall have left the matrimonial home, whichever is the earlier. In the event that SC should die before she has attained the age of twenty-one years, or if she should leave the matrimonial home before the son of the marriage, SP had attained the age of twenty-one years, the sale would continue to be deferred until he, SP, had attained the age of twenty-one years or had left the matrimonial home, whichever was the earlier.

3) When the sale shall have been completed, the share of the nett proceeds of sale attributable to the petitioner and respondent should be divided between them as to two thirds to the petitioner and one third to the respondent. This would mark the greater needs of the petitioner and the conduct of the respondent and would enable the petitioner to purchase a smaller alternative property.

4) Because the home must be preserved for the benefit of the children for a period which could be in excess of six years and because we do not think that the petitioner should be required to account to the respondent for wear and tear, depreciation, and replacement of the furniture and other mobiliary effects, we should order that the whole of the contents of the matrimonial home as set out in the valuation prepared by Messrs. F. Le Gallais and Sons and dated the 22nd December, 1987, and the addendum thereto dated the 28th January, 1988, should be to the petitioner absolutely.

5) In order to protect the petitioner against any unforeseen adverse circumstances which could deprive her of the income from the flat and/or the parking places or make it impossible for her to remain in employment, we should order the respondent to pay to the petitioner until the sale ordered to take place under paragraph (1) of the Order shall have taken place and the nett proceeds distributed in accordance with paragraph (3) of the Order, the annual sum of £1 towards the maintenance and support of the petitioner.

6) The respondent should pay the school fees incurred for the continued education of the children of the marriage at Victoria College and the Jersey College for Girls respectively and for any further education thereafter agreed upon by the parties or, in default of agreement, sanctioned by the Court.

7) The respondent should continue to pay allowances direct to the children of the marriage as at present, i.e. £40 per month to SP and £30 per month to SC . When SC attains the age of sixteen years her allowance should be increased to £40 per month. The legal obligation to pay such allowances to terminate when the children respectively attain the age of twenty-one years.

8) The respondent should pay to the petitioner the sum of £500 per annum towards the maintenance and support of the children of the marriage, such annual sum to be reduced to £250 when SP attains the age of twenty-one years or leaves the matrimonial home, whichever shall be the earlier and to cease altogether when SC attains the age of twenty-one years or leaves the matrimonial home, whichever shall be the earlier.. We have in mind the claim of the respondent that he pays for school clothes for the children and contributes to their non-school clothes and that we consider the petitioner's estimated expenditure on new clothes for the children to be grossly exaggerated.

9) The frozen joint account at Barclays Bank plc. should vest in the

10) The respondent should continue to pay the premiums on the four life insurance policies listed in the schedule annexed to his affidavit of means, but the policies should be held on trust for the benefit of the petitioner and the respondent in equal shares.

11) The whole until further order.

12) The respondent should pay the costs of the divorce; but liability for the costs of the present matter should be apportioned as to one third to the petitioner and two thirds to the respondent.

It is necessary now for the respondent's parents to be convened in order that they may have the opportunity to make representations with respect to the order. No procedural rules have been enacted and there are no precedents to guide us. Therefore, we are going to ask the Greffier to write to the respondent's parents or their legal adviser in order to convene them to appear before us in order that they may have that opportunity.