20 pages.

ROYAL COURT
(Matrimonial Causes Division)

Before: Commissioner F. C. Hamon
Jurat J. H. Vint
Jurat C. L. Gruchy

56.

Between: M **Petitioner**

And: G **Respondent**

H

Appeal against Greffier Substitute's Order of 27th June, 1990, on ancillary matters.

Advocate Miss M.E. Whittaker for the Petitioner.
Advocate C.R. Pycroft for the Respondent.

This is an appeal from a decision of Mr. Peter Harris, Greffier Substitute, made on 27th June, 1990. The hearing arose following a decree of judicial separation pronounced in the cause on the 17th January, 1990. It concerned ancillary matters and, in particular, the financial contribution which the husband would make to the wife and to the only child of the marriage, R.

It was held in Cameron -v- Archdale (1983) 1 C.A.247 Unreported, (applied in Taylor -v- Taylor (Née Hayter) 1987), that in considering an application for the variation of an order for financial provision, the court is not confined to considering changes in the means of the parties since the original order was made, but is required to look at their actual means at the time the case is before it and to approach the question of the fixing of the level of payments 'de novo'. It does seem to us, however, that we cannot ignore the judgment of the Greffier as though it had never existed; counsel did not in any way urge that we should. It was, however, pointed out that there are notable differences between this hearing and the hearing before the Greffier. The hearing before the Greffier was very much shorter than the hearing before this Court; in two instances the

evidence was not the same: the Respondent's father did not give evidence before us for reasons which were not made clear. One witness (C) was heard only on affidavit before the Greffier and this court has had the advantage of a mass of additional evidence not only from the parties themselves but also from accountants and estate agents called on their behalf. It is clear to us that if the court is satisfied with the decision of the Greffier on grounds of law or of fact it will not necessarily interfere (see, by way of example, Fagan v. Le Marchand, Unreported, 22nd January, 1988). We say this in the light of our comments as to the fresh evidence that we have heard. We think that the answer lies not in the authorities cited to us of procedures in the English courts but in two passages of judgments from this court. The first is a judgment on Rule 6/19 of the Royal Court Rules in Broad Street Investments -v- Nat West Bank 1985-86 JLR 6, at page 9, where the then Bailiff said this:

> "Both counsel recognised that this court was hearing an appeal against the exercise of the Greffier's discretion though the way in which we should approach such an appeal was not argued before us. Our view is (and we are referring only to r.6/19) that our duty now is to exercise our own discretion but that although we are not fettered by the previous exercise of discretion by the Greffier, we should of course give it due weight."

Again (and this, too, was not a matrimonial cause) the learned Deputy Bailiff said in the matter of a Representation by Moussa Seif Amirhosseini and others, Jersey Judgements, 14th March, 1991, Unreported:

> "Like Mr. Michel, the court had not seen the statement of the Judicial Greffier's reasons for his decision until Mr. Bailhache was addressing us in reply to Mr. Michel early this afternoon. We take this statement into account but we have treated this hearing as a re-hearing and have accordingly exercised our own discretion 'de novo'. But we consider the Greffier's reasoning to be sound and we suspect that if Mr.

Michel had had the statement before the hearing on 9th October, 1990, he might well have adopted a different stance".

And then later the court said this:

"Because we are dealing with this de novo we are not bound by the exact order made by the Greffier".

Our duty under the law is clear. We will treat this hearing as a hearing 'de novo'. We will have regard to the findings of the Judicial Greffier but, even if we agree with them, we will not consider ourselves bound to reach the same conclusion if, on the facts that we have heard, we no longer consider that conclusion to be tenable.

There is one other preliminary matter which causes us real concern. It arises out of the period of co-habitation and the length of the subsequent marriage.

The parties were married in February 1988, but they had met in the early 1980s'. R was born in June 1986. There had been a long period of co-habitation. There had been, in the Respondent's words "problems since 1983". There had been litigation between the parties. An Order of Justice given on the 19th October, 1987, and brought before the marriage was solemnised, contained allegations of brutal assault and with non-molestation injunctions against the Respondent (then the Defendant). The Greffier in his reasoned judgment said this "The parties were married in 1988 following a fairly long period of co-habitation during which the child, R , was born and subsequently legitimised per subsequens matrimonium. A decree of Judicial Separation on the ground of the husband's adultery was granted to the wife in January, 1990". (In fact, on 17th January, 1990).

"This appears to be one of those cases where the parties seemingly lived reasonably happily together while unmarried although by October 1987, tension had obviously arisen because

the wife sought a non-molestation injunction against the husband. The matter was adjourned sine die with the injunction remaining on. Strangely, however, some three months later, the parties married. It is not quite clear why this happened, but one can only surmise that it was to protect the interests of the child. The husband, however, did not, it would seem, change his ways in marriage and perhaps feeling the pressures of a more permanent relationship with the wife, did little to smooth the way ahead. Consequently, the relationship of the parties deteriorated rapidly leading to a total breakdown of the marriage. The evidence adduced at the hearing did not make it clear upon whom blame should be laid for the breakdown and, in the absence of such positive evidence, it must be assumed that there was fault on both sides."

The marriage lasted less than two years. There was a period of co-habitation lasting (with a break of some months in 1987 followed by a reconciliation) for some 7 years. The Petitioner wife described the period as a "Marriage in all but name". The Respondent husband described it as "mere co-habitation".

We feel it necessary to remind ourselves that we are dealing with the Matrimonial Causes Law, a law which deals only with what has been described as the "honourable state of matrimony". We do not feel that, in the context of this law, there is such a thing as "marriage in all but name". The marriage lasted less than two years and it ended. While the marriage subsisted there arose duties and obligations and rights which were peculiar to the state of marriage and which gave to both parties enforceable obligations. We say this particularly in regard to R . At one stage in the proceedings the Respondent husband made some suggestion that he had given everything to his wife and asked for nothing in return. We cannot accept that contention. We agree with the learned Greffier that, on marriage, the Respondent husband "did not, it would seem, change his ways". The duration of the marriage was under two years and the period of co-habitation is not the same as the period of marriage. Indeed within

this peri.. of co-habitation there was a time when the petitioner wife and the Respondent husband lived apart. He formed an attachment to another lady. He was entitled to do so. However, he continued with this liaison after marriage and, at this point, what would have been no more than a liaison became an adulterous relationship and led to a decree of Judicial Separation. We will not, of course, ignore the period of co-habitation (during which time R was born). But we will not give as much weight to the period of co-habitation as we will to the duration of the marriage.

The facts relating to the marriage were not generally disputed. We shall go into those facts in a moment. The accommodation in which the Petitioner wife and R at present reside is distressing. Mother and child are living in a hostel in town provided by the Housing Committee. They share that accommodation with 34 others, including 17 children. They pay £38 per week. They have two rooms and share a bathroom, toilet, and kitchen facilities, with the other inhabitants. The living conditions were described by the wife as "horrible". The Respondent husband owns, through his company, E Ltd., a Guest House in St Helier. This has a gross value of somewhere in the region of £305,000. He also has a half share with his father in a property, which is a four-bedroomed bungalow in St. Saviour, and which was let on 21st April, 1990, for £700per month. He works for a firm of accountants and earns £12,000 per annum. At one time he had an interest in a business known as D . This is owned through a Company. In his statement of reasons the learned Greffier stated, perhaps a little baldly, "the husband and his father appeared to have ordered their financial affairs as to make it very difficult for the wife to gain access to these assets". Later in his order the Greffier made an order that the wife would be paid a lump sum of £25,000 within three months (of the date of the order) and pending receipt of that sum, the Guest House will be charged in the sum of £25,000 in favour of the wife. We feel, with respect, that the order made was in these terms, ultra vires. The Guest House was not owned by the husband but by E Limited, and it does seem to us that the learned Greffier should have

had regard to the provisions of Article 29A of the law (as amended by Article 2 of the Matrimonial Causes (Amendment No. 7)(Jersey) Law, 1986, which reads:

> "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 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".

We think that there is an omission of the word "or" in the words of the article, and we add the words in brackets to explain our finding:

> "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."

But whether or not the implementation of the order made was ultra vires, we are still left to consider whether the award of £25,000 was correct in the circumstances of the case.

Article 29(1) of the Matrimonial Causes (Jersey) Law, 1949, (the Law) provides that the court may, in making financial provisions for a party to a marriage, where a decree of Judicial Separation has been made, 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 circumstances, order, inter alia, 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." In lieu of, or in addition to any such lump sum, the court may, of course, if it thinks reasonable, order the payment of an annual or periodic sum for maintenance. The court is also expressly required to exercise its

powers having regard to the conduct of the parties and their financial circumstances.

Mrs. Whittaker, for the Petitioner wife (and despite the protests of Mr. Boxall), laid much emphasis on the conduct of the Respondent. Conduct is a factor which, under the law of Jersey, must be taken into account. We remind ourselves that in Urquhart -v- Urquhart, Née Wallace (1974) JJ 119, the court approved the matters mentioned in Section 5(1) of the Matrimonial Proceedings and Property Act 1970 (later Section 25 of the Matrimonial Causes Act 1973) but went on to say that the court had no doubt that, in the view of the difference in wording between the Jersey and English provisions - because in Jersey the concept of matrimonial guilt is retained - the court must in every case take conduct into account. But, although Mrs. Whittaker, was entitled under the law to bring conduct to our attention we must, at the outset, say that we have found much of the evidence confusing and contradictory.

We also have to consider the "one third" starting point suggested in Wachtel -v- Wachtel (1973) 1 All ER 829. The Wachtel rule has been approved in this court and in the Jersey Court of Appeal, but it is only a starting point, which can be adjusted according to the principles laid down in section 25 of the Matrimonial Causes Act, 1973. We must bear in mind two factors. In Wachtel -v- Wachtel, Lord Denning M.R. said at page 840:

> "We would emphasise that this proposal is not a rule. It is only a starting point. It will serve in cases where the marriage has lasted for many years and the wife has been in the home bringing up the children. It may not be applicable where the marriage has lasted only a short time, or where there are no children and she can go out to work."

The second factor is that (as Lord Denning said in Wachtel -v- Wachtel):

"No order should be made for a lump sum unless the husband has capital assets out of which to pay it - without crippling his earning power".

But again:

"Where the husband has available capital assets sufficient for the purpose the court should not hesitate to order a lump sum."

In the present case the learned Greffier (and we hope that we are not being discourteous towards him) appears to have reached this award of £25,000 because "at one stage the husband, presumably with his father, made an offer to the wife, this offer specifically did not include continued maintenance payments. Clearly funds were available at some time."

Paragraphs 21 and 22 of the Respondent's submissions, however, are clear:

"21. That there was an original offer of final settlement which stated the Petitioner should receive a lump sum of £25,000 but this offer was made in or about July 1989 when the latest audited accounts of the Guest House were available. The accounts which have now been completed show that last year the Guest House made a loss of approximately £11,500 and consequently the Respondent is not in a position to furnish a sum of £25,000 to the Petitioner without the assistance of a bank.

22. That despite attempts to raise the sum of £25,000 by way of a loan since the Order was made the Respondent has been unable to obtain finance from any bank. The Respondent submits that any potential lender may be concerned that the Respondent does not have sufficient collateral to cover a loan of this size. The Respondent further submits that a potential lender will not provide him with a further loan

facility while the size of the loan may need to be increased should the court raise the level of the lump sum awarded to the Petitioner on appeal."

So we have the not uncommon situation where the Plaintiff wife claims that a lump sum payment of £25,000 (or in the alternative the nominal maintenance figures awarded in her favour and in favour of the child of the marriage) are totally inadequate and where the Respondent husband claims that the lump sum payment of £25,000 is well beyond his present means. Not unnaturally the proceedings were as fiercely contested as had been the short-lived marriage between the parties.

Before proceeding to examine the facts we must remind ourselves of the matters mentioned in section 25 of the Matrimonial Causes Act 1973 (which were approved in Urquhart -v- Urquhart, Née Wallace). The section reads as follows:-

"(1) It shall be the duty of the Court in deciding whether to exercise its powers ..... in relation to a party to the marriage and, if so, in what manner, 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 foreseable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseable 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 as to the welfare of the family, including any contributions made by looking after the home or caring for the family;

and so to exercise those powers as to place the parties, so far as 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 and responsibilities towards the other."

The parties were married in February, 1988. At the time of the marriage the parties lived at a property known as T in St. Helier. R, their only child, was born in June, 1986, and was consequently legitimated by the marriage. It is perhaps an insight into the somewhat tempestuous relationship between the parties that in October, 1987, four months before the celebration of the marriage, the petitioner (who had changed her surname to G) brought an Order of Justice against the Respondent alleging assault, causing black eyes and pulling out of hair; alleging that he attempted to strangle her, and alleging eviction from T which would have left her and R destitute. In November, 1989, (during the marriage) E Limited (which owned the Guest House) commenced proceedings against the Petitioner alleging physical and verbal assault and molestation by the Petitioner on the Respondent, seriously prejudicing the company's business. In each case interim injunctions were imposed.

It is also clear that after the marriage the Respondent continued with what we have earlier described as "liaisons" with at

least two women. After the marriage these became, in law, adulterous relationships.

We find the attitude of the husband quite extraordinary. In his statement of submissions he said this:

> "The Respondent during the period of co-habitation and the subsequent marriage was always anxious to give the Petitioner the security which she seemed to demand. The Respondent hoped that the birth of the child in June, 1986, would add a permanency to their relationship.
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> The Respondent agreed to the marriage in order to restore the relationship and to give security to the Petitioner.
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> The same motives provoked both the gift of shares in the Company, D , aforementioned and the purchase of the said property, T, in St. Helier. The same was true of the purchase of the Guest House."

In his evidence before us, he spoke of "giving his wife a baby". Perhaps hindsight shows that this marriage was doomed from the start. There were quite serious allegations brought by the Respondent against the Petitioner alleging adultery. He told us that in the early hours of the morning, late in 1989, he had gone to the Guest House and discovered the wife entertaining a young man in her bedroom. At the time he had been looking after R . He told us that when he went to the Guest House he heard laughing and giggling from one of the bedrooms. He got very angry and banged on the door. The Petitioner opened the door. She was wearing a dressing gown. A young man was in the room. He was in trousers only. There was a bottle of wine in the room. The Respondent telephoned Mrs. W (who gave evidence) and the Police. Both the Petitioner and the young man left. Mrs. F (with whom the Respondent had also had an adulterous relationship) gave a further description of this man. She had seen him drive the D van on two

occasions down Francis Street and park outside the premises where the Petitioner was working. She had also seen him at B helping the Petitioner to remove the sign-writing from the car. We agree with Rayden on Divorce, 11th Edition, p.184, where it states "The conjunction of strong inclination with evidence of opportunity affords strong prima facie evidence of adultery but it is not an irrebuttable presumption." The Petitioner gave us an explanation. She denied an adulterous relationship somewhat descriptively "on her son's life". We accept her explanation. On the high standard of proof required, and in our judgment, the Respondent has failed to prove adultery to our satisfaction.

We have found the evidence on cruelty contradictory and confusing. On the question of cruelty the Jersey Court of Appeal in Urquhart -v- Urquhart (née Wallace) (1973) JJ 2483 at page 2484 re-stated the four ingredients which go to make this matrimonial offence.

> "1. Misconduct must be of a grave and weighty nature; it must be more than mere trivialities, though there may come a point at which the conduct threatens the health of the other spouse, in which event the Court will give relief,
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> 2. It must be proved that there is a real injury to health or a reasonable apprehension of such injury,
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> 3. It must be proved that it is the misconduct of the spouse against whom the complaint is made which has caused the injury to the health of the complainant and
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> 4. Reviewing the whole of the evidence and taking into account the conduct of one party and the extent to which the complainant may have brought the trouble on himself or herself, the Court may be satisfied that the conduct can properly be described as cruelty in the ordinary sense of the term".

There were two descriptive episodes of violence given to us. Miss M (the Petitioner's sister) had seen the parties slap one another (although she would only admit to her sister slapping the Respondent in retaliation). When the parties were living at T she had witnessed an incident where the Respondent had tried to pull the Petitioner's teeth out. There were allegations of cruelty by the Petitioner against the Respondent and in turn by the Respondent against the Petitioner. There were allegations that the Respondent had tried to strangle the Petitioner, that he had, in an argument over R , dragged the Petitioner out into the road, pulling out some of her hair and kicking her in the legs causing bruising. The Police were called. But again, on the 8th November, 1989, we heard allegations of a physical attack by the Petitioner on the Respondent at the Guest House. He said that she had been using abusive language and shouting. She had been about to go out with a Mrs. Z . The Petitioner said that the Respondent was humiliating her in front of two friends of his. He alleged that she physically assaulted him, scratching his face and slapping him. Again the Police were called and took the Petitioner away for questioning.

The Petitioner told us that there were a few fights each year, but rarely would she slap the Respondent first. We must recall that these assaults were carried on into the marriage after the long period of co-habitation. They are perhaps understandable in the context of this relationship where the parties both worked extremely hard, where the Respondent continued with his peccadilloes after marriage as he had done before, and where the birth of R appears only to have complicated an already strained relationship.

Mr. Boxall appeared to avoid the question of conduct and was drawn reluctantly into this particular field. We must recall that a decree of judicial separation has been granted on the grounds of adultery by the Respondent. We are really examining the evidence that we have on conduct to see whether we are bound to amend the sum awarded because of the conduct of either party. In this case, although the allegations are serious, we are not prepared to depart form the one-third starting point.

Both parties appeared to have contributed to the marriage according to their lights: perhaps the Respondent's attitude was best summed-up when, under cross-examination, he told us "there was a time when I was pushed aside and it was baby, baby, baby."

A friend of the family, Mrs. L , described the relationship as a love/hate relationship. That we can understand. Many of the problems that have arisen between the parties appear to have been the consequence of financial pressure. There was, however, one particularly disturbing incident when, 10 April, 1990, the Respondent's father barred his daughter-in-law and grandson from the property B which led to the Petitioner and R finding accommodation at the Women's Refuge. We have no doubt that the Respondent was fully aware of what was happening. The event was justified by saying, firstly, that alternative accommodation had been suggested and that the Petitioner had agreed in a consent order of this court to be housed at the property "for a maximum period of three months or until further order". No extension had been applied for. On the same day as the Petitioner was barred from the property, the Respondent and his father signed an exempted transaction from the Housing Department to allow an employer of the Respondent to take a tenancy of the property at £700 per month. This was described to us by Mr. Boxall as "a nasty little incident".

The Respondent made numerous complaints about the way that the wife ran the Guest House. We saw one letter of complaint from guests who had stayed there. The letter did not assist us to reach a decision. Suffice it to say that we see nothing in the evidence that we have heard that leads us to depart in any material way from the conclusions of the learned Greffier. In particular we would endorse a passage from the reasons:

> "It is essential that the wife be put in a position to purchase a flat for herself and to be able to bring up the child in proper surroundings. At the same time she must be entitled to obtain suitably remunerative employment to

...aintain her life style and to support the child, particularly in view of the haphazard way in which the husband has kept up maintenance payments".

We say that nothing leads us to depart in any material way even though because we feel that the learned Greffier failed to take into account that the Respondent had (despite his life style) worked extremely long hours to make his contribution, if not to the happiness of the marriage, then at least to its continued slow financial growth. It is the assets structure of the marriage that we must turn in order to see how we can assess the value of the Petitioner's claim and whether the Respondent has capital assets out of which to pay it.

Even here there is a complication.

The Respondent owns, jointly with his father (who did not give evidence before us) B.

The Respondent is the sole beneficial shareholder of E Limited, which company owns the Guest House.

The funds for the purchase of the Guest House were raised by the sale of T which had been purchased by the Respondent on the 20th July, 1984, and which was sold on the 30th September, 1988. So that for seven months it was the matrimonial home. The Petitioner abandoned her dower rights on the sale. The Respondent told us (and the accounts bore out the information although they were unaudited) that the purchase price of the Guest House of £250,000 was paid for in part from the balance of the sale of T. The balance of the purchase price was borrowed by E Ltd (which owns the Guest House) from the Hambros Bank (Jersey) Ltd. Loans apparently made by the Respondent's mother and father were not repaid (they were at the time £3,000 from the father and £10,000 from the mother) but were continued as loans due by the company. We are satisfied that the Petitioner believed that, in some way, she would have an interest in the Guest House. If that were her understanding and she told us that when contract came to be passed in court she stood up - as she had stood up some two months

previously to abandon her dower right on T ...out was told to sit down. She said that she did not have the terms of the contract explained to her.

We entirely accept that the Petitioner made a valuable contribution to what was a short-lived and perhaps ill-conceived marriage. The Respondent made much of the fact that he cooked the breakfasts at the Guest House but she had a small child whose nights, she told us, were often disturbed.

This is not to say that the Respondent did not contribute equally to the marriage. He clearly worked extremely hard. But the Petitioner's contribution was considerable, not only when she was working at the Guest House, but also when she was helping with the business of D. That business is owned by P Limited. At the time the Respondent gave the Petitioner his shares in the company but retained his loan account. We can discount any value in the company: its purpose served only to remind us that the Petitioner worked not only in the Guest House, but also at D when her husband was out of the Island on business.

We have to contrast the Petitioner's present accommodation with that of the Respondent because, not only does he live at the Guest House, but he owns an undivided half share in the property known as B with his father. This property was purchased in September, 1989, for £150,000. Its purchase was almost entirely funded by a loan from Refuge Assurance plc. We were told that the Respondent's father paid the £22,500 deposit on the property. It is of course let. We feel that there is some equity in the property problem and we were assured by Mr. Boxall that the Respondent is eager to sell it but its sale is prevented by injunctions obtained by the Petitioner.

The Respondent earns some £12,000 per annum from his employment as an audit clerk. His relationship with his employers seems to us to be somewhat unusual. He is given a free hand by his employers who were prepared to act as bankers for him when

injuncti s (whose meaning the Respondent told us were not clear to him but which we are minded to think that he ignored) prevented him from using his current bank accounts. It must be recalled that the first paying tenant at B was Mr. K who was one of his employers at this firm.

We had no direct evidence from any member of the Respondent's family (his father, his mother or his brother who acts as Trustee of his mother) but we did hear that the Respondent's mother who, it appears, is severely invalided, has now moved into the Guest House.

There is a complication over the Guest House. The Island Development Committee require the chalet in the garden to be demolished and the owner will have to move in to what had been guest accommodation. This will involve building works. This work has been estimated to cost in the region of £27,000 but we had no evidence to support or disprove this sum. The work will reduce the guest accommodation from 23 to 19. We heard from three Estate Agents and an Assistant Manager at Hambros. The valuations varied but we take the mean figure at £305,000. We take this figure bearing in mind the strictures of the learned Deputy Bailiff (as he then was) in Hawarth -v- McBride (1984) JJ 1 at page 7 where he said "where the court is faced with a number of conflicting valuations, as regards property, and here valuations are conflicting as regards the settlement and the interests of the wife in the settlements, it is prudent, as the court said in that case, to take the lower valuation."

We were also greatly assisted by Mr. Richard Ireson F.C.A., a partner in the firm of T.A. Le Sueur & Co. who took us through the accounts of E Limited. If we take the value of the property as being £305,000 and deduct from that £5,000 to take out the commissions and legal fees we can carry out a "rule of thumb" exercise. The property stands in the 1989 balance sheet as a fixed asset (at cost including legal fees) of £256,281.25p. The difference between the two figures can be rounded off at £44,000. Adding this figure to the net equity we reach a round figure of £76,303. If we are to take the figure of 1/3 then the sum of £25,000 is probably

correct. The learned Greffier, of course, did not have the benefit of hearing these experts but his "sixth sense" appears to have prevailed.

Although the marriage was short we are not prepared to penalise the Petitioner for that. During this short marriage she not only cared for R but worked, both in the Guest House and at D. Her needs, and those of R, are very great. Her standard of living was comfortable until she was driven from B.

The argument of the Petitioner appears to be that she cannot find rented accommodation for herself and R, and the £25,000 is not sufficient to enable her to purchase a property. We sympathise with that view, but unfortunately we cannot be guided by sympathy. We can only say that having heard the evidence we can see nothing which causes us to depart from the award of £25,000.

We have most anxiously considered all the financial evidence. If we had been in any way convinced that there were additional sums salted away by the Respondent we would have had no hesitation in increasing the amount awarded to the Petitioner. We do not think that there are such additional sums. We can criticize the Respondent. He had been devious in his activities. Much of his asset structure was, in our view, designed to protect his own financial interests and to prevent the Petitioner from sharing in his finances. We still do not feel that he has more than he says. We have some doubts that he will be able to pay the sum awarded. In those circumstances we intend to alter the Greffier's award in these terms.

The shares in E Ltd shall, within one week of this date, be vested in the Viscount. Interest on the £25,000 shall accrue at 1% over Barclays Bank Base rate for the time being, per annum, from the date of this judgment until payment. If payment is not made within six months the Viscount shall be empowered to sell the property either by a sale of shares or by a sale of the property out of the company. If the £25,000 has not been paid within three months of this date the Viscount is empowered to commence advertising the

property (or the company) for sale with a view to passing contract within the six months stipulated.

If the Viscount requires directions he can return to this Court at any time.

The maintenance orders shall remain and all other orders stand except that we will allow B to be sold. We therefore remove any impediment to the sale of that property.

In this case each side shall bear its own costs, in addition to this appeal.

Authorities

Matrimonial Causes (Jersey) Law, 1949, as amended.

O'Connell -v- O'Connell (30th November, 1988) Jersey Unreported.

Pennington -v- Pennington (1985-86) JLR N.10.

Fagan -v- Le Marchand (22nd January, 1988) Jersey Unreported.

Haines -v- Greenlee (24th February, 1989) Jersey Unreported.

Kyte -v- Kyte 3 W.L.R. 1114, C.A. (as reported Family Law Manual pp. 6093-6094).

Urquhart -v- Wallace (1974) J.J. 119.

Wachtel -v- Wachtel (1973) 1 All E.R. 829.

Khan -v- Khan (1980) 1 All E.R. 497.

Cumbers -v- Cumbers (1975) 1 All E.R. 1.

Rakusen and Hunt: Distribution of Matrimonial Assets on Divorce 3rd Ed'n pp. 76-77 and 200-201.

Cameron -v- Archdale (1983) 1 C. of A. 247.

Taylor -v- Taylor (née Hayter) (1987-88) J.L.R. N.14.

Broad Street Investments -v- National Westminster Bank (1985-86) J.L.R. 6 at p.9.

Representation of Amirhosseini and Others (14th March, 1991) Jersey Unreported.

Rayden (15th Ed'n): pp. 902-905; 949-950; 996-998.

Re O (infants) (1971) 2 All E.R. 744.

Sansom -v- Sansom (1966) 2 All E.R. 396.

Howarth -v- McBride (1984) J.J. 1.

Soni -v- Soni (1984) F.L.R. 294.

S -v- S (1977) 1 All E.R. 56.

Foley -v- Foley (1981) 2 All E.R. 857.

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