

10/85

No. 13 of 1983

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND
TOBAGO

B E T W E E N :

JOYCE LYNCH

Appellant
(Respondent)

- and -

JOSEPH CHRISTOPHER LYNCH

Respondent
(Petitioner)

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS
20 Old Queen Street,
London SW1H 9HU

Solicitors for the
Appellant

Stephenson Harwood,
Saddlers' Hall,
Gutter Lane,
London,
EC2V 6BS.

Solicitors for the Respondent

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL OF TRINIDAD
AND TOBAGO

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- and -
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(Petitioner)

RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND
TOBAGO

B E T W E E N :

JOYCE LYNCH Appellant
(Respondent)

- and -

JOSEPH CHRISTOPHER LYNCH Respondent
(Petitioner)

10

RECORD OF PROCEEDINGS

No. 1

PETITION OF JOSEPH
CHRISTOPHER LYNCH

In the High
Court of
Justice
Trinidad and
Tobago

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(Matrimonial)

No.1
Petition
of Joseph
Christopher
Lynch
2nd June
1975

No. M 394 of 1975

The Petition of JOSEPH CHRISTOPHER LYNCH shows
that :-

20

1. On the 3rd day of June, 1967, the Petitioner
was lawfully married to JOYCE LYNCH then JOYCE
CHAITRAM Spinster (hereinafter called "the
Respondent") at the Sacred Heart Roman Catholic
Church, Port of Spain.

2. The Petitioner and the Respondent last
cohabited at 29, Crescent Gardens, Mausica Road,
D'Abadie.

3. Both the Petitioner and the Respondent are

In the
High Court

No.1
Petition
of Joseph
Christopher
Lynch
2nd June
1975

(continued)

domiciled in Trinidad and Tobago; the Petitioner is a Corporal of Police and resides at 29, Crescent Drive, Mausica Road, D'Abadie, and the Respondent is a student and resides at the Campus of the University of the West Indies, Cave Hill, Barbados.

4. There are no children of the family.

5. No other child now living has been born to the Respondent during the marriage so far as is known to the Petitioner.

10

6. There have been no previous proceedings in any Court in Trinidad and Tobago with reference to the marriage.

7. No agreement or arrangement has been made or is proposed to be made between the parties for the support of the Respondent.

8. The marriage has broken irretrievably.

8a. The Petitioner and Respondent have lived separate and apart for a continuous period of at least two years immediately preceding the presentation of this Petition and the Respondent consents to a Decree being granted.

20

PARTICULARS

The parties have live separate and apart since May, 1973.

9. The Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent.

a. The Respondent is a woman of violent temper and has frequently nagged, sworn at and shouted and abused the petitioner.

30

b. During the month of May, 1968, the day and date I cannot recall, the Respondent was found in a compromising situation with a Government Auditor at Parliament's Office where she was employed.

c. The Petitioner reprimanded the Respondent about her behaviour and in the result the Respondent deserted the Petitioner and removed her belongings from the matrimonial home and remained away for a period of five days.

40

d. During the period June 1968 to August 1969

the Respondent would return to the matrimonial home at all times of the night and when explanation were sought from her she would swear at, shout and abuse the Petitioner in very strong language.

- 10 e. During the same period in (d) supra the Respondent left the matrimonial home on several occasions for periods varying between two and three weeks without the knowledge and consent of the Petitioner and would adamantly refuse to offer any explanation for her absence on her return.
- 20 f. On the 31st day of August, 1969, the Respondent without any reasonable cause withdrew from cohabitation with the Petitioner and removed to a separate bedroom in the matrimonial home which she has since so occupied.
- g. From the said 31st August, 1969, the Respondent has refused to cook or wash any clothing or to perform any domestic chores for the Petitioner.
- h. On the 25th September, 1974, the Respondent left the matrimonial home taking her personal belongings without the knowledge of the Petitioner.
- 30 i. On the 27th September, 1974, the Petitioner received a letter from Messrs. J.B.Wilson & Co., Solicitors acting for the Respondent indicating that the Respondent has decided to live separate and permanently apart from the Petitioner.
- 40 j. On the 12th October, 1974, the Petitioner learnt that the Respondent was residing in Barbados where she is a student at the University of the West Indies, Cave Hill, Barbados, and still continues to so reside.

The Petitioner therefore prays :

- a. That the said marriage may be dissolved.

Sgd. Joseph Christopher Lynch
Petitioner

In the
High Court

No.1
Petition
of Joseph
Christopher
Lynch
2nd June
1975

(continued)

The name and address of the person who is to be served with this Petition is JOYCE LYNCH, University of the West Indies, Cave Hill, Barbados.

Sgd. Lai Fook Harracksingh & Co.,
Petitioner's Solicitors

The Petitioner's address for service is in care of his Solicitors i.e. Messrs. Lai Fook, Harracksingh and Co., of No.41, St.Vincent Street, Port of Spain, Trinidad.

10

In the High
Court of
Justice
Trinidad and
Tobago

No.2

RESPONDENT'S ANSWER TO
PETITION

No.2
Respondent's
Answer to
Petition
December 1975

No. 394 of 1975

IN THE HIGH COURT OF JUSTICE
(Matrimonial)

BETWEEN

JOSEPH CHRISTOPHER LYNCH Petitioner

- and -

JOYCE LYNCH Respondent

20

The Respondent Joyce Lynch in answer to the Petition filed herein on the 2nd day of June 1975 says as follows :-

1. She denies the allegations contained in paragraph 9 of the Petition and in answer to the particulars set out in the said paragraph says as follows :-

It is the Petitioner who is a person of violent and uncontrolled temper and who has on several occasion loudly abused the Respondent, threatened to kill her and assaulted and beat her.

30

Particulars

(1) In the year 1967 just a few months after

the marriage; the Petitioner beat the respondent causing her to cry out aloud and to attract the attention of a neighbour, Mrs. Rogers who subsequently spoke to the Petitioner about his conduct. In the High Court of Justice Trinidad and Tobago

- 10 (2) In the year 1970 while the Respondent and the Petitioner were driving along Richmond Street Port of Spain with two friends (Mrs. Sheila Mitchell and Mrs. Patricia Guisepe) the Petitioner cuffed the Respondent in her mouth. No.2 Respondent's Answer to Petition December 1975
- 20 (3) On 23rd September 1971 the Petitioner beat the Respondent in the presence of a neighbour (Mrs. Joseph Rogers) causing swelling around the Respondent's eyes and bleeding from her nostrils. The Respondent, as a result of these injuries, sought medical attention at the Arima District Hospital on the following day and also made a report to the Arima Police. (continued)
- 30 (4) On 22nd September 1974 the Petitioner beat the Respondent in the presence of a neighbour (Mrs. Kingston) by cuffing her several times on her neck and face with one hand while holding her by her hair with the other hand. As a result of this beating the Respondent had to seek medical attention from Dr. H.L.S.Durity.
- 30 (5) On several occasions apart from these above mentioned the Petitioner assaulted and beat the Respondent: In fact on very many occasions when the Respondent said something of which the Petitioner did not approve he would assault and beat the Respondent, apart from abusing her loudly and with the most profane expressions.
- 40 (6) On one occasion (at night) the Petitioner abused the Respondent so loudly and for so long that a neighbour (Mrs. Joycelyn Kingston) came to the house the following day and remonstrated with him for his behaviour.
- (7) The Petitioner usually accompanied his abuse of the Respondent with threats to do her bodily harm and would frequently order her to pack her clothes and leave the house. As a result the Respondent never felt secure.

In the High
Court of
Justice
Trinidad
and Tobago

No.2
Respondent's
Answer to
Petition
December
1975

(continued)

- (8) In the month of September 1974 the
Petitioner's behaviour became even more
unbearable. His abuses of the Respondent
became much more frequent and on the
night of the 19th September after she
had planned to spend the night with her
mother but changed her plans and returned
home about 8.10 p.m. the Petitioner
told the Respondent that she must either
pack and leave or he would kill her. 10
The Respondent became scared and while
she was packing the Petitioner took up
a cutlass and threatened to destroy some
of her belongings. After the Respondent
had packed the Petitioner refused to
drive her to her Aunt's home and as a
result she did not leave the home that
night.
- (9) On the night of September 22nd the 20
Petitioner ordered the Respondent to
remain inside the house and then turned off
the lights in the house, locked the door
and went out. The Respondent was
apprehensive about her safety and went
over to the home of a neighbour (Mrs.
Kingston) and reported the position to
her. Mrs. Kingston accompanied the
Respondent home and when the Petitioner
returned home - he inflicted on the 30
Respondent the beating mentioned at
sub-paragraph (4) above. It was after
this beating that the Respondent decided
to leave the home and actually did so on
25th September, 1974.
- (10) During the said month of September, the
Respondent accused the Petitioner of
carrying on an adulterous association
with another woman. He replied that as
soon as the Respondent left the home 40
(as he had ordered to her to do) he would
bring another woman the very next day.
2. The Respondent denies the allegation
contained in sub-paragraphs b,c,d, and e of the
said particulars. In fact in the month of May
1968, the Respondent was not employed at
Parliament office Red House but at the Hansard
Office, Edward Street, Port of Spain.
3. The Respondent denies the allegation
contained in paragraph f of the said particulars.
In June 1969 or thereabout the Petitioner 50
obtained a loan from the National Housing

Authority and did certain renovations to the matrimonial home including the addition of a new bedroom which he of his own volition decided to use as his own bedroom. The only occasion on which the Respondent refused to cohabit with the Petitioner was during those periods when he was suffering from an ailment which he said his doctor diagnosed as "yaws" and which manifested itself by sores appearing on his genital organ. It was only during the course of the marriage that the Respondent became aware that the Petitioner was affected with this illness and had been regularly treated for it at the Caribbean Medical Centre, Port of Spain.

In the High Court of Justice Trinidad and Tobago

No.2
Respondent's Answer to Petition December 1975

(continued)

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4. As indicated above the Respondent's departure from the matrimonial home was due solely to the violent and unbearable conduct of the Petitioner.

5. The Respondent admits sub-paragraph (i) of the said particulars.

5a. The Respondent says that the said marriage has broken down irretrievably.

5b. The Respondent says that the Petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with him, particulars of which are set out in paragraph 1 sub-paragraphs 1 to 10.

5c. The parties to the said marriage have lived separate and apart for a continuous period of at least two years immediately preceding the presentation of this Answer and the Petitioner consents to a Decree being granted.

PARTICULARS

The parties to the marriage have lived separate and apart since May 1973 and there has been no period of reconciliation.

6. The Respondent further says that the Petitioner has committed adultery with one Sandra Isaac and the Respondent find it intolerable to live with him.

Particulars

- (1) The Petitioner lives in open concubinage with the said Sandra Isaac at 29 Crescent Gardens, Mausica, D'Abadie.

In the High
Court of
Justice
Trinidad and
Tobago

No.2
Respondent's
Answer to
Petition
December
1975

(continued)

2. Between Sunday 14th December and
Monday 15th December, 1975 at
No.29 Crescent Gardens aforesaid,
the Petitioner committed adultery
with the said Sandra Isaac.
The Respondent therefore prays
that:

- (1) The Prayer of the Petitioner be
rejected;
- (2) The said marriage be dissolved; 10
- (3) The Petitioner be ordered to pay
the costs of this suit.
- (4) Such order for a lump sum and/or
periodical payments be made for
the maintenance of the Respondent
by the Petitioner as the Court may
deem just.
- (5) Such order for securing the said
periodical payments be made as the
Court may deem just. 20
- (6) An order be made for settlement of
property and for transfer of
property by the Petitioner to the
Respondent.

Dated this day of December, 1975.

The names and addresses of the persons who
are to be served with this answer is Joseph
Christopher Lynch, c/o Lai Fook, Harracksingh
and Company, 41, St.Vincent Street, Port of
Spain, and Sandra Isaac c/o Police Headquarters, 30
Port of Spain.

Sgd. J.B.Wilson & Co.
Respondent's Solicitors.

No. 3

PETITIONER'S REPLY TO
ANSWER

In the High
Court of
Justice
Trinidad and
Tobago

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 394 of 1975

No.3
Petitioner's
Reply to
Answer
14th January
1976

Between

JOSEPH CHRISTOPHER LYNCH Petitioner

and

10

JOYCE LYNCH Respondent

REPLY

The Petitioner in REPLY to the ANSWER filed
suit, says that :

1. Save in so far as the same consists of
admission he denies each and every
allegation contained in the said answer
and joins issue thereon.

20

2. With regard to Paragraph 2 of the
Particulars contained in the Answer the
Petitioner admits that he struck the
Respondent on the mouth, but the same
was done to prevent the Respondent from
continuing to strike him while he was
driving and to prevent an accident.

(1) The Prayer of the Answer may be
rejected.

T.A. LEE
Of Counsel

30

Delivered this 14th day of January, 1976 by
MESSRS. LAI FOOK, HARRACKSINGH & CO., of 41
St. Vincent Street, Port of Spain, Petitioner's
Solicitors.

TO: Messrs. J.B.Wilson & Co. Sgd. Lai Fook,
16, St.Vincent Street, Harracksingh
Port of Spain, and Company,
Respondent's Solicitors Petitioner's
Solicitors

In the High
Court of
Justice
Trinidad and
Tobago

No. 4

AFFIDAVIT OF JOSEPH
LYNCH

No.4
Affidavit of
Joseph
Lynch
29th July
1977

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(MATRIMONIAL)

BETWEEN

JOSEPH CHRISTOPHER LYNCH Petitioner

AND

JOYCE LYNCH

Respondent

10

No. M 394 of 1975

I, Joseph Christopher Lynch of No.29
Crescent Gardens, Mausica, D'Abadie, Police
Sergeant, make oath and say as follows :

1. I have read what purports to be a true
copy of the affidavit of Joyce Lynch,
the Respondent sworn to on 18th July,
1977 and filed herein.
2. On 10th January, 1967 Messrs. MOOSAI
HARDWARE, Eastern Main Road, Tunapuna, 20
was instructed by NATIONAL HOUSING
AUTHORITY to supply materials in the
sum of \$7,400.00 to construct a dwelling
house for me at No.29, Crescent Gardens,
Mausica Road, D'Abadie. I am not aware
that this property now valued \$90,000.00.
The said property is insured for
\$10,500.00. The said building was
completed sometime in March, 1967, and
I occupied it. On 10th April, 1967 I 30
signed all bills totalling \$7,400.00 and
Moosai's Hardware was indebted to me in
the sum of \$236.71. Full payment to
Moosai's Hardware was made by the National
Housing Authority on 13th April, 1967.
3. On 26th February, 1967, I purchased from
JACK FARAH & COMPANY, Park Street, Port
of Spain, items of furniture for my home
in the sum of \$2,380.00 from my savings.
4. On 30th September, 1972 I obtained a loan 40
from Cocorite St.James Credit Union in

the sum of \$6,314.55 to purchase a new Mazda motor car. The purchase of this car was not in February, 1970 as stated by the Respondent in her affidavit. I sold the car on 23rd January, 1976 for the sum of \$3,400.00. The Respondent left the Matrimonial home on 25th September, 1974.

In the High Court of Justice Trinidad and Tobago

No.4
Affidavit of Joseph Lynch
29th July 1977

- 10 5. I was never at anytime indebted to Moosai's Hardware in the sum of \$2,000.00 after the completion of my house as alleged in paragraph 3 of Respondent's affidavit. I commenced payment out of my salary on my loan on 31st May, 1967 in the sum of \$54.00 per month. I then received a house allowance of \$45.00 per month.
- 20 6. I was married to the Respondent on 3rd June, 1967.
7. The Respondent never contributed in any way to the purchase of the said house.
8. I never at anytime borrowed money from Cocorite St.James Credit Union to furnish my home.
- 30 9. It is not true that the Respondent was paying the sum of \$45.00 towards furniture. It is not true that I constructed drains in the curtilage of the home in 1969. It is not true that doors or Celotex had been changed in my house by the Respondent.
10. Being alone in the home I became fearful that thieves might break into the house during my absence and for my safety at nights, I obtained a loan from Royal Bank and requested Mr. Frank Bridgwater (Contractor) to burglar-proof all the bedrooms and the kitchen windows. I paid him the sum of \$650.00.
- 40 11. I paid a monthly instalment from my commuted allowance of \$145.00 per month towards the said motor car. The Respondent never paid any Gas or Food bills because in addition to giving her \$50.00 per month to be saved towards her studies, I purchased all food stuffs from the Police Canteen and the money was deducted from my salary.
12. On 18th February, 1971, I obtained a further

(continued)

In the High
Court of
Justice
Trinidad and
Tobago

No.4
Affidavit of
Joseph Lynch
29th July 1977

(continued)

loan in the sum of \$3,000.00 from the National Housing Authority to effect repairs to my home. So, I added an additional bedroom, a Garage and fenced the entire property. The payments towards my house loan increased from \$54.00 per month to \$84.09 per month and my House allowance also increased from \$45.00 per month to \$75.00 per month as from 31st January, 1970. All household items purchased by the Respondent during our marriage was requested by her through O.Wilson & Co., her Solicitors and all the items were delivered on 8th February, 1975.

10

13. The Respondent never at any time purchased any electrical iron from Y. De Lima & Co. The electric Iron she owned was given to her by Miss Jacqueline Clarke, who is now Mrs. CLIFTON, her co-worker, as a wedding gift. During my marriage to the Respondent she had been spending money on personal belongings, the maintenance of her mother and on her studies to obtain "A" level passes in order to further her education from since the year 1969. On 3rd June, 1974, the Respondent showed me her Savings Bank Book containing the sum of \$3,225.00. During our marriage the respondent did purchase shirts for me for my birthday and Wedding Anniversaries and I also gave her gifts such as Hair Dryer, jewels (bracelets, Earrings) and dresses. The last gift I gave her on her last birthday before she deserted the matrimonial home, was the sum of \$60.00 to purchase a pair of broad-rimmed sun glasses.

20

30

40

14. I did sign an application form for the Respondent to proceed to the University Campus of the West Indies, St. Augustine, because she intimated to me that the Government was offering Scholarships in Law. So on that basis I signed the form guaranteeing to pay extra expenses if incurred. The Respondent was to attend U.W.I. in Trinidad.

50

15. The Respondent deserted the matrimonial home on 25th September, 1974, after I

10 dropped her to work she returned home during my absence and took most of her personal belongings. On 27th September, 1974 I received a letter from her through her Solicitors O.Wilson & Co. dated 27th September, 1974, alleging cruelty and that she intended living apart from me permanently. I replied through my Solicitors, Lai Fook, Harracksingh & Co., on 27th September, 1974 denying the allegations, and claimed that she had deserted me by leaving my house without just cause and without my consent. On 15th October, 1974 I received information that she was in Barbados. I did despatch a letter through my Solicitors informing the University Administration that the Respondent had deserted me, and I am no longer responsible for any extra expenses she might have incurred.

20

In the High Court of Justice Trinidad and Tobago

No.4
Affidavit of Joseph Lynch
29th July 1977

(continued)

SWORN TO at No.6)
Sackville Street, Port) Sgd. Joseph C.Lynch
of Spain On this 29th)
day of July, 1977)

Before me

/s/ Malcolm Davis

Commissioner of Affidavits

30 No. 5
NOTICE OF APPLICATION
FOR ANCILLARY RELIEF

No.5
Notice of Application for Ancillary Relief
27th June 1977

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
No.394 of 1975

BETWEEN
JOSEPH CHRISTOPHER LYNCH
Petitioner
AND
JOYCE LYNCH Respondent

In the High
Court of
Justice
Trinidad and
Tobago

NOTICE OF APPLICATION FOR ANCILLARY
RELIEF

TAKE NOTICE that the Respondent intends
to apply to the Court for the following
relief :-

No.5
Notice of
Application
for Ancillary
Relief
27th June 1977

(continued)

1. Such order for a lump sum and/or
periodical payments for her maintenance
by the Petitioner as the Court seems just.
2. Such order for securing the said
periodical payments as the Court seems just. 10
3. An order for settlement of property
and/or transfer of property by the
Petitioner to the Respondent.

The application will be heard by a
Judge in Chambers at the Red House, Port
of Spain, on Tuesday the 19th day of July,
1977, at the hour of 9.00 o'clock in the
forenoon.

TAKE NOTICE ALSO that you must send to
the Registrar so to reach him within 14 days 20
after you receive this notice, an affidavit
giving full particulars of your property
and income. You must at the same time send
a copy of your affidavit to Messrs. J.B.
Wilson & Co., of No.16 St.Vincent Street,
Port of Spain, Solicitors for the applicant.
IF YOU WISH to allege that the Respondent
has property or income, you should say so
in your affidavit.

Dated this 27th day of June, 1977. 30

/sgd/ J.B.Wilson & Co.

Respondent's Solicitors

TO: The Registrar of the Supreme Court of
Judicature
And to Messrs. Lai-Fook, Harracksingh & Co.
Petitioner's Solicitors

No. 6
DECREE ABSOLUTE

In the High
Court of
Justice
Trinidad and
Tobago

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(Matrimonial)

No.6
Decree
Absolute
2nd September
1976

No.394 of 1975

Between

JOSEPH CHRISTOPHER LYNCH Petitioner

And

JOYCE LYNCH

Respondent 10

Referring to the Decree Nisi made in this
cause on the 21st day of June, 1976, whereby it
was decreed that the marriage solemnised on the
3rd day of June, 1967, at the Sacred Heart Roman
Catholic Church, Port of Spain, Trinidad, between
the Petitioner and the Respondent be dissolved
unless sufficient cause be shown to the Court
within six weeks from the making of this decree
why such decree should not be made absolute and
no such cause having been shown it is hereby
certified that the said decree was on the 2nd
September, 1976, made Final and Absolute and
that the said marriage was thereby dissolved.

20

Dated this 2nd day of September, 1976.

Sgd. Wendy Punnette Hope,
Assistant Registrar

In the High
Court of
Justice
Trinidad and
Tobago

No. 7

ORDER OF MR. JUSTICE
WARNER

No.7
Order of Mr.
Justice Warner
21st June 1976

DECREE NISI-DISSOLUTION

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
No. M 394 of 1975

BETWEEN

JOSEPH CHRISTOPHER LYNCH Petitioner

AND

10

JOYCE LYNCH Respondent

Before the Honourable Mr. Justice Warner
The 21st day of June, 1976

UPON READING the Petition and Answer
filed herein and

UPON HEARING Counsel for the Petitioner
and Counsel for the Respondent

IT IS BY CONSENT ORDERED that leave be
and the same is hereby granted to the
Petitioner to amend the Petition filed herein 20
by insertion after paragraph 8 the following:-

8a. The Petitioner and Respondent have lived
separate and apart for a continuous period
of at least two years immediately preceding the
presentation of this Petition and the Respon-
dent consents to a Decree being granted.

PARTICULARS

The parties lived separate and apart
since May, 1973.

AND IT IS FURTHER BY CONSENT ORDERED that 30
leave be and the same is granted to the
Respondent to amend the Answer filed herein
by inserting after paragraph 5 the following:-

5a. The Respondent says that the said marriage
has broken down irretrievably.

5b. The Respondent says that the Petitioner has behaved in such a way that the Respondent cannot reasonably be expected to live with him, particulars of which are set out in paragraph 1 sub-paragraphs 1 to 10.

In the High Court of Justice Trinidad and Tobago

10 5c. The parties to the said marriage have lived separate and apart for a continuous period of at least two years immediately preceding the presentation of this Answer and the Petitioner consents to a Decree being granted.

No.7
Order of Mr. Justice Warner
21st June 1976

(continued)

PARTICULARS

The parties to the marriage have lived separate and apart since May 1973 and there has been no period of reconciliation.

20 THIS COURT DOTH HOLD that the parties to the marriage have lived separate and apart since May 1973 and both the Petitioner and the Respondent consent to a Decree for the dissolution of the said marriage being granted.

AND THIS COURT DOTH FURTHER HOLD that the marriage solemnised on 3rd day of June, 1967, at the Sacred Heart Roman Catholic Church, Port of Spain, Trinidad, between the Petitioner and the Respondent has broken down irretrievably.

30 AND THIS COURT DECREES that the said marriage be dissolved unless sufficient cause be shown to the Court within six weeks from the making of this decree why such decree should not be made absolute.

AND THIS COURT ORDERS that there be no order as to costs.

40 AND THIS ORDER DECLARES that it is satisfied that for the purposes of Section 47 of the Matrimonial Proceedings and Property Act 1971 there are no children of the family to whom the said section applies.

By the Court
Sgd. Wendy Punnette Hope
Assistant Registrar

In the High
Court of
Justice
Trinidad and
Tobago

No. 8

AFFIDAVIT OF JOSEPH
LYNCH

No.8
Affidavit of
Joseph Lynch
15th November
1976

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(Matrimonial)

No.394 of 1975

BETWEEN

JOSEPH CHRISTOPHER LYNCH Petitioner

AND

JOYCE LYNCH Respondent

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I, JOSEPH CHRISTOPHER LYNCH of 29,
Crescent Drive, Mausica Road, D'Abadie, in
the Island of Trinidad, Corporal of Police,
in answer to the notice of application filed
herein, make oath and say as follows :-

1. That I am 38 years old.
2. That my income is \$866.00 per month plus
a housing allowance of \$30.00 out of this sum
I had to pay the following :-

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Income Tax	\$287.33
Superannuation fund	10.82
National Insurance	12.25
Widow and Orphan	11.75
Mortgage with N.H.A.	84.09
Life Assurance	101.45
Police Association Fund	5.00
Sports Club and Mess	3.00
Police Raffle	1.00
Instalment on furniture	30.00
Repayment of loan to Royal Bank for repairs to residence	54.00
Maintenance of illegitimate child	60.00
Boarding and laundry	120.00
Light Bill	27.00
Water rate per month	6.00
House rates	4.00

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3. That I have no money in the bank.

4. That I own my home situate at 29 Crescent Gardens as aforesaid valued at \$10,000 and insured for the sum of \$10,000.

In the High Court of Justice Trinidad and Tobago

5. I own a motor car registered as PM 3120 valued at \$1,500.

No.8 Affidavit of Joseph Lynch 15th November 1976

6. I hold 100 shares in the Royal Bank of Canada.

10 7. The Respondent has her separate estate comprising of money in the bank, jewellery and derived an income of \$500.00 per month as Clerk 11 in the service of the Government of Trinidad and Tobago, and she left my home in 1974 to pursue course for a law degree in Barbados without my consent. (continued)

8. I put her to proof of her earning capacity.

20 SWORN TO at 23 St.Vincent) Street, in the City of) /s/ Joseph C. Port of Spain this 15th) Lynch day of November, 1976)

Before me,

/s/ Francis G. Thomas Commissioner of Affidavits

No. 9

AFFIDAVIT OF JOYCE LYNCH

No.9 Affidavit of Joyce Lynch 18th July 1977

TRINIDAD AND TOBAGO

30 IN THE HIGH COURT OF JUSTICE (Matrimonial)

BETWEEN

JOSEPH CHRISTOPHER LYNCH Petitioner

AND

JOYCE LYNCH Respondent

I, JOYCE LYNCH, now residing temporarily at Saddle Road, San Juan, in the Ward of

In the High
Court of
Justice
Trinidad and
Tobago

No.9
Affidavit of
Joyce Lynch
18th July
1977

(continued)

St.Anns, in Trinidad, Law Student, make
oath and say as follows :

1. I have read what purports to be a true
copy of the affidavit of Joseph Christopher
Lynch the Petitioner herein sworn on the
6th day of July 1977 and filed herein.

2. As regards the former matrimonial home
at No.29 Crescent Gardens, Mausica, the
present value thereof together with the
parcel of land on which it stands, is I am 10
advised not less than \$90,000.00

3. The said house was built in the year 1967
and for this purpose the Petitioner obtained
a loan of \$7,500.00 from the National Housing
Authority. However this amount proved to be
inadequate and the Petitioner had to obtain
a further loan and/or credit from Moosai's
Hardware, Tunapuna to the extent of about
\$2,000.00 most of which I repaid by monthly 20
instalments out of my own income. Further
the Petitioner obtained another loan from
the Cocorite St.James Credit Union with which
he made a down payment upon furniture,
furnishings and fixtures for the home and it
was I who paid the monthly instalments of
\$48.00 each in respect thereof from the month
of June 1967 until the balance due was
completely paid.

4. In the year 1969 a garage was added to
the home at a cost of about \$1,000.00 most of 30
which was paid by me out of my salary and I
also spent further sums on the construction
of a drain in the curtilage of the home and
in burglar proofing the bedrooms thereof a
course which the Petitioner and I then
considered necessary as he was often on night
duty. Thereafter I contributed to minor repairs
to the home including, fencing thereof,
changing of doors and celotex etc.

5. Around the month of February 1970 the 40
Petitioner obtained another loan from the
said Credit Union and with this he purchased
at a cost about \$6,300.00 a new Mazda motor-car
PR-2991. The instalments on repayment of
this loan were deducted from his salary and
I agreed at his request to pay and did pay
(from that time until we separated) all the
food bills for the home as well as the monthly
gas and other bills in respect of the said
motor-car. After we separated the Petitioner 50

sold this motor-car for \$5,000.00.

In the High Court of Justice Trinidad and Tobago

6. In the year 1971-1972 the Petitioner obtained another loan of \$2,500.00 from the National Housing Authority and he used this to add a new bedroom to the home. The instalment payable to the National Housing Authority increased as a result of and in addition to paying all household bills (as I had already been doing) I also from around this time bought clothes for the Petitioner out of my salary. I also opened an account at Y. DE LIMA & CO.LTD. and took from this store household items (electric iron, pressure cooker etc.) for the home.

No.9 Affidavit of Joyce Lynch 18th July 1977

(continued)

7. The maintenance payments made by the Petitioner for his illegitimate child were to my knowledge around \$20.00 per month and not \$60.00 per month as stated in his said affidavit.

8. I have no money in bank and the jewellery which I possess is worth far less than \$3,225.00 and consists of my engagement and wedding rings and a gold bracelet which the Petitioner purchased for me from McLeod's Antique Shop for \$38.00.

9. I was formerly employed as a Clerk I in the Civil Service and my gross salary was then \$446.00 per month. I am at present on no-pay study leave doing studies in law at the University of the West Indies, Cave Hill. Barbados. I receive no income from any source whatsoever and am being maintained by loans from relatives to whom I am at present indebted in the sum of about \$10,000.00

10. It is completely untrue that I left the Petitioner's home to study law without his consent since he had duly signed the University forms guaranteeing to pay my fees and expenses during my course of studies but after the break down of the marriage he revoked his guarantee through a letter from his solicitors dated 3rd October, 1974 addressed to the Registrar of the Cave Hill Campus of the University.

SWORN at No.16 St.Vincent)
Street, Port of Spain, this) Sgd. Joyce Lynch
18th day of July, 1977)

Before me,
Sgd. W.N.Grannum
COMMISSIONER OF AFFIDAVITS

Filed on behalf
of the Respondent

In the High
Court of
Justice
Trinidad and
Tobago

No. 10

AFFIDAVIT OF JOSEPH
LYNCH

No.10
Affidavit of
Joseph Lynch
6th July
1977

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(MATRIMONIAL)

No.394 of 1975

BETWEEN

JOSEPH CHRISTOPHER LYNCH Petitioner

AND

JOYCE LYNCH Respondent

10

I, JOSEPH CHRISTOPHER LYNCH of 29,
Crescent Drive, Mausica Road, D'Abadie, in
the Island of Trinidad, Sergeant of Police,
in answer to the notice of application filed
herein make oath and say as follows :-

1. That I am 38 years old.

2. That my income is \$932.00 per month plus
a housing allowance of \$75.00 out of this sum
I had to pay the following :-

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Salary	£932.00
Income tax	287.33
Superannuation fund	10.82
National Insurance	12.25
Widow and Orphan	11.75
Mortgage with N.H.A.	84.09
Life Assurance	101.45
Police Association Fund	5.00
Sports Club and Mess	3.00
Police Raffle	1.00
Instalment on furniture	30.00
Repayment of loan to Royal Bank for repairs to residence	54.00
Maintenance of illegitimate child	60.00
Domestic Maid	57.00
Light Bill	27.00
Water rate per month	6.00
House rates	4.00

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3. That I have no money in the bank and I have a loan from Royal Bank, Frederick Street.

In the High Court of Justice Trinidad and Tobago

4. That I own my home situate at 29, Crescent Gardens as aforesaid which is mortgaged with N.H.A. for \$10,500.

5. I own a motor car registered as PM 3120 valued at \$1,500.

No.10 Affidavit of Joseph Lynch 6th July 1977

10 6. I hold 100 shares in the Royal Bank of Canada jointly with Respondent worth \$300.00.

(continued)

20 7. The Respondent has her separate estate consisting of money in the bank, at least \$3,225.00 jewellery and derived an income of \$500.00 per month as Clerk II in the service of the Government of Trinidad and Tobago, and she left my home in 1974 to pursue a course for a law degree in Barbados without my consent and spends \$390 per month for Board and Lodge, and \$144 per year tuition fees, Guild Fees \$48, Caution Fees \$80.

8. I put her to proof of her earning capacity.

SWORN to at 23 St.Vincent)
Street in the City of) /S/ Joseph C.Lynch
Port of Spain this 6th)
day of July, 1977)

Before me,

Sgd. Francis G.Thomas
COMMISSIONER OF AFFIDAVITS

30 Date 6.7.77.

In the High
Court of
Justice
Trinidad and
Tobago

No. 11

ORDER OF MR. JUSTICE
WARNER

No.11
Order of Mr.
Justice Warner
10th & 11th
October 1978

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(MATRIMONIAL)

No.394 of 1975

BETWEEN

JOSEPH CHRISTOPHER LYNCH Petitioner

AND

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JOYCE LYNCH

Respondent

IN CHAMBERS

Entered the 11th day of September, 1979

Dated the 10th and 11th day of October, 1978
Before the Honourable Mr. Justice Alcalde Warner

Upon the return of the Notice dated the 27th day of June, 1977 and upon reading the said notice and the affidavit of Joyce Lynch sworn to on the 18th day of July, 1977 and of Joseph Christopher Lynch sworn to on the 6th day of July, 1977 all filed herein, and upon hearing counsel for the respondent and counsel for the Petitioner and upon hearing the evidence of the parties under cross-examination by the court

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IT IS ORDERED

That the Petitioner do pay to the Respondent the lump sum of \$3,800.00 by instalments as follows :

The first payment of \$1,800.00 to be made on or before the 1st day of November, 1978. 30

The second payment of \$2,000.00 to be made on or before the 30th day of June, 1979.

AND IT'S FURTHER ORDERED

That the Petitioner do pay to the Respondent the costs of her application fixed by this Honourable Court at \$800.00.

Assistant Registrar.

In the High Court of Justice Trinidad and Tobago

No.11
Order of Mr. Justice Warner
10th & 11th
October 1978

(continued)

No.12

JUDGES NOTES ON EVIDENCE

No.12
Judges Notes on Evidence
11th August 1978

IN THE HIGH COURT OF JUSTICE

BETWEEN

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JOYCE LYNCH Plaintiff

AND

JOSEPH LYNCH Defendant

Before the Honourable Mr. Justice
Alcalde Warner

Howell for Applicant (wife)
King for Respondent (husband)

NOTES OF EVIDENCE

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Amended notice dated 13/4/77.
Reads affidavit of wife filed 8.7.77.
Refers to affidavit of husband. It appears that during subsistence of marriage a number of alterations or additions were made to matrimonial home. The applicant-wife has in fact been contributing towards the expenses of the addition and alteration. Addition of garage \$1,000.00 most of which she paid out of her own salary. Para. 4 constructed drain on

In the High
Court of
Justice
Trinidad and
Tobago

premises and contributed to burglar proofing
minor repairs including fencing and changing
of doors.
Submits in 1967 his salary would have been
much lower than in 1977.

No.12
Judges Notes
on Evidence
11th August
1978

(continued)

No.13
Evidence of
Joyce Lynch
11th August
1978

No.13

EVIDENCE OF JOYCE LYNCH

JOYCE LYNCH Sworn States - cross-examined King:

I am on a temporary job with the Civil
Service, Parliament Department.

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To Court:

I hold a post but I am on leave without
pay during course of my training.

Continuing :

I have finished my Bachelor of Laws Degree
but I have not finished my course. I attended
University of the West Indies. I intend to
pursue post-graduate work doing a diploma
course in Petroleum Law - that will take one
academic year. It ends next June i.e. June 1979. 20
I will not be a full fledged Barrister or
Solicitor until I have completed Certificate of
Legal Education. I have not decided yet whether
to be a Barrister or Solicitor. My substantive
post is Clerk II. I have not been paid. I
am a Clerk II but I am being paid an acting
allowance for job I am doing. In all it comes
to about \$1,200. It is Clerk IV - I think it
is in Range 21. I am acting Clerk IV attached
to the Public Accounts Committee. I am
positive it is not \$1,791 I am getting. It is
about \$1,242 gross. I will have to apply for
leave again to do post graduate work. I had
leave until July last year. I have resumed
duties until I am ready to go again. Doing
post graduate work in Dundee will be expensive.
It will cost \$8,000 or \$10,000. I have been

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negotiating with my Government and it is my view that I will be awarded a Student Revolving Loan Fund. I am not sure how such money is paid. It is not official yet but it is likely that the funds will be released for me to take my place at the University. I have not had funds approved. I am still in negotiating stage. I can proceed to become a barrister or solicitor without doing petroleum course. I already owe \$10,000 to my relatives. I borrowed the money from my aunt Renea Chaitram. I don't recall the exact amount and also my stepfather Camillo Henry. It is about \$5,000 I owe him. I am not sure of the amount. I also borrowed \$2,000 from my brother Reynold Agard. Nobody else. My stepfather lives with my mother. He works at the Post Office as a postman Grade III. In June 1967 I am not aware that I was on bad terms with my stepfather. I had left my mother's home and gone to live in a room at my aunt's home at San Juan. This is not the same aunt who loaned me the money. The reason why I left my mother's home was because my mother disagreed with my relationship with the petitioner. When I met petitioner for first time I had not already been living in San Juan by my aunt. I can't remember for how long I lived by my aunt. It could be a few months that I lived by my aunt before I got married. I met my husband for first time while I was attending High School. That could not be in March 1967. When I met him while I was attending High School. We were boy friend and girl friend. I left High School in 1965 - I met him 4 or 5 months before that. I did not leave my mother's home while going to High School. I left the home after going to High School. I did not leave home in 1965. I do not remember when I left the home. It was after I left High School and before June, 1967. I was engaged to my husband - it could be about a year prior to my marriage. It was September 1966. I did not have a party - he gave me an engagement ring - I have it. I was engaged a year. It is not the case that I met my husband in March, 1967 and got married in June 1967. When I was engaged in September 1966, certainly I lived with my aunt at San Juan. If it is proved that it was in March 1967, that I met my husband, then it would not be true that it is on account of my relationship with him that I moved to my aunt's home in 1966. When I met my husband for first time it was at Broadway, Arima. At that time I was living at Arima with my mother. My mother objected to my

In the High Court of Justice Trinidad and Tobago

No.13
Evidence of
Joyce Lynch
11th August
1978

(continued)

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In the High
Court of
Justice
Trinidad and
Tobago

No.13
Evidence of
Joyce Lynch
11th August
1978

(continued)

husband the very first time he came to our home - that was while I was still in High School. It was before June 1965. There were many grounds of objection - my mother felt that I was still at High School and should not be keeping serious company. I think that was her strong objection. She thought I should allow myself some time to work before I could think seriously of anybody. Her objection was my getting involved and being serious at that age in an affair which might lead to marriage. I am 32 years of age. It may have been before 1965 that I left High School. I got my first job I think before 1967. It was probably 1966. It could possibly be 1965. It was not in 1963 that I got my first job. It was immediately after I left High School that I got my first job. I knew my husband for about 4 years before we got married. As I met him I introduced him to my mother. I did not leave immediately to go and live with my aunt. I know in 1966 when I was engaged to my husband I had been living with my aunt. I can't remember how long I left after I introduced my husband to my mother. It was before my engagement that I started living with my aunt. When I was engaged I was already working. When I met my husband the house was not being built. I saw the land before the house was built my husband took me there. When he took me there he had not bought the land yet. I do not recall how long it was after I met him that he bought the land. He bought the land from Edward Bailey Smith. When he took me to see the land I was working. I don't recall the exact time he took me to see the land. I can't remember how long I was working for when he took me to see the land. He did not take me to see the land while I was going to school. It is possible that was going to school in 1963. At the time he took me to see the land I don't remember if we were engaged to be married. I cannot fix that time in relation to September 1966. When he bought the land I did not put any money towards the purchase of it. I was present when the house was being constructed. I know who was the builder one Edson Cato was the builder. I got to know Mr. Cato while the house was being constructed. I met him for first time then. I gave Mr. Cato no money. I did not ask my husband to put the land in my name and his. All the money to purchase the land was raised by him. All the

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money paid to Mr. Cato was paid by him through the loan from National Housing Authority. At the initial stage I did not put any money into construction of the house. The house was built by him initially with his own money. The house was completed around March, 1967. I don't recall when I met Mr. Smith first. The first time I met Mr. Smith was on an occasion when my former husband took me there to see the land and he was going to pay an instalment. At that time we were not married. When I met my husband for the first time the house was not under construction. It was not at that stage that I met Mr. Cato. My husband did not buy the land out right. He was paying instalments. He went to Smith who lived not far from the land to pay the instalment. I saw Mr. Cato at the stage where the foundation was being dug. I was introduced to him while house was being constructed. I did not see Mr. Cato before he went on the land to build the house. If a foundation is being built I take it that it is a stage of the house being constructed. So therefore it is correct to say that I met Mr. Cato at that time. It was not when house was already in the air that I first met Mr. Cato. When the house was finished I saw it. When the house was completed there were some drains but there still needed to be a drain on the left side. There were drains on the right side and the back but none on the left side. I call the left the southern side. There was a hole a sort of canal but it was unfinished it was not made out in concrete. It was to be completed. I don't recall that I got somebody to do that drain. The drain was done eventually. A garage was put on the side of the house and that drain had to be redone. The drain was done before the garage was put. Having put a garage on the left side there was need for a new drain, a totally different drain. By a new drain I do not mean one in addition to the one existing. The old drain had to be dug up and a new one put there. The addition of the garage necessitated a new drain. There was no need for a drain there. Having built the garage it extended over the drain and it was necessary to put another drain to take the water off the roof. The first drain had to be covered up. But for that fact we would have had 2 drains. I had to do a new drain and cover up the old. I don't recall who

In the High Court of Justice Trinidad and Tobago

No.13
Evidence of
Joyce Lynch
11th August
1978

(continued)

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In the High Court of Justice Trinidad and Tobago

No.13
Evidence of Joyce Lynch
11th August 1978

(continued)

did the new drain. I paid somewhere around \$42. I did not get a receipt. In that arrangement my former husband would employ the people then he came and asked me for the money saying how much it cost. I gave him and he gave them. I am not aware that people doing a job like that would give a receipt. My husband came and asked me for the money. That was at the home. It was in 1969. I would not remember the month. In the case of the garage he drew the plan and told me he wanted to build the garage. At that time I worked for an acting allowance - I got about \$650. He asked monthly for a contribution towards building the garage. It could be about \$80. per month for about 4 to 5 months. It ended in 1969 - I can't remember the exact month. It could be more or less than \$80. My contribution towards building a garage could have been \$600 and about \$42 for the drain.

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Adjourned 11.8.78 - 11.00 a.m.

Resumed 11.8.78

Appearances as Before:

JOYCE LYNCH resworn - cross-examined King

I said in affidavit that in 1969 the garage was added. I remember it was 1969 because at that time I got an appointment to act as Accounting Assistant and it was that money that was earmarked for assisting in that venture. I know that his house was mortgaged to National Housing Authority. To do the addition I would need the approval of the authority. Plans would have to be submitted to the authority for the addition. I know that my husband was given money to do repairs but not in 1969. The garage was put on before those repairs which were done about 1970. The drain was done about a month or so after the garage was put on. There was a plan in respect of the garage. I don't know when it was approved. I cannot deny that it was approved in 1971.

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Q. It will follow as the night the day that the plan had to be approved before the garage was built?

Howell objects that whether requirements were met cannot be assumed.

It involves asking Court to take judicial notice.

Court rules question is argument.

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Not allowed.

Before the garage was built, I imagine it was

necessary to get a plan from National Housing Authority. I said in affidavit Petitioner got a loan of \$2,500 from National Housing Authority. I know because my former husband told me of the application and told me when the loan was approved. He told me when he got the money. He did tell me that he had submitted drawings for the garage. He told me that the plan to add the garage was approved by National Housing Authority. No money was taken from National Housing Authority for the garage. The garage was to have been built from our own funds and not on a loan from National Housing Authority. That was agreement with me and my former husband. I had expected this extra money and he decided to put the garage on. I do not know actual cost of garage - I estimated at \$1,000 - There were 2 walls a wall with decorative blocks on the southern side and a wall at the back. There were 2 walls one to east and one to south. The entrance to the garage is on the southern side. There were 3 walls when garage was completed wall of the house and two others. There was no gate. The garage was not completely encased. I paid most of the money for the garage. I acted for 6 months. Between April and September my contribution was \$92 per month. It was six months. I handed up this money but I am not sure the building of the garage went on for the 6 months. I gave my husband the money and he utilised it. I don't remember exactly when the garage was built. The garage was to have been done on our own funds, I do not know if he had to wait for my contribution every month. I remember saying yesterday I paid \$80 for about 4 to 5 months. My period of acting was 6 months, it does not follow that I paid for 6 months. I said \$80 yesterday but I said earlier today that I checked my records and discovered it was \$92. I was not sure of exact amount so I said about \$82. Having checked records at the Parliament Office where I worked and discovered that the acting allowance was \$92. per month. It was my acting allowance that I gave. When I said yesterday about \$80 I was not sure. This transaction was 1969. When I said most of it was paid by me out of my salary, it is also possible that I contributed from my basic salary, in addition to contributing my acting allowance. I can't remember if I paid from my basic salary. There were things like painting to be done and he called from time to time. I am not shifting my ground to make it appear I contributed more

In the High Court of Justice Trinidad and Tobago

No.13
Evidence of
Joyce Lynch
11th August
1978

(continued)

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In the High Court of Justice Trinidad and Tobago

No.13
Evidence of
Joyce Lynch
11th August
1978

(continued)

than \$400. I tried to verify what I was say by checking. I did not say yesterday he paid somebody to dig drain and it was unconcreted and he paid somebody to concrete it. I said I paid \$42 for the new drain. I paid for one drain. I did not say yesterday that I paid to have the drain already dug completed. If I said so that would not be true. I am not making up 2 versions. I do not agree that no drain was dug after the garage was built. I do not agree that the original drain was built in anticipation of the erection of the garage. I do not understand meaning of "curtilage". I swore to the affidavit. The word "curtilage" is in my affidavit and I swore to it, but whether or not I used the words. My lawyers prepared the affidavit on the basis of statements I made. 10

Q. Towards the \$1,000 for the construction of the garage the amount you put was not most of the \$1,000? 20

A. I do not agree.

I paid for the burglar proofing of 1 bedroom. I paid it by \$25 instalments. I can't remember how much I paid. The person who did it was called Moses. From what I remember I paid it all off by \$25 instalments. I could not say how many instalments. Your client paid him the money. He had the agreement I used to give my former husband \$25 for payment to Mr. Moses. I did not pay Mr. Moses I did not employ him. I saw him doing the job of burglar proofing. I only burglar proofed the master bedroom. Up until I left the house only one bedroom was burglar proofed, which is the master bedroom. I swore to this. I said I spend sums in burglar proofing bedrooms thereof. I did not say I burglar-proofed the whole house. The affidavit has that I spent money on burglar proofing bedrooms. It is not true if I said bedrooms. It was the master bedroom that was burglar proofed. There are 3 bedrooms. The master bedroom is the one to the road the one next to toilet and bath. The bedroom I called the master bedroom was the one we occupied when we got married. I left there in September 1974. I do not agree that there was no burglar proofing at all. I do not know Bridgewater - I can't remember who made the front gate. There were 2 bedrooms beside the master bedroom. I controlled my own 30 40 50

salary. I paid for the furniture. I bought them for common use. The furnishings in the house a downpayment was made and I paid \$48 per month. There are things I bought which could be mine.

In the High Court of Justice Trinidad and Tobago

Adjourned 14.8.78 at 10.00 a.m.

No.13
Evidence of
Joyce Lynch
11th August
1978

Resumed:

Appearances as Before:

10 JOYCE LYNCH Resworn - continuing cross-examined King:

(continued)

20 Shown plan - I see it - this is a plan of the building Tendered. Court enquire as regarding documents annexed. Plan put in and marked J.L.1. Attached to the plan is National Housing Authority form approving the addition to the building, and there is also notice of permission to develop from Ministry of Planning and Development. Estimated expenditure is stated on another form as \$3,000. According to this plan in 1971 there was no garage to the existing building. What this plan describes as a verandah is that I knew to be a washroom. When I left the roof of the garage was in line with the verandah. What is called the verandah had to be built contrary to this plan. What is called the verandah would have been awkward if it was not in line. The plan was stamped as accepted by National Housing Authority on 8.1.71, there was already a garage there. It is a fact that there was a garage there. The plan was found to be at odds with existing garage. The verandah was not there before the garage. The verandah was built after the garage. The verandah could have been built in 1970-1971. I can't remember if there was a verandah in January, 1971. There are several dates on the plan. I am not quite familiar with plans. I see a date stamp on that plan in 1970. This does not help me to fix the date of the verandah. When I moved in there was no verandah. The verandah was built some time in 1970 and 1971. The new bedroom was built at the same time as the new kitchen and new verandah. There was an old kitchen - the old kitchen is shown as dining room on diagram A the top left hand corner of the plan. The sinks, the stove, fridge and kitchen cupboard were in place written "dining room".

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14th August
1978

In the High
Court of
Justice
Trinidad and
Tobago

No.13
Evidence of
Joyce Lynch
14th August
1978

(continued)

What I call living room is shown as living room. The living room had a dining table and it was also a living room. The plan could be right. The words "existing kitchen" are hand written over portion marked Dining Room in print. No existing garage is shown on the plan. The garage would have been to front of what is called verandah. In January 1971 there was no verandah existing. Between 1970 and 1971 Mr. Lynch borrowed money from National Housing Authority about \$3,000. The money was used on the building. My husband got \$3,000 to do repairs. I said I gave him money - I was not referring to this addition shown in the plan. I did not give him money for that. During course of my marriage I spent a lot of money as we had to have joint income tax return and there were always things like changing doors for which I had to pay. Before this addition they were drenched with rain and no longer good because termites were eating them. They had to be changed. These are repairs for which I gave money, this house was built in 1967. The doors at the back one was a flush door, one was made out of wood. The door at the kitchen was not flush. The doors were weather beaten and to some extent termite ridden and had to be changed. I don't remember how much money I put for the doors. Counsel refers to Para.6. I made a mistake when I said \$2,500 in this paragraph. It was \$3,000. I paid food bills - sometimes my husband took goods from the canteen. At some times we had an arrangement where he once took meat from the canteen and I bought other things from the Supermarket. He never got everything from canteen. There would be foodstuffs in canteen which you could not get. I don't remember now what these were. Things were cheaper in the canteen. In some cases he could not go over \$90. in canteen and he had to pay deductions so I would have to buy certain things in supermarket. Sometimes he could not get things in canteen. It is not that he was limited by Police order. He was limited by the constraints of loans. He gave me the impression he was hard-up. I knew he was hard-up - this is why I agreed to use his money in the house. I know he is married again. I have seen his wife. I don't know she is expecting a child. I don't know for a fact he is expecting a child. I am worse off now than when I was married to Mr. Lynch. I mean in a financial way. I use to give him money. I

give him no money now. I have not been working - I have been acquiring a profession. I have been on leave without pay for 4 years. I have been employed from 4.7.75. For 4 academic years I have been away studying. I left in 1974 October I finished my course in June, 1978. During that time I resumed work on vacation for three years. For 2 years I worked in the training scheme - I got about \$700 for 6 weeks - I am deprived of what I have earned for 7 years living with him. He is in possession of the house with everything I contributed to pay for, in residence with a wife. For the 7 years he was enhanced because I was able to contribute. He never supported me - I supported myself with assistance from my relatives. I supported him. At that time I did not have a L.L.B. My earning capacity has increased. I would not be in a position to support him. The L.L.B. is not a professional qualification. The circumstances are changed - I do not live in the house. I want money from him.

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Q. Could you give me any reason why you want money from him now when he could not give you any when you were married?

A. Yes because I have been forced to change my life style and have found myself in a situation where I do not have any money and have to suffer the loss of what I have earned over the 7 years. In addition to which I embarked upon the study programme because he agreed to assist me to do it. When I was offered the space he withdrew his answer.

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When I left for University marriage had broken down for a week before. I consented a decree that we had lived separate and apart since May, 1973. It was not a week before I left for University that my husband and I started to live badly. I took it that breaking down meant when I left home. One week after leaving home I got formal acceptance. One 13.10.74 I wrote a letter to the Mc Leods. When I left the house I did not tell him I was leaving. Sometime around 23.9.74 he had threatened me with a cutlass. That is why I left on 25.9.74. He was very violent. Morning when I left he had actually dropped me off at Fire Brigade Station to work. In the circumstances I did not think it was wise to tell him I was going to Barbados.

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In the High Court of Justice Trinidad and Tobago

No.13
Evidence of
Joyce Lynch
14th August
1978

(continued)

In the High
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No.13
Evidence of
Joyce Lynch
14th August
1978

(continued)

He knew I was going to University because he wrote the University. My life ambition was to do law. He had said he would try to assist. He did not want to assist with A Levels because he threw away my books.

I don't know what my prospects are because there a lot of people with the same degree. I do not know of anybody here with a post-graduate degree in Petroleum Law - that is remote. When I left my husband I was Clerk I 10
my basic salary was \$446. I was acting library Assistant in Parliament for 4 years before leaving the house. I cannot say whether now I have an L.L.B. degree I will earn much more money. I am now acting Clerk IV I am not married. I live with my mother in a rented house she lives in San Juan. It is a house being rented from Mrs. Theresa Montano. I go to Denmark sometime not sometimes, my father sent me a ticket. I 20
visited Denmark in 1975. My father helps financially not with any degrees of consistency. On one or 2 occasions he gave me some money towards that. The first time he gave me \$1,000 - Barbados. Next time he gave about \$300. My father is restaurateur. I can't say he is wealthy. I asked him for help. He gave me \$1,300. My former husband is originally from St. Vincent. I don't know he is ill apart from a condition which he 30
said something about having yaws in his blood. I did say he told me he had a condition. The proof is that he had been attending C.M.C. The doctors - I said I refused to have inter-course with him because of sores, I interpreted what I saw as what his doctor told him he had.

Adjourned to 15.8.78 at 10.30 a.m.

Resumed - 15.8.78

N. King for Petitioner
No Appearance of respondent

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16th August
1978

Adjourned 16.8.78

Resumed - 16.8.78

Appearance as before:

JOYCE LYNCH Resworn states - cross-examined
King:

The motor car my husband had I did not contribute towards it. This car was bought cash and he paid through monthly deductions. When he started paying we agreed that I would buy food for the home which I did until I left 50

the home. I also bought clothes for both of us. In a word to use common parlance his salary and deductions did not leave him with very much as his own. At one stage car was in an accident. I paid for repairs as he did not want to lose no-claim bonus. I had to get a loan to pay \$500. I borrowed part of it from Civil Service Association. I don't remember the amount. The other part was met out of my salary. From time he bought car I paid all the food bills. That could be about \$150. In 1971 it could have been \$150, it could be more. We had a dog. It could have been \$150 to \$200 I spent on food per month. In 1972 it was about the same. In 1974 it could be more. I could say I spent about \$200 per month. Although we were living apart I still used to do what I used to do before. I was forced to render the services of a maid. I do not know if he could afford that. Whenever time came around for insurance he would demand the money. I had to pay his mechanic \$200. to repaint his Toyota car which we owned before the Mazda. He bought new car around 1970 - 1971 as far as I can remember. Around that time I was paying the monies towards the new car. If you put to me that the car was bought in September 1972.

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To Court:

While I lived at that house with my husband we had 3 cars one at a time.

Continuing

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He did have a Mazda motor car while I lived in the house. If the year is wrong, the fact is there was the same arrangement for the other cars. In February 1970 we owned a car. He had to pay instalments. He had to pay instalments on all the cars he owned. He never finished paying instalments to my knowledge. He had an account with a gas station which I used to pay. He always paid for the house and \$150 for the car and he told me about endless contributions in the Police. I paid the light bills. My money was used in all those things. Electricity was about \$25 every 2 months. At one stage one of my aunts in America supplied clothes for both of us I can't remember how much spent on clothes for him. I spent between \$38 and \$40 per month in gas. I paid one major repair for the Mazda. The car did not need

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(continued)

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Evidence of
Joyce Lynch
16th August
1978

(continued)

other repairs. It could be that I paid for servicing. That was not done every month. I don't know if he serviced the car every month. I don't remember. I paid off entire instalments on the furnishings i.e. \$48 per month for 2 years. He paid down payment to Jack Farah and every month I gave him the \$48. That was just after we got married. The furniture taken on instalments were a 3 piece dining room suite, a dining table and six chairs. I don't remember anything else. I owned a bed before we got married. That was in the house. In the furnishings from Farah there also a buffet. Payment for furniture stopped May 1969. He paid the downpayment - I paid the instalments when we got married. I don't agree he bought furniture in February, 1967. Mr. Lynch did not pay any instalment on the furniture. I can't say whether I agree that furniture was bought in February, 1967. Mr. Lynch did not pay any instalment on the furniture. I can't say whether I agree that furniture was bought in February, 1967. Most of the time he made arrangement and then informed me I must pay. I started paying for furniture in June 1967 and completed in 1969. The fridge was bought separate. It was bought before the marriage. He paid the \$23 to J.K.Bayne. I did not pay on the stove. He bought it before. I paid on the coffee table, dressing table. I paid on the 3 piece set - I don't know if it was Danish or Swedish. There was no bed in that set of furniture. He did not buy a bed from Farah. A small bed was bought but not from Farah. The bed was bought between 1970 and 1971. It was bought cash but not with the other furniture. It was bought at time of new addition to house. Shown document - this is a letter head from Jack Farah. I do not agree that this bed was bought in 1967. This is a letter dated 20th July, 1977. There are 2 things here that were not bought when we got married - I took the bed that was bought about 1970. It was a loan from Cocorite St. James Credit Union. I took a vacuum cleaner and polisher. I paid \$25 per month for the vacuum cleaner and for the polisher it could be about \$15. I took some drapes from the house - I bought those cash. I paid cash \$150 for one set of drapes. I paid about \$65 for the other set. On the second set my former husband gave me could be about \$30 towards paying. I can't remember where I got the rest

of the money. I believe we got some back
pay. I took one electric iron from the
home. I bought it. I don't remember how
much I paid for it. I took a Singer sewing
machine from the home. I can't remember
I paid around \$20 per month for it. I
would have paid down money on it. I was
paying \$25 - I took a dining table, a
Chinese picture and a drain basket, ironing
board. I took drapes I can't remember the
number. I did not get any strainer for
the kitchen. Neil George is my brother in
law. I did not get them. I don't know my
brother in law's signature. My solicitor
wrote my husband's solicitor for certain
things. I was in Barbados. These things
itemised I did not receive. The big items
I got. Gifts from my relatives for the
wedding certain kitchen utensils. I felt I
was entitled to some of the wedding gifts.
I think they were given to me personally.
The vacuum cleaner, polisher and sewing machine
I thought I could sell. I wanted them right
away. I have not sold them. I was able to
make arrangements. I took a rice strainer.
I can't remember if I took 2 aluminium pots.
I would say I received 2 pots. There were
pots I wanted which I did not get. I did not
get a swizzler. I did not receive a can
opener. I have not received an iron pot. I
think I received 3 metallic plates. I got
two plastic cups. My husband sent what he
wanted to. It was 4 plastic cups which I had
brought before I got married. I now say these
were bought after marriage I did not collect
a grater. Mr. George has been married to
my sister for about 7 years. I sent Mr. George
to collect certain articles from my ex-husband.
He met me and told me he had got some articles.
I can't remember if he told me he had given
a receipt. I only got the 3 metallic plates
not 2 plastic plates. I did not get a plastic
mug. I got a bread pan. I did not get 2
pirex bowls. I had more than than 2 pirex
bowls. I did not get another plastic cup.
I did not get a butter dish I did not get 2
bread tins for baking. I think I got one
large pot spoon. I did not get the large
frying pan. These articles I received. I
had given an instruction to my solicitor because
I thought I could sell some of them. I thought
there could be no quarrel about them. They
were mine. I considered them to be for use
of both of us but since I had paid every cent
for them and I needed money I thought I could

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No.13
Evidence of
Joyce Lynch
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(continued)

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No.13
Evidence of
Joyce Lynch
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(continued)

get them without any quarrel. My husband and I bought the drapes together. We bought the furniture together. I told my solicitor these things were my personal effects. I told him Singer sewing machine was mine. I bought it with my own money. I said I bought vacuum cleaner and polisher with my own money. The things I asked for I had bought with my own money. I put the bed at my sister's place. She had a new house and there was a room which I was told I could occupy. It is too far so I don't stay there regularly. I sold a vase for \$40. I did get all the money from my father and my aunt. I asked for and received the yellow vase - I asked for the dining table vase also. The Chinese picture cost about \$12. The ironing board, I think was bought by my ex-husband. Probably I contributed towards it. The things mentioned I bought with my own money. It is only the drapes that I admit he contributed to and I claimed was the drapes. There was also the ironing board. The other things on that list were bought by myself. Some of the things kitchen utensils were bought when I knew we were getting married. The list shown me does not reflect all that was in the kitchen. Some of the kitchen utensils were given as gifts. Even Christmas gifts after we were married included kitchen utensils. I remember asking solicitor to have house transferred to me since the petition for divorce. When I asked him to write I told him I needed husband. This is the letter J.L.2. I think I told my solicitor I wanted a share in the property. At same time when I told him about the kitchen utensils. I had no money to proceed with the divorce. My solicitor did not write my husband about the property in the original letters. I left it to my solicitors to decide what he would do then. My husband had bought a car and put it in my name. Somebody has told me he has increased his policy. It is possible that he changed it to another name. The insurance agent Mr. Bartolo told me he had done some changes to the policy by increasing it. I don't recall asking if I am still the beneficiary. Shown document - this is a share certificate in both our names. He has been receiving the dividends. I do not agree that I did not tell my solicitor to write my husband about property. I cannot explain why my solicitor did not write about property. I have been telling my solicitors all along about property. I have

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always been concerned about my financial position. I don't know the procedure about considering financial position. His lawyers said they would agree to some financial arrangement. When I swore to the affidavit I was on no pay leave for a period of 3 years - I acted Accounting Assistant. I was appointed to a substantive post as Clerk II. Many deductions did not come out of my salary. Only deduction coming out was income tax. About \$20 for credit union. There was \$19.88 for insurance. That insurance is now lapsed. It was to my estate. It was just a few days before my husband took out his. I was married I thought everything would have gone to my husband on my death. I was in a sou-sou \$20 per month. That was an arrangement that was not lasting. Apart from these things I was not able to save from my salary. I had to borrow from the Credit Union and Civil Service Association. These were instalments to be paid back. I had to pay Civil Service Association \$3 per month and towards the loan about \$10 per month.

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No.13
Evidence of
Joyce Lynch
16th August
1978

(continued)

Adjourned - 18.8.78 at 11.30 a.m

Resumed - 18.8.78

Appearances as Before :

JOYCE LYNCH resworn cross-examined King:

18th August
1978

During the course of my marriage I was preparing for professional qualification. I financed myself I got free lessons from Mrs. Gillian Chadwick for A levels, nobody else. Dr. Ramaahoye did not give me lessons. He introduced to Mrs. Gillian Chadwick.

Q. The marriage started to go bad because you had stopped cooking and washing for and having sexual relations with your husband.

Howell objects: Bromley Family Law 4th Edn. Question of fault not to be considered in relation to ancillary relief if facts alleged are two years separation and consent.

King: conduct of parties is always relevant on applications for ancillary relief. Refers to s.27(11) of Matrimonial Proceedings and Property Act.

Conduct always relevant.

Rayden 12th Edn.

Questions allowed.

I continued washing and cooking for my husband

In the High Court of Justice Trinidad and Tobago

No.13
Evidence of Joyce Lynch
18th August 1978

(continued)

until I left the house. We lived under the same roof - I do not say up to time I left in September 1974 my husband and I lived happily together. That was so from May 1973. We both wanted to have children I never got pregnant, during the course of the marriage. I attended a Gynaenocologist to find out why I did not become pregnant.

Re-examined Howell:

On 9.8.78 I was asked when I left school - I was not sure. 10
Objection King: this is not clearing up.
Question allowed.
I attended St.Joseph's Convent. At the end of period of school I did Cambridge School Certificate and Cambridge G.C.E. I got certificate at the end. The Cambridge G.C.E. shows I was examined in 1964. It was the later one. I was not sure when I was employed by Government. I got a letter of appointment. 20
This is my first letter of appointment.
King objects on ground that maker is not called.
Document not admitted in evidence.
To Court: The date of my first appointment was 17.5.65. King objects - Over-ruled.

No.14
Evidence of Joseph Lynch
18th August 1978

No.14
EVIDENCE OF JOSEPH LYNCH

JOSEPH CHRISTOPHER LYNCH sworn states -
cross-examined Howell:

I am not now an Acting Inspector. When I met Joyce Lynch I was a Police Constable. I remained a Police Constable for 3 years after I met my wife. I remained a Police Constable for 3 years after marriage. I did not assist her in getting her first job. As a Police Constable in 1967 my salary was \$230 plus house allowance \$30; plus plain clothes allowance \$15 plus Detective allowance \$10 plus meal allowance \$30. The figure remained so until 31.1.70. OUT of salary of \$230 something was deducted - Income Tax was deducted \$23.01. I had to pay super-annuation \$14.00, Widows and Orphans Fund about \$10.00 to \$12.00. I had no life insurance until 1969. I did not have money 40

for Police Association then. I did not have to pay sport club and mess during 1969 and 1970. I did not have to pay Police Raffle during 1960 and 1970. I had to pay \$54.69 per month to National Housing Authority as from 31.5.67. Most I have ever paid since I have constructed the house is \$1,954. I paid towards illegitimate child \$20 per month in 1967. In 1967 I was stationed at Special Branch Port of Spain. I had to travel from Waterloo, Central Trinidad to Port of Spain. Just before marriage I moved into my house at 29, Crescent Gardens Mausica. I got married on 3.6.67 and have lived there up to present time. In 1967 I had no car I travelled by taxi and bus. I used my Police pass on buses but not in taxis. I used to spend about £15 per month in travelling. On getting married I had no washing machine. We had someone who was doing the washing for us and the ironing. This person was employed after our marriage. She was employed about 1968. The person was Miss Beulah Elias of Bagatelle Road San Juan. Before this date the respondent did the washing and ironing. In fact she washed my clothes and hers. I would do the same. As a Police officer I wore no Police uniform. I was a plainclothes police officer. As a police officer in plain clothes I always had to be clean and presentable looking. I paid that maid - we never paid more than \$7 at any time - she used to wash and iron by the pieces. I would pay \$7 per month. I retained the services of that washer and ironer from 1968 to around October 1976. It would not be correct to say that she did this only for 4 months. Shortly before respondent left the house the woman had a baby and we both paid her a visit and collected the clothes she had for us before she had that child. My wife left me in 1974. At inception of marriage in 1967 things were not rather tight. By tight I understand "financial position not good". My wife at time was working. At that time I purchased all items from Police canteen - food. At that time it cost about \$60 per month. Fresh fruit etc. were bought outside at that time. The canteen stocks those now. During time I would give my wife about \$5 to purchase things which were not in canteen. When I got married to my wife I did not know that she intended to pursue a course in law. Sometime about 1969 she intimated to me that

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(continued)

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in order to get to higher echelons of the Civil Service she would have to obtain a degree and in order to get this degree she would have to begin her A Levels. I told her that was fine. In 1967 my wife cooked my food I did the cleaning of the house. The respondent cleaned the house on only 7 occasions for 7 years. In 1967 I was owing National Housing Authority \$7,400 as from time I built the house.

To Court:

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(continued)

The loan to be repaid was over a period of 20 to 25 years at \$54 per month.

Continuing :

I took no materials in excess. I was not owing Moosai Hardware after my marriage. My wife did not have to pay Moosai \$20 per month from time of marriage. Moosai was indebted to me \$236.21. I do not know my wife was paying Moosai \$20 per month. I did not tell my wife I was indebted to Moosai in sum of \$2,000. I did not receive from my wife \$20 per month to pay to Moosai. My wife did not give me \$20 per month to pay to Moosai. I bought my first car it could be around 1969. I purchased it in respondent's name.

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21st August 1978

Adjourned 21.8.78 - 11.a.m.
Resumed - 21.8.78

Lynch in person
Howell for applicant.

JOSEPH LYNCH cross-examined Howell:

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I bought my first car in 1969 under respondent's name. It was a Renault - I paid \$1,800 for it. I did not buy this car cash. I paid \$1,000 on the motor car and I asked the respondent to assist me with the other \$800. and she told me she was keeping her money to study. Therefore I had to approach Mrs. Beryl Yearwood the Manager of Cocorite St. James Credit Union who is quite known to me for a loan of \$800 and she Mrs. Yearwood signed for a loan at Cocorite Credit Union to enable me to purchase that car. I asked my wife before I purchased the car. Relationship between my wife and myself was at that time very good. I could not buy the car cash because I had only \$1,000 at this stage. I know that my wife

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(continued)

10 said that her money was to pursue her
studies. I put the car in her name because
at the time I had no driving permit. I
put the shares in Royal Bank in my wife's
name in 1972 or 1973 because of my love
for her. After the purchase of the first
car my budget was not rather tight. It
was no additional strain on my income.
Everything was not placed on her. She
got everything on a platter. Initially
I had visualised having a 3 bedroom house.
I completed my house before I was married
but it contained 2 bedrooms. I never
thought of expanding the house at that time.
I thought first a 2 bedroom house and after-
wards I saw that I could have constructed
another room. I saw this in relation to how
much money I had to pay with. In May 1967
I did not have the money to construct a
20 3 bedroom house. I became a sergeant some-
time in March, 1977. In 1971-1972 I constru-
cted the 3rd bedroom to the house. I was
then a Corporal. I became a Corporal on
31.1.70. My salary then would have been
over \$500 per month about \$600. This was
gross salary but exclusive of allowances and
my house allowance then came to \$75 per month.
My salary then was ruled by Compensation and
Classification Plan Public Service. I would
30 accept I was then Range 23C. I would accept
that highest I could have earned was \$490.
All this time my wife kept her monies to
herself. In fact she never assisted me with
the building of the garage. It was built
together with the 3rd room. That was in
1971, 1972. The garage I now speak of was
not shown on the plan tendered in evidence.
The room that was added on was not there then.
Shown document - this is for painting a
40 garage. It is a receipt of Joseph Lynch I
cannot make out name of person who signed.
This is dated 30.9.69. This is first time I
am seeing this receipt.
King arrives.
I never received this receipt for the painting
of any garage in 1969. I do not know the
Philip Sawmill in D'Abadie. I did not
construct anything in 1969 to any part of my
house. I could have painted the house in 1969.
50 I can't remember this receipt. I did not
remember galvanize sheeting in 1969. I did not
buy nails cement or celotex in 1969. I did not
know Ideal Supply Store in Broadway Arima.
This is first time I am seeing this receipt. I
did not buy these items in 1969 - I never

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Joseph Lynch
21st August
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(continued)

constructed a garage in 1969.

Q. After the construction of your garage,
you had to construct drains?

King objects to question - Question overruled.

To Court:

I did construct a garage. In 1970 I did
not have to construct drains. After I
constructed the garage, I had to construct a
drain. This drain would be on southern side
of the garage.

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Continuing :

It was during time I was constructing 3rd room
that I constructed the garage. I did not
consider it my duty to go to National Housing
Authority and tell them I was constructing a
garage. I put on the burglar proofing in 1975
while I was alone in the house. On occasions
as a special branch man I would have to work
in the night. I did not have and still do not
have a telephone in my house. At some times
from 1967 to 1971-1972 my duties in the day
would run into the night. I had to leave my
wife in the house that was not burglar proofed.
This was a wife I loved. I did not think it
wise to burglar proof the house for her safety
in the night. The burglar-proofing must have
taken about 1 hour and a half. When I left
in the morning house was not burglar-proofed,
when I arrived in night it was burglar-proofed.
I had a little white dog and when respondent
left me I gave it away. I had a brown dog not
a black - I had no dog at the time of the
burglar-proofing and none since. The first
window which is western side, the northern side,
the eastern side and also the living room on
the southern side. The entire house is wrought
iron. This was done after she left. To the
best of my knowledge she has returned. I was
at home we had no conversation, I did not see
her. Shown photograph - this is a photograph
of my house. I am sorry - this is not a
photograph of my house. It is a photograph of
her mother's house. This is the respondent and
this myself. I have not seen any car in the
picture I see very well. Witness shown another
photograph (in colour). This is not my house.
This is her mother's house. I owned PR - 2991
I see it parked at entrance to garage. I see
my brown dog.

Howell applies that witness be asked to leave

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as he will want to make an application and will want to tell Court questions he intends he ask.
King objects - Ruling witness is a party can cannot be asked to leave Court.
Shown 3rd photograph - I recognise a person in photograph - I do not recognise the building. I recognize a person who is my former mother-in-law. During subsistence of marriage I visited my mother in law on several occasions. I know houses. I know of one house at Santa Cruz - I know she lived at a place called Dogpatch in Arima. I know she (the mother in law) was living at Santa Cruz in a house with her common-law husband shortly before respondent left me. I swore before I gave evidence. This photograph is one of former wife and myself. The building shown in it is house of former mother-in-law. Shown Joseph L.l. again I would not say house in this one is mine. In this photograph one window out of 3 is burglar proofed. The wrought iron shown in this picture is like the one I have at my house. The blocks enclosing the gallery resemble the blocks I have at my house. The decorative blocks to the front in the picture resemble the decorative blocks to the front of my house. The gate shown there resembles my gate. The pathway looks something like the pathway leading to my house. Decorative blocks south of the gallery in the picture resemble the decorative blocks south of the gallery in my house. The two windows south of the house in the picture also resemble the 2 windows south of my house. The part of garage shown is in the same position as part of garage in my house. I have a letter box resembling this letter box on the photograph. The window has a resemblance to window at my house. I can see gate in the picture more clearly than the window in the picture so I can't say whether the design of the wrought iron on the gate and the design on the window are the same. I don't know when this photograph was taken.

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Q. I am putting it that the house which you see in this photograph is your house at 20, Crescent Gardens D'Abadie?

Objection witness is incompetent to answer question since he did not himself take the photograph. Competent person will be person who

In the High Court of Justice Trinidad and Tobago

N0.14
Evidence of Joseph Lynch
21st August 1978

(continued)

In the High Court of Justice Trinidad and Tobago

No.14 Evidence of Joseph Lynch 21st August 1978

(continued)

took it. Overruled.

Answer: I would not say for sure that that is my building because I do not know when the photograph was taken.

Shown 2nd photograph - Do you see yourself in this photograph?

King objects to any evidence being given about this photograph unless until it is evidence.

10

Court rules he can be asked whether he regards what he sees as a photograph of himself.

Shown picture - I regard what I see here as a photograph of myself. I do not know when this photograph was taken. At one time I owned a car PR 2991 a Mazda. That was some time after 1974. The car was purchased in 1972 in respondent's name. I bought it in her name.

King objects to any questions regarding contents unless it is admitted in evidence.

20

Tendered in evidence - King objects photograph cannot be put in except through photographer.

Overruled. Photograph put in and marked Joseph L.2. Shown Joseph L.2. - I would say this photograph shows the garage in front of my house. I can't remember when that photograph was taken. Photograph shown to witness - I identify my garage in this photograph. This is the wall that encloses the premises. Photograph tendered.

30

King objects - Photographer must be called. Overruled. Put in and marked Joseph L.3.

This is the first time I am seeing this. I do not recognise the person shown in the picture. Everything between my former wife and myself went well until about 1973. I would say until about beginning of 1973. I was on speaking terms after things began to go bad in early 1973. She was not then cooking for me.

40

Relations were strained. There was no harmony between us I gave her the money to buy shades for her birthday around 6.9.74. This was after she had stopped cooking, stopped washing and the relationship had broken down. I signed her application form for University some time in 1973 because at this stage I had still loved my wife very much. Up to that time I was giving her \$50 per month. I gave her that until she left my home. I started giving her the \$50 per month from February 1970 after I had received my first promotion. I was happy that she was going to further her studies. I was happy for both of us. I never became

50

10 unhappy even though she had left me. I stopped giving her the \$50 per month. In 1969 I took out an insurance policy. I named my then wife as beneficiary in that policy. It is about 1972 that I took the shares in Royal Bank. I do not have the certificates here. They were \$100 shares for which I paid \$500. I was doing these things because I loved my wife. During period 1967 to 1973 we enjoyed much happiness.

In the High Court of Justice Trinidad and Tobago

No.14
Evidence of Joseph Lynch
21st August 1978

Q. At no time did I anticipate that there would be a split between us?

(continued)

20 Objection: Question is pure speculation. Between 1967 and 1973 I never anticipated that there would be a break in the marriage. During that period I was working towards her general happiness and she towards mine. My wife did not during the period contribute in the manner she says that she contributed. My wife did not contribute to the further building of the house. She did not pay Moosai \$20 per month towards purchase of materials between 1967 and 1974. As far as I know she at no time paid Moosai money towards purchase of materials for the house.

Part heard adjourned 22.8.78 - 9.30 a.m.

22nd August 1978

Resumed - 22.8.78

Appearances as before:

30 JOSEPH LYNCH Resworn states - cross-examined Howell:

40 In 1974 my house was fully furnished. I had one 3 piece living room suite, dining table and 6 chairs, dressing table, 3 beds, 1 Novak black T.V. set, 2 wrought iron porch chairs, 1 reclining chair, stereo set and records, 3 bar stools, 1 pouff, 1 portable radio, 2 chairs, one canvas oil painting. The canvas oil painting was given to me by Dominic Isaac as a gift. I have a painting of Caroni plain at my home I purchased that from him around 1971.

To Court:

The gift and the one bought were there together. There were 2 paintings.

In the High Court of Justice Trinidad and Tobago

No.14
Evidence of Joseph Lynch
22nd August 1978

(continued)

Continuing :

I bought the first 3 items cash from Farah on 25.2.67. Added to those items is a teak buffet which I subsequently gave to the respondent's mother. In 1967 I paid \$2,380 cash from my savings as I had worked for 8 years. My wife did not pay the greater part of the money towards construction of the garage. My wife did not pay for the construction of any drain around the garage. My wife did not burglar-proof the front or master bedroom of the house out of her own money. She did not burglar proof it at all. She did not contribute to repairs such as changing of doors. The house has celotex inside. I did buy a Mazda car. The instalments for this car was deducted from my salary. The Petitioner did not pay food bills for the home. 10

To Court:

20

On 30/1/70 I started getting a commuted allowance for extra hours. I still get that whenever I am not on leave. It has been increased.

Continuing :

Before this I had 2 other cars. We never had an arrangement for food bills to be paid by her. I do not have the Mazda car now. I sold it on 23/1/76. I got \$3,400 for it. I sold it to Eugene Stewart. I signed a transfer form. This car was not sold for more than \$3,400 I did not sell it for \$5,000. I took a further loan of \$3,000 from National Housing Authority in 1971. My payment to National Housing Authority went up then from \$54 to \$89.09. The Petitioner bought me one or 2 shirts as gifts. I would not say my wife assisted me in nothing. I would say she was a very good wife to me until 1973. With her salary she bought things like bed, sewing machine. She was spending her money to pass Civil Service Exam paying Mr. Richardson connected with Holder's School. She went on to take British Constitution from same person. She told me she had been assisting her mother. I had no idea of her salary. I filed joint income tax returns. She would have known my salary from TDI slip. I never knew hers because she would pass the forms to her and she would make up the papers. I had to sign my income tax return, 50

most of the time I never read it. I had a lot of confidence in her. Her salary did not mean any big thing to me. Up to May or June 1974 I gave her \$50 per month towards her studies. I volunteered this money. She did not ask me for it. I figured it was for the betterment of both of us. I don't know if it is a fact that she got a degree in law. From 1973-1974 I had not maintained her.

10

To Court:

There was no legal barrier to my putting the car in my wife's name. I put 3 cars in her name and this because of my love for her. I got my driving permit in 1970. Land in that area - a piece equivalent to mine would be \$30,000 to \$35,000. If I had to sell the house now I would sell for about \$60,000.

Continuing cross-examined

20

My salary now is \$1,431 per month. My house allowance is \$75, I get a meal allowance of \$30, plain clothes allowance \$20 per month, detective allowance \$10 and when I am not on leave I get a commuted allowance of \$245 per month. The commuted allowance is in place of overtime. I remarried on 12/12/67. (sic)

Further cross-examined:

The first car was worth \$1,800 second \$2,400 and the third \$6,314.

30

Re-examined King:

40

The car I sold for \$3,400 - I put that money back to Credit Union. I got a further loan to buy another 2nd hand car. The PM 3120 was a '72 model. When marriage broke up in May 1973, the balance on the mortgage was, I don't know. It was mortgaged for \$10,500. In 1971 it was valued for \$10,000. It is now insured for \$19,500. It was valued by National Housing Authority around March, 1971. Since 1973, there has been a steep increase in properties. I now work with Security Branch. As a result I have certain allowances. If I were a member of regular stream I would not get a detective allowance commuted allowance also plain clothes allowance. In the Service I am subject to transfer.

In the High Court of Justice Trinidad and Tobago

No.14
Evidence of Joseph Lynch
22nd August 1978

(continued)

In the High
Court of
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No.14
Evidence of
Joseph Lynch
22nd August
1978

(continued)

No.15
Submissions
of Mr.King
22nd August
1978

To Court:

I don't know what overtime other
policemen get.

To Court:

If I said premises in picture were my
mother in law's and later said they were mine.
There is no explanation I would like to offer.

No.15

SUBMISSIONS OF MR.KING

King: This is an unusual case. It is not 10
the ordinary run of the mill case where
wife is applying for ancillary relief from
husband because she is dependent on him
for sustenance. Under the Matrimonial
Proceedings and Property Act wife and husband
are on the same footing. Under present law
it is conceivable husband could apply for
maintenance. That presupposes that grant of
ancillary relief to wife is not given as 20
matter of course. Court must look into all
circumstances and see whether husband should
be made to pay any money not as a form of
punishment. One cannot escape fact here you
have an application by a wife whose position
after break down has increased a hundredfold.
One cannot say what future is in store for
a young attractive woman of 32 on a threshold
of a career. Court must decide to put wife
into a position to which she has been 30
accustomed before breakdown. This is reason
for 1/3 rule. There is no evidence that the
wife has since breakdown been in worse
position than she was during the course of
the marriage. She has an L.L.B. degree.
Position of respondent husband he is still
a policeman S.27(1) Matrimonial Proceeding
and Property Act. No children of the family
s.26 would be important section 1/3 rule
applicable to a long marriage not a short one.

Wachtel v. Wachtel /1973/ All E.R. at p.831 40
at p.840 D.S.271 applies to s.26 husband could

not be expected to support a wife who is going to further education. She is single person. There need not be provision of a home no children of the family.

In the High Court of Justice Trinidad and Tobago

10 Respondent has remarried is expecting a family. Obligation to provide a home for his wife and family. He has to pay mortgage, taxes and other outgoing expenses 4th Edn., of Halsbury. In the future he is likely to have children. In future her responsibilities can be passed on to her husband.
(c) Standard of living enjoyed by family before breakdown.
(d) Age and duration.

No.15 Submissions of Mr. King 22nd August 1978

(continued)

Health of husband.

20 Assuming but not admitted that she had contributed half towards purchase of land and house, having regard to circumstances. Court would still have had to leave matrimonial home completely to husband, because she left. Station of life of respondent husband. At inception he was able to provide a roof. If Court is satisfied she has made a contribution at all, question whether lump sum should be granted.

She left and went away without telling husband anything.

30 Proprietary interest is nil. Even if everything she says in affidavit is correct these infinitesimal claim are not sufficient. Conflict re drains.

She only asked for plastic cups etc. did not write asking through solicitor for house. S.27 and so to exercise powers. Financial position in which they would have been if marriage had not broken-down. West v Wes /1977/ 2 All E.R. 705 at a guess did not mean in a normal sense. Campbell v. Campbell /1977/ 1 All E.R.1. If Court is inclined to award anything value of property must be valued at time marriage broke down windfall to husband after applicant left must not accrue to her. Escalation in costs which has started in past 2 or 3 years.

Court asked to take into account all circumstances of case.

Submits application misconceived.

SUBMISSION OF MR. HOWELL

No.16
Submission of
Mr. Howell
22nd August
1978

Howell 3 applications - first under s.24.
Lump sum being asked for is separate and
apart from lump sum with regard to property
settlement.
Bromley's family Law 4th Edn. p.433. Had to
borrow \$10,000. Financially short. Refers to
s.27.

If husband was willing to assist wife with 10
money for studies she was entitled to during
separation to some sort of maintenance,
Christamon v. Christamon /1973/ 2 All E.R.247.
Property application husband bought land
instalments did not begin until month before
marriage in 1967 (See husband's affidavit
Para.5). Look at house as a house bought at
time of marriage. Look at first \$54 paid
before marriage to infer that this contribution
did not take place. 20

Howell invites Court to infer from circum-
stances of case that neither husband nor wife
visualised that the marriage would have come
to an end after 6 1/2 to 7 years and that from
the start they both were working as a team
towards the paying off of the matrimonial
home - Refers to affidavit of applicant at Para.
5 by paying food bills by buying petitioner's
clothes by assisting in construction of garage
by paying for the furniture and fixtures to 30
the house and for construction of the drain.

One can infer contribution because had the
applicant not done these the Petitioner's
salary would not be free to be paid against the
instalment of the house. Wife was looking
after household things, burden of looking
after the house left on the husband. It
would appear from the evidence that husband
well knew wife was subscribing towards general
well being of the marriage itself. He knew 40
that wife's money was well taken care of. This
is why when she began pursuing her studies he
was giving her \$50 per month. Court should
infer he did this because he knew money being
used towards purchase of the house. Money
spent towards well being of marriage and
this was reflected in evidence of husband.
Husband placed 3 cars in name of wife because
of his love for her. This placed 3 cars in
name of wife because of his love for her. 50

This would be taken into account for lump sum.
These were advancements made. Wife has suffi-
ciently contributed towards payment to be
entitled to a share in matrimonial home. Worth

\$90,000 not challenged. Interest in house should be measure of at least 1/2 minus the value of the land. Agreement was implied. Says applicant gave evidence of such agreement. She would not be entitled to pension which she would otherwise have got.

In the High Court of Justice Trinidad and Tobago

King objects - there is no evidence of this. This is only in case of 5 years separation.

No.16
Submission of Mr. Howell
22nd August 1978

10

Howell: Earning capacity is of permanence - financial needs. Former husband has exclusive use of matrimonial home. Wife has made major contribution to welfare of family by giving petitioner such emotional stability during marriage. Evidence that he was able to put cars in her name and name her as beneficiary and purchase of shares.

(continued)

20

Asks Court to make order for 1/2 matrimonial home minus value of the land.

Backhouse v. Backhouse /1978/ 1 All E.R. 1158 at p.1168 F.

Adjourned to 9.10.78

No. 17

No.17
9th October 1978
Judgment

JUDGMENT

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
(MATRIMONIAL)

BETWEEN

30

JOSEPH CHRISTOPHER LYNCH Petitioner

AND

JOYCE LYNCH Respondent

Before the Honourable Mr. Justice
Alcalde Warner

N. King for Petitioner
Mr. Howell for Respondent

J U D G M E N T

By answer and Cross-Petition the Respondent

In the High
Court of
Justice
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Tobago

No.17
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(continued)

applied for such an order for a lump sum and/or periodical payment for her maintenance by the Petitioner as the Court sees just, such order for securing the said periodical payment as to the Court seems just and an order for settlement of property and /or transfer of property by the Petitioner to Respondent.

Both the Petition for Divorce and Cross-Petition have been granted and the Respondent has now proceeded with her application for ancillary relief. 10

The parties were married on 3rd June, 1967, and on 21st June, 1976 the decree nisi was granted. There are no children of the family. The Petitioner is a Sergeant of Police earning salary \$1,431 per month, house allowance \$75, meal allowance \$30, plain clothes allowance \$20, detective allowance \$10 and a commuted allowance of \$245 per month, while the Respondent is a law student. 20
She has obtained the degree of Bachelor of Laws of the University of the West Indies and must by now have left for Scotland where she is to pursue a diploma course in Petroleum Law. It should have been pointed out that the degree of Bachelor of Laws will not entitle her to practise law as a barrister or solicitor, but merely entitles her to proceed to a two year course with the Council of Legal Education which can end in this qualification. She had from time to time 30
been granted leave from the Civil service to pursue her course, but holds the substantive office of Clerk II in the Civil service with salary at a range from \$811-1107 per month. For each academic year since October 1976 she has been receiving no salary but during the vacation months she is at work in one Government Department or another and receives emoluments sometimes at a higher rate than 40
her substantive salary.

From the answers of the Respondent in cross-examination she appears to be saying that were it not for her drawing no emoluments during her period of study, she would now be in a better position financially than when she and the Petitioner lived together. This is because of the substantial contribution which she claims to have been making to household expenses. The Respondent is saying that the Petitioner is the one who has benefited from

her contribution to the family over the years, and in effect she is asking the Court to use this contribution as the basis for ancillary relief. The case for the Petitioner is in general a denial that the wife made substantial contribution. The Respondent's history of her contributions is summarised in her affidavit of 18th July, 1977. Firstly she claims that of the sum of approximately \$2,000 due by the Petitioner to Moosai's Hardware, Tunapuna, for materials supplied in connection with the building of the matrimonial home she repaid the greater part by monthly instalments. Further she alleges that she paid the monthly instalments of \$48.00 by which the Petitioner was repaying a loan granted by the Cocorite St. James Credit Union in connection with a downpayment on furniture, furnishings and fixtures. It is also claimed by the Respondent that she paid most of the \$1,000 which was the cost of adding a garage to the house around 1969. In addition, the Respondent says that she spent money on the construction of a drain and on burglar-proofing in bedrooms. In her evidence she stated that the money spent by her was for burglar-proofing one bedroom.

30 A new Mazda motor car; the Respondent says, was purchased by the Petitioner in 1972 and this, it is claimed, resulted in the Respondent having to assume responsibility for food bills as well as for monthly petrol bills for the motor car.

40 It is also claimed by the Respondent that the obtaining of a new loan from the National Housing Authority for \$2,500 used for adding a bedroom to the matrimonial home resulted in the Respondent having to buy clothing for the Petitioner. In answer to this the Petitioner's case is that well before the marriage he had paid off Moosai's Hardware from the proceeds of a National Housing Authority loan and that he had taken no money from the Respondent for the purpose of payment to Moosai's Hardware.

50 The Petitioner denied having borrowed from the Cocorite St. James Credit Union for the purpose of furnishing his home. It is claimed by the Petitioner that he obtained a loan from the Royal Bank for the burglar-proofing of all the bedrooms and kitchen windows.

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9th October
1978
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(continued)

It turns out that when the Respondent was cross-examined she made it clear that she was saying that only one bedroom was burglar-proofed while she reside with the Petitioner. This was the master bedroom in which she sometimes sleep alone, when the husband was out on night duty. The case for the Petitioner on this aspect of the matter was that it was after the couple separated that he, considering it unsafe to remain alone in the house, had all the bedrooms burglar-proofed. 10

The construction of drains in the curtilage of the home in 1969 has been denied by the Petitioner. On the whole the Petitioner seeks to make out that the Respondent was make no contribution, but that instead he was making a payment to her of \$50 monthly towards her advanced studies. The instalments for repayment of loans from National Housing Authority were, he claims, met by him from a housing allowance received, while car instalments were paid out of a commuted over-time allowance. On the other hand, the Respondent points to specific periods when she received an acting allowance the whole of which was turned over to the Respondent every month for some purpose connected either with expenditure on repairs of or improvement to the house or in connection with the motor car. 20
The Respondent was cross-examined at length for some three days at least. Two seeming inconsistencies turned up in the cross-examination of the Respondent. One related to the sum spent on the garage as she at first said that it was \$80.00 per month for 4 to 5 months and later \$92 per month for 6 months. She explained this by stating that the second answer was given after she had had an opportunity to consult the records of the Parliament Office. The other related to the drain on the left side of the house. At one stage the respondent appeared to be saying that there was a drain on the left side of the house and it had to be concreted. Later she was saying that the drain on the left side was covered by the garage and a new drain altogether had to be dug. This is hardly a patent inconsistency and could have been the result of faulty memory. Assuming it to be an inconsistency I do not regard it as the result of deliberate falsehood. 30
There were also some instances in which the year of an event appeared to be wrongly stated by her. 40 50

Some point was sought to be made with regard to the difference between her evidence with regard to the garage and time of construction and the fact that the plan approved in 1971 did not show the existence of a garage.

In the High Court of Justice Trinidad and Tobago

10 The Petitioner himself was cross-examined. He admitted that he had acquired a car in 1969, in which year the respondent says the garage was built. He stated too that he erected a garage in 1970. This would have been before the year 1971 when he states he borrowed money in order to effect additions and build a garage. There was also cross-examination of the Petitioner with regard to several photographs shown him. He was shown a photograph. At first he said it was a photograph of his house. Very quickly he changed his word and said that it was a photograph of the house of his mother-in-law. He identified a car shown in the picture as his own, a dog shown in the picture as his and noted a resemblance between the blocks enclosing the gallery, the pathway, the garage, the gate all shown in the picture and those in the corresponding parts of his house. He went further and said that the reason why he would not say for certain that the building shown in the picture was his house was that he did not know when the picture was taken. He noted that only one window out of three shown in the picture was burglar-proofed. Without making a finding that the building shown in the picture was at the matrimonial home, I must comment that in the light of the petitioner's quick change of answer regarding the identity of the building shown in the picture and his other answers on the subject of the picture this aspect of the matter appeared to invite at least a question mark.

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(continued)

50 In answer to the allegation of the respondent that she paid the food bills, the Petitioner was saying that he obtained food from the Police canteen and paid for this by way of salary deduction. The Respondent countered by stating that the Petitioner was limited to taking \$90 credit per month in goods from the canteen and that only part of the foodstuffs used in the house came from the canteen. The Petitioner also admitted that there were certain items of food e.g. fresh fruit which were not in those days obtainable from the canteen.

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(continued)

There are two other aspects of the Petitioner's evidence on which I will make observations. One of these is the fact that the cars he purchased while they lived together were put in the wife's name. The other is that the Petitioner claims that he used to give his wife some \$50 per month for use in connection with her studies. She had been studying for A Levels and had to pay for coaching. With regard to his putting the cars in her name, at one stage he offered the explanation that it was done in relation to the first car as he did not have a driving permit. He agreed that this was not the case with the two cars subsequently acquired. I consider this action of his as lending support to the wife's claim that her contribution had to be increased to enable him to meet the instalments for car purchase. With regard to the monthly payment of \$50 while I do not reject the Petitioner's statement completely so as to find that money was never given by him to the respondent in connection with her educational expenses, I am not satisfied that this sum was regularly paid over any substantial period.

I proceed to state my findings on the various aspects of the Respondent's claim to have made contribution. Let me say that I found the Respondent's testimony as a whole more reliable than that of the Petitioner. I find as a fact that the Respondent in or about 1969 made a contribution of \$92 per month for 6 months in connection with a garage which the Petitioner erected.

I also find as a fact that the Respondent spent further sums on the construction of a drain in the curtilage of the home and in burglar-proofing the master bedroom of the house. I am satisfied also that she contributed to minor repairs in the home including the changing of doors and celotex.

I find also that as a result of the addition of a new bedroom to the house in or about 1971 and the purchase of cars in connection with which the Petitioner had to repay loans by instalment, the Respondent was required to expend her money on food for use of the family and on household goods. On the other hand I have been asked to take into account the health of the Petitioner who, it has been disclosed, suffers from yaws.

On the other hand I have been asked to take into account in favour of the Respondent the value to her of a pension under the Widows' and Orphans' Pensions Ordinance which by reasons of the dissolution she has lost the chance of acquiring. There is evidence, that the Petitioner is a contributor to Widows' and Orphans' Pensions Scheme.

In the High Court of Justice Trinidad and Tobago

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Judgment

10

Both of these are matters falling to be considered under s.27 of the Matrimonial Proceedings and Property Act, but the evidence does not show how serious the condition of the Petitioner is at present

(continued)

20

As I have stated earlier, I have found that the Respondent did make a financial contribution, to the welfare of the family. Not only did she make a financial contribution, she worked in the home cooking meals for the family.

30

As I see it, the circumstances warrant the making of an order in favour of the Respondent. I do not consider an order for periodical payments as befitting the facts of the case. The question is whether I should make an order for a lump sum payment together with an order for transfer of property or whether I should make only one of the orders. I consider it appropriate to the case to make one only of the orders and the order I regard as best in the circumstances is one for lump sum payment. I have taken all the criteria under s.27 of the Act into account including the remarriage of the Petitioner. An order for payment of a lump sum of \$3,800 by the Petitioner to the respondent in my judgment, meets the justice of the case. I so order.

40

Let me say that the increased value of the house between 1974 and the present time has not been taken into account.

Order of payment of lump sum by instalments, \$1,800 on or before 31st November, 1978 and \$2,000 on or before 30th June, 1979.

Dated this 9th day of October, 1978.

.....

Alcalde Warner
Judge

In the High
Court of
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No.17
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Judgment

(continued)

Note:

On 10th October, 1978 after hearing Counsel for Petitioner and solicitor for respondent the Court ordered the Petitioner to pay to the Respondent \$800 costs of the application for ancillary relief.

In the Court
of Appeal
Trinidad and
Tobago

No.18
Amended Notice
of Appeal
5th February
1980

No. 18

AMENDED NOTICE OF
APPEAL

TRINIDAD AND TOBAGO

10

AMENDED NOTICE OF APPEAL

IN THE COURT OF APPEAL

Civil Appeal No.10 of 1980

BETWEEN

JOYCE LYNCH

Respondent/
Appellant

AND

JOSEPH CHRISTOPHER
LYNCH

Petitioner/
Respondent

TAKE NOTICE that the Respondent/Appellant 20
being dissatisfied with the part of the
decision more particularly stated in paragraph
2 thereof of the High Court of Justice
contained in the Order of the Honourable
Mr. Justice Warner dated the 10th day of
October, 1978 doth hereby appeal to the Court
of Appeal upon the grounds set out in
paragraph 3 and will at the hearing of the
Appeal seek the relief set out in paragraph 4.

1. And the Appellant further states that 30
the names and address including her own of

the persons directly affected by the Appeal are those set out in paragraph 5.

In the Court
of Appeal
Trinidad and
Tobago

2. That the Petitioner do pay the Respondent the lump sum of \$3,800.00 by instalments as follows :-

No.18
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5th February
1980

The first payment of \$1,800.00 to be made on or before the 1st day of November 1978.

10 The second payment of \$2,000.00 to be made on or before the 30th day of June 1979.

(continued)

3. Grounds of Appeal

(1) That the decision of the Learned Judge was against the Weight of evidence.

20 (2) The Learned Judge failed or omitted to decide upon the rights of the appellant in accordance with the provisions of Section 24, 26 and 27 of the Matrimonial Proceedings and Property Ordinance and in particular failed to exercise the power of the Court to place the Appellant in the financial position in which she would have if the marriage had not broken down.

(3) The Appellant was in the circumstances established by the evidence entitled to relief immediately after the breakdown of the marriage and the Learned Judge ought to have made orders for periodical payments and/or a lump sum and for a transfer of an interest in the matrimonial home sufficient to protect her rights.

30 (4) The award of a lump sum payment of \$3,800.00 was wholly inadequate to meet the entitlement of the appellant in the circumstances disclosed by the evidence and in particular it failed to take into account the need of the Appellant for a roof over her head and her maintenance needs while endeavouring to qualify for entry into the Legal profession.

The relief sought is :-

40 4. (1) Such order for a lump sum and/or periodical payments for her maintenance by the Petitioner as the Court seems just.

(2) Such order for securing the said periodical payments as the Court seems just.

(3) An order for settlement of property and/or transfer of property by the Petitioner to the Respondent.

In the Court
of Appeal
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5. The persons directly affected by the
Appeal.

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(continued)

<u>NAME</u>	<u>ADDRESS</u>	
JOSEPH LYNCH	29, Crescent Gardens, Mausica Road D'Abadie TRINIDAD	
JOYCE LYNCH	Santa Cruz Old Road Junction Lower Santa Cruz TRINIDAD	10

Dated this 5th day of February, 1980

.....

D. de Peiza & Co.
17 Rust Street
St. Clair
Port of Spain
Solicitors for the Appellant

TO: The Registrar
Court of Appeal
Trinidad House
PORT OF SPAIN 20

TO: N.B. Sowley & Company
16 St.Vincent Street
Port of Spain
Solicitor for the Respondent

No. 19
ORDER OF THE COURT
OF APPEAL

In the Court
of Appeal
Trinidad and
Tobago

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. 10 of 1980
High Court No. 394 of 1975

No.19
Order of the
Court of
Appeal
11th December
1981

Between

10 JOYCE LYNCH Respondent/
Appellant

And

JOSEPH CHRISTOPHER Petitioner/
LYNCH Respondent

Entered the 11th day of December, 1981
Dated the 11th day of December, 1981

20 Before the Honourables: Sir Isaac Hyatali,
Chief Justice
Mr. Justice P.L.U.Cross
J.A.
Mr. Justice J.Braithwaite
J.A.

UPON READING the Notice of Appeal filed
herein on behalf of the above-named Respondent/
Appellant dated the 5th day of February, 1980,
and the Judgment hereinafter mentioned.

UPON READING the record filed herein

UPON HEARING Counsel for the Respondent/
Appellant and Counsel for the Petitioner/Respondent

IT IS ORDERED

- 30 (i) that this Appeal be and the same is hereby
allowed;
- (ii) that the Judgment of the Honourable Mr.
Justice A.Warner dated the 10th day of
October, 1978, be varied from a lump sum
of \$3,800.00 to a lump sum of \$20,000.00
to be paid on or before the 31st day of
March, 1982, by the Petitioner/Respondent
to the Respondent/Appellant;

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(iii) that the costs of this Appeal be
taxed and paid by the Petitioner/
Respondent to the Respondent/Appellant.

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Order of the
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Sgd. Asst. Registrar.

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Judgment of
the Court
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11th December
1981

No. 20

JUDGMENT OF THE
COURT OF APPEAL

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Between

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JOYCE LYNCH

Respondent/
Appellant

And

JOSEPH CHRISTOPHER
LYNCH

Petitioner/
Respondent

Coram: Sir Isaac Hyatali, C.J.
P.L.U. Cross, J.A.
J. Braithwaite, J.A.

Dr. F. Ramsahoye, S.C. - for the Appellant
N. King, S.C. - for the Respondent 20

J U D G M E N T

Delivered by Cross, J.A.

This is an appeal by Joyce Lynch the former
wife of Joseph Christopher Lynch to whom for

reasons of convenience I shall refer as "the wife" and "the husband" respectively, from an order made on 9th October, 1978 by Warner J. under which he ordered the husband to make her a lump sum payment of \$3,800.00 on her application for ancillary relief heard after the dissolution of the marriage. The parties were married on 3rd June, 1967 and were separated in September 1974. Both the husband's petition and the wife's cross-petition for divorce were granted and the marriage was dissolved on 2nd September, 1976.

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The grounds of appeal may be briefly stated thus :-

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- (a) The judge did not decide the rights of the wife in accordance with the provisions of the Matrimonial Proceedings and Property Act.
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- (b) The judge ought to have ordered periodical payments as well as a lump sum payment.
- (c) The judge ought to have made an order for the transfer to the wife of an interest in the matrimonial home.
- (d) The lump sum awarded was wholly inadequate in the circumstances disclosed by the evidence.

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This appeal is of particular importance since it is the first occasion so far as I am aware, on which this Court has been asked to review a judgment granting ancillary relief pursuant to the discretionary powers conferred by section 24 and 26 of the Matrimonial Proceedings and Property Act ("the Act") (Chapter 45:51 of the Revised Edition of the Laws of the Republic of Trinidad and Tobago): consequently, it

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provides this tribunal with the opportunity to set out the principles which should be applied and to indicate the manner in which consideration of the circumstances detailed in section 27 of the Act should generally be approached. The weight of the evidence bearing on each of these circumstances would usually tip the scales in favour of one party or the other and it is the duty, I may say the difficult duty, of the trial judge to balance the scales so that in the

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end he arrives at a decision which achieves broad justice between the parties. No two cases of this nature are alike; each must be determined according to its peculiar facts. It would be inappropriate therefore to regard decisions of this Court which do not enunciate or apply principles of law in these matters as precedents to be followed: they should more properly be seen as guides in the search for a just solution to the financial problems which almost invariably arise on the breakdown of a marriage.

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Before examining in detail the circumstances of the case in their relevance to the application of the provisions of section 27 of the Act it might be useful to survey briefly the history of the marriage.

The parties were married in June 1967 soon after the husband, a Police Corporal had purchased, from his own funds, a plot of land on which he had erected a house with the assistance of a mortgage from the National Housing Authority. This house became the matrimonial home. During the marriage and before the parties separated in September 1974 certain alterations and additions were made to the house to which the wife contributed financially. Immediately after the separation the wife entered the University of the West Indies at Cave Hill where she graduated in 1978 with the degree of Bachelor of Laws. She subsequently completed a diploma course in Petroleum Law at Dundee and is now studying for her professional Law exams at the Sir Hugh Wooding School of Law. She expects to complete her studies next year. There are no children of the marriage and the husband has since remarried and lives with his new wife in the matrimonial home.

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I shall now proceed to consider the matters to which a Court must have regard. They are all the circumstances of the case including all the matters set out in paragraphs (a) to (h) of Section 27 (1).

Paragraph (a) refers to the income, earning capacity, property and other financial resources which each of the parties has, or is likely to have in the foreseeable future. At the hearing the judge found the husband's total emoluments to be

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approximately \$1,700 per month. He is a police corporal a few years older than his wife who is now in her middle thirties. She is substantively a clerk in the Civil Service on no-pay leave while a student, although she obtains vacation employment at a salary rather more than her notional substantive salary which is about \$1,200.00 per month. Even with normal promotion prospects it is highly unlikely that the husband's future earnings will ever approach those of the wife whose legal qualifications together with her special training in Petroleum Law virtually assure her of a successful and prosperous career. Apart from a motor car and a few shares jointly owned with the wife, the husband's property consists solely of the house which he occupies with his present wife. He values it at \$60,000.00 while the wife claims that it is worth \$90,000.00. The real value probably lies somewhere between the two figures. In any case the amount of the mortgage is \$10,500.00. The wife owns no property.

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Paragraph (b) reads :-

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

The husband has remarried. He has a wife to maintain and in the normal course of events would expect to raise a family. He has a home and the responsibility of meeting the mortgage payments. The wife now lives with her mother but will obviously need her own establishment in the very near future when she embarks on her professional career. She has incurred certain debts in pursuing her studies which she will no doubt have to repay. She puts these at \$10,000. At present she has little income and will not, for perhaps a few years, have the capital for meeting these needs and fulfilling her obligations.

Paragraph (c), (d) and (e) refer to the standard of living of the parties, their respective ages and any physical or mental disability of either of them. However, the standard of living enjoyed by the family before the breakdown of the marriage is of little

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significance in the circumstances and the age of the parties does not affect the matter either way. Barring accidents, each can look forward to many years of a happy and productive life. The marriage lasted for seven years, a period which cannot be regarded as being either long or short, although the breakdown came at a stage which in popular mythology is particularly susceptible to the tensions of married life.

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Apart from a brief reference by the wife that the husband at one time suffered from yaws there is no evidence that the health of the parties is of any relevance.

I now turn to paragraph (f) which reads as follows :-

"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."

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It is under this heading that I think the trial judge underestimated the contribution made by the wife. The husband came to the marriage as owner of a house built on his own land. During the marriage the wife was in paid employment and the learned judge found that she had contributed a sum of about \$600.00 towards the construction of a garage attached to the house, spent further sums laying down a drain, burglar-proofing the master bedroom and in making minor repairs. The expenditure of these sums would naturally have had the effect of adding to the value of the matrimonial home. In addition, the wife was held to have contributed to the welfare of the family by looking after the home.

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Paragraph (h) requires the Court to put into the scales the value of any benefit (for example, a pension) which, by reason of the dissolution of the marriage either party will lose the chance of acquiring. The wife has lost the chance of a pension under the Widow and Orphans' Pensions Ordinance but no evidence was given of its value.

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Finally, the Court is enjoined so to exercise the powers conferred 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.

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10 The learned judge awarded a lump sum of \$3,800. It is difficult to understand how he arrived at this figure in the absence of any indication of the weight he attached to any of the several factors itemised in Section 27(1). He seems to have concentrated his attention on paragraph (f); even here, while finding the wife's testimony more reliable than that of the husband he apparently discounted her evidence that from 1971 to 1974 she contributed between \$150 and \$200 per month to the purchase of food for the household - a sum rather more than the amount awarded.

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How then should the question of appropriate financial provision for the wife be approached? Counsel for the husband has not suggested that the wife is entitled to nothing. The real issues therefore are what form should the wife's entitlement take and at what figure should it be assessed? Under the powers conferred by section 24 and 26 the Court may make an order for periodical payments, a lump sum and a transfer of property; specifically by section 24(2) an order may be made for the purpose of enabling the wife to meet any expenses reasonably incurred by her in maintaining herself.

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Taking a broad view of the circumstances of this case I think the learned trial judge was right in not ordering a transfer of property. The matrimonial home was acquired by the husband before the marriage. The wife left and the husband now occupies the house with his second wife.

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In Wachtel vs Wachtel (1973) 1 All E.R. 329 - The matrimonial house was purchased by the husband in his name two years after the marriage. He paid the mortgage instalments but his wife had contributed to the matrimonial home by looking after the home and helping her husband, a dentist, as his receptionist and doing clerical work. On the breakdown of the marriage after 18 years, the wife left the matrimonial home while the husband continued to live there - In

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his judgment Lord Denning M.R. said at
p.840 :-

"The question of a lump sum needs special consideration in relation to the matrimonial home. The house is in most cases the principal capital asset. Sometimes the only asset.... On the breakdown of the marriage arrangements should be made whereby it is vested in him absolutely, free of any share in the wife, and he alone is liable for the mortgage instalments. But the wife should be compensated for the loss of her share by being awarded a lump sum. It should be a sum sufficient to enable her to get settled in a place of her own, such as by putting down a deposit on a flat or house. It should not however, be an excessive sum. It should be such as the husband can raise by a further mortgage on the house without crippling him."

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With respect, I think Lord Denning's approach was as usual eminently sensible and his guidance was followed by Balcombe J. in Backhouse vs Backhouse (1978) 1 All E.R. 1158. Lord Denning himself had re-inforced his views in Kowalczyk vs Kowalczyk (1973) 2 All E.R. 1042 where a husband had bought a house two years before his marriage. The couple lived in the house after the marriage. Eleven years later the wife left the matrimonial home. The husband remained in the house continuing to pay the mortgage instalments. The Registrar held that the wife was entitled to one-quarter share in the property on the basis that she had occasionally made payments on the mortgage, on electricity bills and had purchased some of the food for the household. On appeal Lord Denning said (at p.1045) :-

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".....I would remit the case to the Registrar so that he can decide what share it is just to award to the wife, having regard to any contributions by her, in money or money's worth, to the improvement of the property.....in this case.....the registrar might well order that, instead of the house being sold, her share may be extinguished and the husband should pay her a lump sum in place of it... .."

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10 In the instant case it seems to me that the justice of the case will be met by ordering the payment of a lump sum to enable the wife to make a deposit on a suitable home of her own so that she would be placed in the position in which she would have been if the marriage had not broken down. In view of the wife's probable earnings in the near future, the fact that there is no child of the marriage and the husband's present situation and future prospects, I think an order for periodical payments would be inappropriate and unjust.

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1981

(continued)

20 What sum should the husband be ordered to pay? The wife has contributed to the extension of the property and to repairs. She has worked during the whole of their life together and after the purchase of a car in 1971 carried the burden of feeding the household for 3 years. She has had to house and maintain herself since the breakdown of the marriage. An award of what amounts to just about two months of the husband's salary is, in my opinion, clearly inadequate. I would order the husband to pay the wife a lump sum of \$20,000.00 on or before 31st March, 1982. Taking into account his salary at the time of the trial - it is probably much higher now - and the value of his property he should have 30 no difficulty in raising a second mortgage.

The husband is to pay the wife's taxed costs of this appeal.

P.L.U. CROSS,
Justice of Appeal.

Braithwaite J.A. /s/ JOHN A. BRAITHWAITE J.A.

I AGREE

HAYATALI C.J., I ALSO AGREE /s/ ISAAC HAYATALI
CHIEF JUSTICE

In the Court
of Appeal
Trinidad and
Tobago

No. 21

ORDER GRANTING
CONDITIONAL LEAVE
TO APPEAL TO JUDICIAL
COMMITTEE OF THE PRIVY
COUNCIL

No.21
Order granting
conditional
leave to
appeal to
Judicial
Committee of
the Privy
Council
18th January
1982

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL
Civil Appeal No.10 of 1980

BETWEEN

JOYCE LYNCH

Applicant/
Appellant

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And

JOSEPH CHRISTOPHER
LYNCH

Respondent/
Respondent

Dated the 18th day of January, 1982
Entered the day of 1982

Before the Honourables Kelsick J.A.,
Hassanali, J.A.,
Cross, J.A.

UPON the Notice of Motion of the above-
named Applicant/Appellant dated the 29th day
of December, 1981 for leave to appeal to
the Judicial Committee against the judgment
of the Court comprising the Honourable Sir
Justice Isaac Hyatali the Honourable Mr.
Justice P.L.U. Cross and the Honourable Mr.
John Braithwaite Justices of Appeal delivered
herein on the 11th day of December, 1981.

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AND UPON READING the said Notice and
the affidavit in support thereof sworn to by
Dave de Peiza on the 29th day of December,
1981 and filed herein.

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AND UPON HEARING Counsel for the
Applicant/Appellant and Counsel for the
Respondent.

THE COURT DOTH ORDER that subject to
the performance by the said Applicant/Appellant
of the conditions hereinafter mentioned and
subject to the final Order of this Court
upon the compliance with such conditions

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leave to appeal to the Judicial Committee against the said judgment of the Court of Appeal be and the same is hereby granted to the Applicant/Appellant in pursuance of Section 109 subsection 1 (a) of the Trinidad and Tobago Constitution.

In the Court
of Appeal
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Tobago

AND THIS COURT DOTH FURTHER ORDER
that :-

No.21
Order granting
conditional
leave to
appeal to
Judicial
Committee of
the Privy
Council
18th January
1982

- 10 1. The Applicant/Appellant do within ninety (90) days from the date hereof enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of Five Hundred Pounds (£500.00) for the due prosecution of the said Appeal.
- 20 2. All costs of and occasioned by the said Appeal shall abide the event of the said Appeal through the Judicial Committee if the said Appeal shall be allowed or dismissed or shall abide the result of the said Appeal in case the said Appeal shall stand dismissed for want of prosecution.
- 30 3. The Applicant/Appellant do within three (3) months from the date of this Order take out all appointments that may be necessary for setting the record in such Appeal to enable the Registrar of this Court to certify that the said record has been settled and that the provision of this Order on the part of the Applicant/Appellant has been complied with.
- 40 4. The Applicant/Appellant be at liberty to apply at any time within four (4) months from the date of this Order for final leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of this of due compliance on her part with the conditions of this Order.
5. The costs of and incidental to this application be the costs in the cause.

(continued)

LIBERTY TO APPLY.

BY THE COURT
Sgd. Asst. Registrar

In the Court
of Appeal
Trinidad and
Tobago

No. 22

ORDER GRANTING FINAL LEAVE
TO APPEAL TO JUDICIAL
COMMITTEE OF THE PRIVY
COUNCIL

No.22
Order granting
final leave
to Appeal to
Judicial
Committee of
the Privy
Council
19th May
1982

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

BETWEEN

JOYCE LYNCH

Applicant/
Appellant

10

AND

JOSEPH CHRISTOPHER
LYNCH

Respondent

Dated and Entered the 19th day of May, 1982

Before the Honourables Mr. Justice Kelsick
Mr. Justice Hassanali
Mr. Justice Braithwaite

UPON READING the Notice of Motion filed
herein on behalf of the above-named
Plaintiff/Respondent

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AND UPON READING the Judges notes
herein

AND UPON HEARING Counsel for the Defendant/
Appellant the Plaintiff/Respondent not appear-
ing and unrepresented

AND MATURE DELIBERATION thereupon had

IT IS ORDERED that

Final leave be and the same is hereby
granted to the Applicant/Appellant to appeal
to the Judicial Committee to the Privy
Council against the judgment and order of
the Court of Appeal herein dated 1st December,
1981.

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The costs of this application be costs
in the cause.

Sgd. Registrar

No. 13 of 1983

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND
TOBAGO

B E T W E E N :

JOYCE LYNCH

Appellant
(Respondent)

- and -

JOSEPH CHRISTOPHER LYNCH

Respondent
(Petitioner)

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS
20 Old Queen Street,
London SW1H 9HU

Solicitors for the
Appellant