

ROYAL COURT
(Matrimonial Causes Division)

197.

12th November, 1992.

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
and Jurats Vint and Bonn

Between:
And:

GM
LM

Cross Petitioner
Petitioner

Advocate G.R. Boxall for the Plaintiff.
Advocate R.G. Morris for the Defendant.

JUDGMENT

THE LIEUTENANT BAILIFF: These proceedings form part of the numerous issues which have arisen between Mr. and Mrs. M consequent upon the breakdown of their marriage.

Although the marriage has now ended it will be convenient to refer to them as husband and wife.

Mr. and Mrs. M were married in Jersey, in 1987. There are two children of the marriage:

- 2P born 1988;
- born 1989.

It was the husband's third and the wife's first marriage.

Matrimonial proceedings were commenced by the wife in August 1991, the petition being filed on 10th September, 1991. The petition was contested and, with the answer a cross-petition was filed alleging that the wife had committed adultery.

In addition the husband issued an Order of Justice by which he obtained injunctions, served on the wife on 12th October, 1991, preventing her from:

- "(i) remaining in or re-entering the matrimonial home in the Parish of St. Saviour or approaching within fifty yards thereof;
- (ii) harming, molesting, contacting or communicating in any way whatsoever with the Plaintiff or any of his colleagues or business associates, save for the purpose

of arranging access to the children of the marriage by prior agreement with the Plaintiff;

(iii) damaging, hiding, retaining, disposing of or in any way interfering with any belongings of the Plaintiff".

These proceedings were contested by the wife and it suffices to say that after a 32 day hearing the Court, by a majority on the 27th January, 1992, permitted the wife to return to the matrimonial home. The judgment, clearly intended to be the prelude to a longer one which has not, however, been forthcoming, *inter alia* :

(1) *granted the application and discharged the said interim injunction contained in paragraph A(i) and (ii) of the prayer of the said Order of Justice;*

(2) *re-imposed an interim injunction on the first defendant restraining her from:-*

- (i) harming or molesting the plaintiff; and*
- (ii) contacting or communicating with any of the plaintiff's colleagues or business associates in any form or manner adverse to him.*

(3) *ordered that each party should pay their own costs".*

Almost inevitably, further difficulties arose between the parties following which the wife issued an application for an interim injunction. This came before the Court, in Chambers, on 29th April, 1992, at which time the wife had removed herself and the children to the Women's Refuge. The husband made a counter application alleging in part that the wife was in contempt of the previous Order, whilst both parties wished to have the children.

It is unnecessary to go into further details as to this hearing, save to say that the Court ordered a further report from the Children's Office.

This was followed by a summons by the husband seeking staying access which came before the Court, again sitting in Chambers, on 20th May, 1992. In dealing with and refusing the summons the Court made it clear to both parties that they must understand that the *status quo* is not fixed permanently by any temporary arrangement pending a hearing.

The litigation then returned to the Court on 30th June, 1992, the report of the Children's Officer, Mrs. J. Hart, having by now been prepared. On the application of the husband he was granted a decree nisi on the grounds of the wife's adultery, which had been admitted by her. The wife's petition, alleging cruelty, was dismissed by consent in that action; and the allegations of

cruelty made by the husband were likewise withdrawn, again, insofar as concerned the divorce. The Court then endorsed an agreement reached between the parties as to the division of the matrimonial assets, the question of maintenance being left over until the end of the present proceedings.

Following a further application from the husband for increased access *pendente lite* (which was refused), advice from counsel that *licitation* proceedings were now pending (which we decided was a separate issue outside the purview of the present proceedings) and a statement from counsel for the wife to the effect that the action contemplated by the wife which had led to the hearing on 29th April, 1992, was now withdrawn, the points at issue between the parties before us at that hearing were limited as follows:

first, the matters of contempt raised in the husband's counterclaim:

second, the prayers for custody, care and control of the children.

At this point the hearing had to be adjourned, as one of the Jurats felt disqualified to continue, with the result that, the Court as now constituted had to resume and decide the issues between the parties.

This therefore brings us to the present hearing. Before dealing with any of the allegations we ought to say that the wife has removed to a flat found by the Housing Committee. The children are still with her and by agreement *pendente lite* the husband has access, but not staying access, on three days per week.

Mr. Boxall for the husband submitted that this hearing was about the custody, care and control of the children.

The children, he said, are the most important issue and in order to decide what best to do about them would involve the Court in an examination of the behaviour and characters of the parents.

The husband's case is that although he accepts that the wife has a primitive and instinctive maternal love, she lacks judgment and indeed control, as well as having neither the maturity nor the basic goodness to complement that love.

In particular, the husband contended that the wife is unsuitable to have custody, care and control of the children on account of:

her low moral standards, dishonesty, amounting to being a compulsive liar; violence in that she physically abuses the

children and has assaulted the husband; ugly vocabulary; flawed background; contempt of the law and of orders of the Court, and financial irresponsibility, to which he added claims that she has a burning resentment against the husband and undermined the children's relationship with him. Furthermore, she was not only unsuitable but not particularly maternal.

There would be, he said, a high risk, if the children were to be brought up by the wife, of delinquency, and the children would not obtain the support they need at the start of their life.

By contrast the father, he submitted, was a different character.

He was gentler, more patient, more compassionate, and, with a deeper understanding, more able to cater for the needs of the children with whom he had a close relationship. He was domesticated, and was flexible as to his working hours being self-employed. He was more cultured, better educated and more financially aware than his wife. To assist him he has loving parents who are ready to assist him. He was a man of integrity who had, he claimed, always been a good provider. Furthermore, he had no animosity towards the wife which might affect the children. These attributes, he submitted, were not outweighed by his being a modest and conservative gambler.

In his evidence the husband stated that he is now aged 39. He was born in Hong Kong, where he was largely educated. His father was in the Royal Hong Kong Police, retiring with the rank of Chief Superintendent, whilst his mother is Shanghaiese.

He joined Barclays Bank in 1971 and remained with the bank in various posts until some time in 1986. His final report and assessment may be described as good. Before he resigned he had obtained promotion and held a position of responsibility. He is clearly a man of above average ability and is able to express himself well and clearly.

The husband came to this marriage with two failed marriages behind him.

From his first marriage he has a son **K** now aged 15 with whom he is still in contact.

From his own account of the failure of the first two marriages, it would seem that in both cases, after the parties had cohabited before marriage the relationship broke down afterwards due to a lack of commitment of one or both the parties to the other. We note though in particular his statement that in the case of the first wife she had become depressed and immobile after the birth of **K** and had retreated back to her parents where they had been living before he was posted.

The husband had come to Jersey with his second wife from whom he was divorced, he thought, in 1984. He had met Mrs. M ("the wife" in these proceedings) during the breakdown of the second marriage, and the relationship developed while he was separated from his second wife. Having met the wife, and facing a posting by his employers outside the Island he resigned as he wished to stay in the Island.

He then found employment with Hambros Bank as a lending officer to develop their lending book. He resigned from this position on 31st March, 1992, and complained that his position there had been severely affected by his wife's actions. He had had a substantial and well paid job, and was now a self employed financial consultant and sole proprietor of a cleaning firm. Business is, he says, difficult in the current environment.

We will return to the circumstances of his leaving Hambros in due course.

When the parties married in 1987, they had been living together for about 12 months.

The wife became pregnant during the honeymoon. The parties rented, and subsequently bought, the matrimonial home, a detached house which contained, inter alia, three double bedrooms and a small bedsitter flat attached to it.

There were clearly difficulties attendant on the birth of N. She was one of twins, the other being lost at three months of pregnancy, and at about seven months the wife was in hospital being treated for high blood pressure.

Both parents, the husband said, were very pleased. Despite false alarms, N seemed happy, normal and healthy.

He played a full part in the early days, and with the experience of having had a previous child, was initially more confident when handling the baby than the wife, with the result that he usually bathed N.

We were shown a series of photographs to demonstrate an affectionate father. We have no reason to doubt that he was, and that he did indeed help with the children when they were little.

J was born in 1989, and according to the husband's account the difficulties of the marriage would seem to date from this time.

His wife, he said, found the extra child limiting, which is hardly surprising as they were only seventeen months apart. She became, he said, more aggressive in her attitude to both him and

the children, with a tendency to lose patience more easily with the children. She stayed in a lot in the day time and would ask him to bring things from the shops.

It was about now that, having hardly sworn when they were first married, the wife, although she wanted a third child as late as February/March, 1991, was by the time J was one year old, liable when having difficulty to shout and scream at the children, using bad and vulgar language, and if he would remonstrate with her on his return home she would storm off into the kitchen. She was not, he said, coping with the situation early in 1991. Asked whether his wife would have appreciated a show of affection on his return home, after coping with two small children all day, the husband replied that his reaction was to protect the children's interests. He added that his wife was not approachable at 6 p.m. Asked whether on return, he had tried to put his arms round her and make a fuss of her he replied that he had not tried it so far as he could recall. He waited, he said, until they went to bed at night.

The wife's account is that, in particular when J was young, he was not, on his return, really bothered with her: she felt like the child being told off every time. There was no affection: he could not even cuddle her when he came home from work. She needed, she said, adult conversation at the end of the day but did not get it. She never, she said, used foul language in front of the children. She repeated these assertions in cross examination, when she complained that on his return she would get told off and instead of comfort would receive aggravation.

On being further pressed in cross examination the wife asserted that she was no longer impatient or confrontational when the children do push her; she now diverts them or takes away their privileges. When her husband was there however as well, he would come home, tell her off like a child and then mollycoddle them, whilst she was trying to discipline them. She objected to this method of rearing children, as he had no discipline and pampered them. As for swearing, she admitted various instances but maintained that she did not do so in front of the children: it was not, she said, part of her character with them. When they come home with swear words she corrects them.

It was clear to us that the husband's return from work merely put undue pressure on the wife, pressure which has greatly eased since they ceased to live together. We accept her evidence of the state of affairs which took place on his return home in preference to his.

The husband believed, he said, that the wife has the ability to deal with the children if she applies herself, but if put under pressure takes out her feelings on the children both verbally and physically. By the time the marriage broke down in

October/November, 1991, J was using the term "stupid bastard". If they continue to be exposed, he fears that their vocabulary will deteriorate. Her aggressive attitude must, he claimed, have a psychological affect on the children. He conceded in cross-examination that when the wife was not under pressure, she did not swear. It was, he said, just lack of control. He further conceded that despite the children having been with the wife since the end of April, bad language by them at present was limited to J using the word "bastard" occasionally when fighting with N.

We will deal in due course with the views of the Child Care Officer, Mrs. Hart, and a Nursery Nurse at the Nursery, neither of whom gave evidence which remotely supported these particular allegations.

The wife is now aged 32. For some seven months she has been employed as a part-time secretary to a local shop fitting company. Her work is mainly secretarial, and during the case at least she has been able to bring work home. It is clear that she is not so well educated as the husband.

Her present accommodation has a big bedroom for the children, whilst she sleeps in the lounge. The flat, on her account, is quite adequate for the family at present. She has a car and loans for purchases are being met.

Her view of the children at present, as compared to the 24th April (the date of their departure from the house) is that they are two totally different children. It was, she said, a horrific sight to see them last year. They have put on weight and are happy. She has no disturbed nights with N, though J often wakes in the early hours for a cuddle.

N, she said, is happy to be at school; whilst J is equally happy to be at Nursery on her own.

Subsequently, continuing her examination-in-chief, the wife gave evidence as to the routine she follows with the family. J, she reaffirmed, still required comforting most nights, but both are doing well at school. She reads to the children before putting them to bed and N is making excellent progress.

If she goes out at night, which is rare, and on average once a month, she and the children sleep at her parents' home.

Access, she said, is now proceeding very well; she is more placid now, with a different circle of friends and no longer swears at the children. She never speaks about the father, she said, in the sense of making derogatory remarks, but just tells the children to go and enjoy themselves with him.

As to the marriage, the wife averred that there were problems on the honeymoon, but that she was overjoyed when, to her surprise, she was pregnant with N . The pregnancy was a difficult one and she spent some time in hospital where, she said, on each occasion that he came (daily) she felt worse, as all he spoke about were his social engagements at the bank.

In cross-examination the wife was pressed on the circumstances surrounding the honeymoon. She complained of his gambling on the honeymoon, and added, when pressed, that he, the husband, was not the same person as before they married, after which his attitude changed. She did not realise that he was going to change so much. In her cross-examination the wife complained bitterly of her husband's indifference. She likened him, indeed, to a robot. When he did make an attempt to save the marriage it was, she said, too late.

Although not directly relevant to the issue before us, these statements do give us, in our view, an insight into the underlying conditions of the marriage. We have formed the firm view that the husband's indifference, emotionally, to his wife lay at the root of many of the problems which finally caused the marriage to founder.

To return to the children, however, the wife agreed that she was "nervy" after N 's birth as she had never had a baby before and was frightened at first in case she dropped her. Her husband had, she said, normally bathed her. She was not, she said, a difficult baby and slept all night at five weeks.

J was born 17 months after N and she was pleased to be pregnant, she said, although she was sick most of the time.

We will return to the matrimonial problems and the behaviour of the parties as it foundered, insofar as they affect the children, in more detail in due course, as such allegations form a large part of the husband's case.

Both parties wish to be the main carers for the children, and, in effect, both come before the Court seeking an award in their own favour.

The wife made it perfectly clear that she had no confidence in the competence of the father to have care and control of the children: he would, she said, always get someone else to do the work.

This, therefore, is the background against which we must place the claims of the parties.

We turn now to the particular allegations and incidents upon which the husband relies in seeking an order in his favour.

The first of the series of allegations by the husband refers to various incidents of physical abuse of the children. As these incidents, her aggression and the general loss of control from which he claims she tends to suffer are central to his case, it is necessary for us to deal with them in some detail, the more so as it was as a result of these three incidents and her general bad language that the husband claimed that he felt concerned enough to contest custody. He does not know, he said, how his wife would cope as a single parent. Before dealing with the allegations, however, we should note that he himself was prepared to use corporal punishment with the children, though in the case of J, the more aggressive of the sisters, he keeps it, he said, to a minimum. He had probably, he said, given one or other of the children a serious smack on perhaps a total of half a dozen times. To react in that way was, he agreed, caused by a momentary loss of temper but was not a normal method of discipline in his opinion. In her evidence-in-chief the wife agreed that when the children were small she had smacked them on the bottom as they were too small to reason with. Now that they are older she finds the threat of withdrawing their video after tea to be more effective. She hardly smacks them any more as they are very well behaved. She confirmed her husband's evidence as to his use of corporal punishment, though she remarked that she thought he was, a few times, hard on N.

These incidents were detailed in the answer and cross petition and consist of three claimed assaults.

The first was on J when she was about 1 year old when, according to the husband, the wife could stand her crying no more and threw her down on the bed; the second some six to eight months later in February, 1991, when he claims that the wife threw N into a chair, again, fortunately without serious damage; and the third at about the same time when the wife, on his account, was unnecessarily violent in moving N out of the way with her foot. In examination-in-chief he accepted that the children suffered no harm on any of these occasions.

We think it necessary to deal with each of these incidents in turn.

The first one, in about July, 1990, took place in the bedroom at about 6 p.m. J was whingeing and crying and generally unhappy. She was standing by the bed. The wife seemed to lose control for a moment, snatched N up from under her arms and threw her down on the bed with quite some force, shouting something like "shut up". N was not hurt as far as he could see: what concerned him was the way her head hit the bed and came up with a whiplash effect. He could see, he said, how dangerous it was. He told the wife off about it and the danger of whiplash. She replied that the whingeing went straight through her.

In cross-examination when asked whether he was not exaggerating, he maintained that he thought it serious at the time and still did.

The wife's account of the incident in her evidence in chief was that she recalled it; that J was then three months old; that she had had constant colic in the day time - though not at night - and that with a 17 month old baby as well it was very hard. The incident took place in the day time, when her husband was not present; and he would not have heard of it unless she had told him.

In cross-examination she reiterated these statements, and reaffirmed that J was not thrown down so as to cause a whiplash injury and that she would have been watching when she threw her. The bed had a pillow on and loads of duvets and she landed on those.

The second allegation, which followed some months later, was that, again at about 6 p.m. when he returned from work, he came in to find both children crying although he did not know why and the wife shouting, especially at N. When N did not respond, the wife again picked her up under her arms and threw her against the back of an armchair. She was again, he said, unnecessarily violent. When he enquired why she had done that and told her not to be so silly, her reply was that she should "bloody well do as she's told". Luckily there was no spine on the back of the chair where N landed. The wife, he said, shewed no sign of regret or remorse. The incident was skated over and, he said, allowed to pass.

In cross-examination he denied that he had made the allegation up.

In her evidence in chief the wife simply denied that this incident had taken place. In cross-examination she totally disagreed with the husband's evidence. N she said, was very small and if she had done that she would have broken her back as the armchair was very hard; or at the very least she would have bruised and damaged her back.

The third incident took place again at about the same time in the evening when the husband returned from work at about 6 p.m.

The situation in the lounge was, he said, tense. All four of the family were there. The husband was watching television and N was partly blocking the way into the kitchen. The wife came out of the kitchen and instead of walking round N, she told her to get out of the way. When she did not respond at once she kicked her with the toe of her right foot, clad we heard in a training shoe, to get her out of the way. She kicked her three times, after which N moved out of the way.

The husband stated that he jumped up and remonstrated with the wife who, in his opinion, had been unnecessarily violent for no reason.

He picked N up, who was crying by now, consoled her and rubbed her thigh. By memory, he thought that the wife had said that she, N, should get out of the way.

In cross-examination, he stated that he did not look for any bruises or marks. However, when he picked her up she settled, so he thought it was nothing serious. He had not, he said, looked for bruises the next day. He could not remember whether he had bathed N that night. He asserted, vigorously, that if the wife were to say that she did not kick N violently but used her foot to move her out of the way, she would be lying.

The wife in her evidence in chief stated that the only time anything like this happened was once when N was sitting in front of her and she moved her with her foot when wearing slippers. She could not remember if her husband was there. Any force was not unreasonable. N was very skinny and tiny and if she had done as stated, she would have bruised her considerably.

In cross-examination she asserted that, as N is tiny and thin boned, had she kicked her she would have broken her leg, or would certainly, at least have bruised her. As to whether the husband picked N up, she could not remember.

The husband agreed that he had not reported any of these incidents to the authorities, giving as his reason that it was a difficult matrimonial situation from time to time and his wife was isolating herself from him with regard to his employment.

He was pressed on this in cross-examination. He agreed that the marriage had been going down-hill from the date of J's birth in 1989, and claimed that the wife's attitude to his work and his absences from home was without justification in his view, as it was extremely rare for him to go out without the wife. He would attend various bank functions about a dozen times a year.

He conceded that the wife might quite conceivably have been under stress at the time of the three incidents which he claims occurred. At the time he had believed it was out of character, but from what he has learnt since, this part of her character, only shewn once N had arrived, had shocked him.

So far as he was aware the third assault was the last.

He did nothing at the time: it was the cumulative effect which concerned him. He had thought the first assault was out of character and told her off. He had not, he said, discussed

discipline with her as he thought it was not necessary. She was an adult and knew how to conduct herself with children.

When asked why he had left it for nine months before using it as a major argument to oust the wife from the matrimonial home, he replied that it would simply have made the relationship worse.

As to the children, he believed that the wife was fully aware that she was acting improperly, and he hoped that as the children got older they would cause the wife less stress; that the incidents would not recur, and that he would be there to support her and stop her repeating her actions.

In cross-examination, he again asserted that his concern for the children was not exaggerated. These were, he said, serious assaults, and shew the extent to which the children are at risk. He had seen his first wife with his son, and based his view on the normal and acceptable behaviour of an adult with children.

We find no evidence to support the husband's allegations that these incidents, insofar as they occurred and insofar as they can be classified as assaults bear anything like the weight which the husband claims, and prefer the evidence of the wife regarding these three incidents.

As to the wife's bad language, this clearly occurred, the husband claimed, at moments of stress, and concerned him.

However, to these incidents and his wife's bad language, he has added a further list of allegations.

The first of these, on his evidence, was his wife's general character.

This revolved around her admitted adultery with Mr. C. On his evidence, the wife had not only lied to him about the relationship (which has now ceased) but had also committed perjury when questioned in previous Court proceedings. He strongly objected to the association which, he said, could have been detrimental had the relationship continued. It was, furthermore, asserted by his counsel and confirmed by counsel for the wife that in the course of counsel's address in the previous proceedings the Court, or at any rate its President, stated that the Court accepted that the wife was a liar.

Quite apart from that, he was worried as to how the relationship and the behaviour of the wife would impinge on the children. Obviously, he said, they would have been confused by the meetings; and if there were a relationship he presumed there would be a physical contact.

In cross-examination, he admitted he had, since the wife had been away from the house, a liaison. In his case he avers, he has been very conscious to ensure there is no affection shewn between him and this lady. They do not even hold hands in the presence of the children who have met her, briefly, on one occasion, and at a barbecue in the garden one afternoon. He claimed that the children would have been confused by the association between the wife and Mr. C as they were still living as husband and wife, but would not be confused in the same way by his new liaison.

Besides, he claims, the wife now has a new admirer.

When this was put to the wife in her evidence in chief she stated that this allegation was rubbish and not true, though she did hope to find somebody else in the future. It had not, she added, been much of a marriage.

We must say at once that we cannot see that insofar as concerns the proceedings which are before us, the case of one parent is either better or worse in this regard than that of the other.

The second was a series of allegations regarding his wife's behaviour in general and her cruelty towards him and the effect it had on the children.

The first part of the allegation is that from about July, 1991, the wife simply did not treat the husband as part of the family. She attempted to segregate him from the children, whom she took into her bedroom, and prevented him from seeing them at weekends. A series of incidents are pleaded, and tape recordings made in this period by the husband were produced. On his evidence it is quite clear that the marriage by the summer of 1991 was under severe, indeed terminal strain, and that, inevitably, conflict over the children arose and formed part of the disagreement between the parents with, equally inevitably, strain being placed on the children. In her evidence, the wife was cross-examined on these allegations. She agreed that she had indeed, from about July, 1991, restricted the time that the children saw the husband. One reason was that she had seen them left in the car outside the bookmakers; where she had herself, on occasion, waited threequarters of an hour for the husband. She agreed that there had indeed been at least one incident when the police were called; and took the opportunity to complain that by this time the husband was coming home at irregular hours.

Many of the same sort of allegations were put to the wife as being the pattern after her return at the end of January; and we believe it suffices to say that we accept her assertion that the children then had the run of the house.

It seemed that although the husband considered that the marriage broke down in October/November, 1991, the wife had already asked for a separation in June, 1991, a date some time after the assaults on the children which he claimed so worried him. Her request took him aback. In his view, in this, she was concerned for herself and her interests overrode those of the children.

This was followed, he claimed, by her refusal to perform wifely tasks, and, perhaps not surprisingly, the atmosphere was more strained than usual.

By his account her only objection, insofar as concerned himself and the children, was that he did not spend enough time with them. In examination-in-chief, he said that the only time he insisted on having to himself was 20 minutes on most Saturday mornings and one hour on most Saturday afternoons to follow the horses. He also had work commitments, and occasionally had to go out at weekends to look at properties or to see customers, when he sometimes took his wife and/or the children.

He considers he took a normal father's rôle and took us through what he described as an average day.

From this it was evident that he claimed that he was habitually at home, and that, on his account, the parents shared the tasks as they might well do in any other household with young children.

In cross-examination, he was pressed as to the extent of his gambling which he denied was excessive, although he agreed it was regular. If he had had another hobby he was sure that he would spend more time out of the house.

For all that we have formed the opinion that the husband is an habitual gambler. We will return to this in due course when dealing with the finances of the family and of the husband in particular.

There then followed claims by the husband of a series of assaults by the wife. They cover a period between July and September, 1991, when on the husband's evidence the wife had, as we say, already asked for, and by implication been refused, a separation.

The first was that on 14th July, 1991, the husband claims that he was assaulted by the wife on his return home early on a Sunday morning. In his evidence in chief he offered no explanation as to where he had been or why his wife was not with him. Although he said his wife attacked him without explanation, he proffered the view that she had found a file note from a shut

briefcase which she had misinterpreted. He was not cross-examined on this point and no evidence was led by the wife.

There followed an account of various other assaults.

In his evidence, the husband stated that the wife had started to try and alienate the children from him, and his efforts to keep in contact with the children led to a series of domestic rows, although we do not understand how the assault to which we refer above could be so categorised.

On his account, a couple of days after the first incident, he returned home, this time at 6 p.m. and found both children about to go up to bed. When he went to greet them, she hauled them away and on her way out, with J over her shoulder, she hit him. He never provoked his wife but only insisted verbally on his right to have normal access to their children.

Again, there was no cross-examination on this point and no evidence was led by the wife.

The next assault took place, he said, a few days later when, having been for a drink with other bank staff he returned home at 7.30 p.m., and although the children were going up to bed, not only went to greet them but told his wife to take J up to bed and took Natalie into the garden in her pyjamas and dressing gown.

His wife came up the garden with a rolling pin, and hit him on the back, whereupon he chased her down the garden and punched her on the most convenient point which was the back of her head. There followed a further struggle when, on his own account, he held his wife down with his knee before picking up N and going back to the garden.

In cross-examination he asserted that his wife most certainly did have a rolling pin in her hand, and conceded that he had hit her quite solidly on the back of the head, or to put it another way, with considerable force (a view confirmed by Dr. Clinton who examined the wife late that evening). The husband conceded that he had lost his temper as a result of the wife refusing him normal access for weeks, the two previous unprovoked assaults and what he described as the extreme provocation of that incident. It is clear that he did not consider his behaviour to have been provocative either during the incident, or, for that matter, prior to these assaults.

We say this even taking into account the strain to which the husband would inevitably be placed by the wife's association with Mr. C, regardless of the reasons which might have led her to it.

Once again, no evidence was led for the wife as to this incident.

We should say that even on his own account, this whole incident does the husband little credit, and falls some way short of convincing the Court that in acting as he did he had the children's interest at heart rather than his own selfish interest.

There would then seem to have followed a cessation in the active hostilities between the parties as the next assault complained of by the husband occurred on 21st August, 1991, when again on the husband's return home, this time at 6 p.m. by his account, and when again the husband insisted on seeing the children, the wife once more resorted to a rolling pin and again there was a struggle, during which the wife tried to knee the husband in the groin and he forced her on to the bed, but being unable to disarm her, left the room in haste. Again, this account was accepted by the wife.

The following morning there was another incident when the wife pulled the husband's hair.

Two tape recordings made, in circumstances which were not entirely clear to us, at the end of August, were played to us and confirm the view as to the family situation which we had formed. The husband advances these recordings as evidence that he was refused access. However, we note that the husband in the second of the three was attempting to deal direct with N rather than with her mother and thus involving his daughter in an argument which might have been better conducted between the parents. The wife stated that she did not know these two conversations were being taped: though in fairness we have to say that subsequently she taped a third conversation without informing the husband. It is, however, germane to remark that in that tape recording, the wife accused the husband of taking the children to the bookmaker the previous week, and of telling them they would be going to live with his parents in England.

On Sunday, 1st September, yet another incident took place. By this time the husband had either learnt or had a strong and well founded suspicion of the wife's adulterous relationship. On the husband's account, the wife, having taken the children away for most of the weekend returned at about 4.30 p.m. and after an argument, told the husband that she wanted him out of the house so that her parents could babysit. The long and the short of it was that, inevitably, an argument followed during which, while he had N in his arms, the wife pulled and scratched him. Both parties then called the police.

Incidents now followed thick and fast in what was clearly an intolerable atmosphere.

On Saturday, 14th September, yet another incident took place, after N had come into her father's room at about 8 a.m. The wife came in, alleged the room smelt of alcohol and accused him of setting a bad example to the children; she struck him and threw his shoes at him. N, he said, was upset, and stood in the doorway shouting, "no, Mummy, no ...". He did not, he said, retaliate. In cross-examination he maintained that N had indeed stood in the doorway shouting "no, Mummy, no".

There was a further assault on 21st September. After telling the wife's niece not to interfere, an altercation took place between the parties, following which the wife slapped him, saying "I'll have you out of this house soon, mate".

Again, this incident was not challenged by the wife.

This was followed on 23rd September by the final assault complained of by the husband in this series when, the husband having objected to the wife putting his belongings in bin liners, a fracas took place during which what he described as a wrestling match took place. In his evidence in chief, the husband stated that halfway up the stairs he had pinned the bag to the wall with his knee and had a wrestling match during which he twisted her round after which she ran downstairs. He did not say whether the children were present.

In cross-examination he denied that he had pushed his wife downstairs; or that when she had got to the bottom she had fallen on N

Again, although the wife in cross-examination referred to having been pushed downstairs on one occasion, she chose not to lead evidence on this point, and we accept the evidence of the husband as to what happened.

This incident developed into another one, to which we will come in due course, involving the wife's parents.

Distressing though these scenes were, and provoked as no doubt both the parties were one with another, we note that on three occasions, on his own evidence, the husband was prepared to grapple with and on one of the occasions strike his wife; on a fourth he appears to have used N as a shield, holding her in his arms during the fracas.

These incidents were brought to an end, for a time, by the ouster injunction obtained by the husband in mid-October which led to the previous proceedings which terminated, temporarily at least, with the finding of 27th January, 1992.

There then followed a whole litany of complaints against the wife's family.

On the husband's evidence, quite apart from their general character, about which he had a good deal to say, he makes complaint of a series of assaults by them.

These apparently followed a telephone conversation between the wife and her mother on 10th August, when it seems that the wife, whose conversation was being taped, said to her mother that the husband needs a good sort out, to which her mother replied that he would get one soon.

Following the incident of 21st August, 1991, described above, the policewoman who had been called, persuaded the wife to allow the husband to see the children. Some time after the wife's mother and sister arrived. In the course of what the husband describes as a conversation, with the children present, he claims that he was assaulted by both Mrs. A his sister-in-law, and by his mother-in-law.

He claimed that the assault was unprovoked and no evidence was led to contradict this.

This was followed, he said, by the appearance of Mr. A on 26th August, who, upset according to the husband by statements made to him by N for which the husband denied responsibility, and about him by the husband, came into the house in the evening and proceeded to punch the husband round the head whilst he, the husband, was seated.

The husband did not call the police, although in his evidence, he said that, in terms, Mr. A had invited him to do so. During the assault the wife, he said, sat in her chair and watched, saying nothing.

Yet another incident took place immediately following that of 23rd September, which we have described above, when the wife's parents arrived and her mother immediately began to set about him, whilst his wife held his hair. To add to the confusion his father-in-law came and struck him while he was held. The whole incident he thought lasted about two minutes.

He then turned to his wife's and her family's financial competence and character.

His wife, he said, simply cannot manage money. When they first met she was working, but owed, *inter alia*, arrears of £3,000 for Income Tax. He helped her to repay these, but this, he said, did not solve the problem for by the summer of 1991 she came to him to tell him that she was some £3,500 in debt, despite having a monthly allowance for housekeeping of £623 for groceries and children's clothing. According to the husband he paid everything else - rates, telephone and so forth - except the milk bill.

In addition she was then earning £100 per month as a part-time barmaid.

The largest debt (£870) was a new television and video which was bought, with his knowledge in March, 1991. He raised, he said, no objection but made it clear that he could not afford to replace the one they had already, but that if she could - she had just had her annual rise - he would have no objection. Only a few weeks later, she came to him with the list. Her attitude to money, he said, was that if she wanted something she would have it irrespective of whether she could afford it.

This and the other debts figured in a notice to admit evidence, served by the husband. The wife admitted them but averred that they were incurred with the full knowledge and consent of the husband and for the general benefit of the family; that the husband himself had debts of over £3,000 and that both parties were and always had been spendthrifts.

In evidence in chief, the husband chose to deal with only the first of these allegations, stating that although the articles may have been useful, they were simply not in a position to make purchases, bearing in mind the housekeeping allowance.

We may, perhaps, add that his counsel specifically refrained from asking the husband about the allegation that he was a spendthrift.

He was, however, strongly cross-examined as to his financial abilities.

He claimed only to have become aware of the extent of the wife's liabilities in May, 1991, and this despite his speaking almost monthly to her regarding her affairs, her account at Hambros or her wanting an advance on next month's housekeeping because she was overspent.

In noting this, we bear in mind that the housekeeping allowance was for food and children's clothing and that he paid all other expenses. How he thought an allowance which he thought was adequate to manage for food and clothing would stretch to a new television and video was not made clear to us; nor as to why, given the wife's past debt problems, he had not made an active enquiry.

As to his financial competence, he had always, he said, met his liabilities as they fell due. He immediately modified this statement, by saying that this was not always from his normal income as there was an occasion at the end of June, 1991, when it was necessary for him to ask his parents for what he described as a bridging facility of £1,000 for some 10 days, pending the sale of some shares in Hambros Bank which he had anticipated would, but

which did not, occur before his mortgage interest was due. In subsequent evidence he stated that he had not yet repaid his parents. This does not appear to be the only loan received from his parents as they have lent him altogether £4,000 in several tranches. He had failed to mention this in the affidavit to which we will refer below, as he considered this to be family support rather than a loan. He should repay it but there would be no pressure on him if he could not do so. In passing we note that his parents are to receive £3,500 out of the proceeds of the sale of the property.

He was asked about a loan made by a Mrs. K. We were not precisely clear as to the details but we noted, first, that he looked extremely uncomfortable when asked; and, second, that the loan was made to one of his banking customers whom the bank would not help, which the Court regards as curious behaviour to say the least for a bank officer in a responsible position. This was in effect conceded by the husband when he stated that he believed that the bank would not be particularly happy but that they did not know, then or later.

He is now behind in his mortgage repayment to Hambros, having paid off the arrears of at least two outstanding quarters with a further share sale and the surrender of an insurance policy. He is not in a position to pay the current interest: and it was, he averred, to a greater degree the wife's fault. She had overspent in August, 1991, and he thought that she had spent £1,300-£1,400 in that month.

However, he ceased to pay maintenance to the wife after she left the matrimonial home in 1991, although he gave her £100-£200 at Christmas on the understanding she would look for work. This continued between the end of January and the end of April, 1992, when he paid, he said, all the bills relating to the house, and the wife was buying food for herself and the children. The only reason she did this was that she had told him that she would be responsible.

He denied that he had at any time refused a request from his wife for assistance, but agreed that he knew she was in receipt of welfare. Asked why he had not offered money in these circumstances, he replied that he knew that he would have to repay it in the end. Since she left, he said, she had not approached him and he had not offered her anything. He recognised, he said, his obligations to his wife and his children and took them very seriously indeed. Asked when he intended to start, he replied that realistically it would be when the house is sold and his financial affairs settled, after which he said that if he had been approached he would have done what he could; that the need only arose since the end of April when she took the children from the house; that if she was unable to provide she would have asked;

and finally that if she failed and they suffered he would hold her responsible.

As he stopped paying her maintenance from September onwards and was to have several more months at the bank, this seemed a curious assertion; and if it were correct, we find it even more strange that, in the financial situation in which he found himself he should - if as he asserted he was not faced with an ultimatum by the bank - have chosen to resign.

He admitted paying the private detective, who arranged for the telephone to be recorded, £1,000: though given the state of the marriage and the feelings of the parties at the time it is hard to criticise this expenditure.

In cross-examination, an unsworn affidavit, prepared for other proceedings, was put to him and accepted by him as being a fair and accurate statement of his affairs at late December, 1991.

Had he been able to include the income of the house lodger, then in normal circumstances his income would have equalled his expenditure.

He was closely examined on this affidavit. In addition to the omission of his parents' loan, mentioned above, he made certain other admissions.

First, he agreed that ^D Ltd. (the cleaning company) in which he has a one-third beneficial interest (his brother having two-thirds) has a bank loan which today, probably stands at £4,500, and has an agreed overdraft facility of £2,000. The affidavit declared that his interest in the company was 50 per cent which he dealt with by stating that his brother would be happy for him to have a 50 per cent interest.

He had, he said, guaranteed the company's borrowings and was the sole guarantor. Although he conceded that the balance sheet of the company as at 31st January, 1992, shews a loss of £2,000 he was not aware of the position when he prepared affidavit, a curious assertion we find for someone of his financial experience and expertise. He had not included it as a contingent liability in his affidavit as he considered that, at that time, there was no possibility of a forced sale. We note, however, that the affidavit refers to the company in rather more positive terms as having no net asset value.

Second, some £2,000 of the loan of £3,500 from his parents (which, as we have mentioned above, is apparently to be repaid out of the joint assets) was invested in ^D Ltd. In addition the husband has made several other payments to or for the benefit of the company or his interest therein.

When the parties borrowed £34,400 from Hambros Bank to make extensions to the property, a loan which was secured on the jointly owned property and for the repayment of which both parties are liable, the husband used £1,000 of this sum towards the expenses of incorporating ^H Ltd. Although he agreed that the wife had a liability to the bank, he denied that she had, as a result of these monies being used, any interest in the company. If she made a claim he would resist it. Although he claimed to have made the wife aware of his overall intentions regarding the company he had neither asked for her permission nor told her that it would cost £1,000 to set the company up.

He was further pressed on payments made to and concerning the company. It appears that, for the previous company in England, a loan of £1,000 was made to a former partner, a Mr. F and that this has not been repaid. This was not the only payment, as a series of other payments, totalling some £1,785 were taken from the parties' joint account and used for the benefit of the company.

We found it unsatisfactory that these details had to be extracted from the husband and were not included in this form in the affidavit, as even though it remained unsworn it had, it appeared, been produced for the purpose of the proceedings.

Third, he was examined with regard to his credit card obligations, and a loan to Barclays Bank plc.

At the date of the affidavit there was a liability of £4,838 owed to Barclays Bank plc. This had arisen because, in 1988, the husband had had a gold card facility which entitled him to a £10,000 overdraft, which he drew to the full, speculating with £5,000 on the stockmarket, a loan of £2,700 to Mr. and Mrs. A and employing the rest on household living when the wife had to cease work with a loss of income of £9,000 per annum. He was not greatly concerned because he had been admitted to a profit sharing scheme at Hambros and, once again, as with the loan from his parents, had used this as a form of bridging facility. The overdraft was converted to a loan in April, 1990, and has been steadily repaid ever since. If he had not used the card, they would have had to reduce their standard of living. Although he agreed that what is borrowed must be repaid, he did not regard this as an unsound course of action: whilst the purchase of shares on borrowed money was not a gamble but a calculated and reasonable risk.

Apart from this there were the three cheque cards and it was perfectly clear, from a schedule produced by the husband that these three accounts (totalling in December 1991 some £4,045) had been up to their limits since at least December, 1988, and the limit for Access having been raised in 1991 the amount owing immediately rose to the new limit. He thought when pressed that

he was paying interest at 21% per annum on these three accounts, a statement which conflicted with one made earlier that it was nearer 30% per annum.

We note that the amount owed on these four accounts in December, 1988 was £13,586, and despite having received £2,500 from the sale of the shares he had bought for £5,000 and the repayment of £2,700 from Mr. and Mrs. A, viz. £5,200, the four accounts still totalled £8,884 in December, 1991, despite the high rate of interest which is charged on such accounts. In making this calculation we have deliberately omitted items such as the £3,400 received from the Hambros share sale, and loans from the husband's parents as these were not stated to be related expressly to these accounts.

Fourth, it appeared that the flat was re-let on 9th December, 1991. The new tenant paid a deposit of £500 and although this was not his money he (the husband) paid away £380 to the previous tenant and used £120 as income. He failed to declare this liability in his affidavit.

We should say that we agree with his admission that the affidavit gives an untrue picture, especially with regard to the liabilities (rather than the assets). We would add that all in all the affidavit with its imperfections and, for whatever reason, his subsequent departure from the bank, shew the husband to be far from a prudent householder carefully husbanding his resources but one who is prepared to spend or risk money which he does not have or is not yet to hand to maintain his style of living.

Furthermore, the husband made it quite plain that he is addicted to gambling, mainly on horses which are his passion.

His gambling would appear to have followed a regular pattern. He admitted going to the betting shop perhaps three times per week, twice in a lunch hour and for an hour or so on a Saturday afternoon.

The wife's view of the time spent was at variance with that of the husband.

The husband estimated the net cost to him at perhaps £20 per week with a weekly turnover of £100 or so and an average bet of perhaps £5. A good win might be perhaps £200. If he won he would give his wife 10% (the going rate) and either pay a bill with the balance or keep it in cash to save drawing. He gave it up, he told the Court, between August, 1991, and February, 1992, but has now restarted, though he does not go to the betting shop at present on a Saturday afternoon if he has the children with him.

It may not be an expensive hobby but we are satisfied that the husband is an habitual gambler, and moreover one who is

prepared to go on gambling despite the critical financial situation in which he now finds himself.

In these circumstances we have to say that the Court disagrees with his assertion that his present admitted insolvency is as a result of his wife's actions. The wife in her cross-examination made the point that whereas her over-spending was on the house and the children, that of the husband - astronomical she thought for a Bank Manager - was spent on gambling or for items for which he could not account.

The wife in her admissions claimed that both are spendthrift. So far as the husband is concerned we find this to be clearly so.

In her evidence-in-chief, however, the wife stated that she was now shewing a greater financial rectitude in that although she was not paying off previous debts incurred with credit cards, she was now trying to, and succeeding in, bringing her current affairs into order, meeting her rent and other current debts as they fell due. She had borrowed no further money since moving into her present accommodation, and this despite receiving no help from the husband. She was cross-examined on these assertions when she maintained them and added that before she incurred her hire purchase liabilities for the car, and the carpet, she had made a full admission to the finance company.

We find no evidence which tends to shew that she is not now adopting a proper and sensible approach to her finances.

As to her family, the husband claimed that her father had received a prison sentence for fraud and produced evidence that her sister and brother-in-law, Mr. and Mrs. A have frequently, in the last 18 months, been successfully sued for debts, which in the circumstances of the family, appear to be substantial. We should, perhaps, add here that her father's conviction was stated to be in 1985, and no evidence was led that the husband was ignorant of this at the time of the marriage.

In cross-examination, the husband modified his evidence and claimed that he had only mentioned his father-in-law's conviction to explain why his mother-in-law told her husband not to get involved in the assault of the 23rd September.

We should say that it is the wife's character which primarily concerns us, rather than that of her immediate family; although of course if there is to be a close association, or the wife is to be much influenced by them this must assume some importance.

Similarly, evidence was given of the wife's conviction in 1983 of several driving offences leading to a disqualification. Again, no evidence was led that the husband was ignorant of this when the parties married.

The husband when asked in examination-in-chief to describe the wife's honesty, stated that he thought that, ultimately she was honest, but immediately qualified this by saying that if it suited her to tell lies then she would be prepared to do so. He instanced several admitted lies with regard to her relationship with Mr. C ; and also that she has, more recently, signed a false declaration for money.

There are two instances where the wife lied about her relationship with Mr. C . The first and in our view the most important by far is that the wife committed perjury in the earlier proceedings in October, 1991, when she denied, before the Inferior Number, having committed adultery with Mr. C . This was admitted by the wife, her excuse, which she gave in her evidence in chief being that she had told a lie because she was scared and had thought that if she had committed adultery, she would have the children taken away from her; but that she had admitted it when she went back into Court.

The second, and in our view much the less important were two instances where the husband claimed, in effect that the wife had been less than frank on oath as to the extent of her relationship with Mr. C . It is claimed that the wife stated in an affidavit that she had not seen Mr. C since the 14th August, but was found in the Priory Inn with Mr. C and the children on 17th August. On cross-examination "found" was reduced, on the evidence before us, to seeing both the wife's and Mr. C 's car there and seeing the wife leave.

It was claimed by counsel for the husband, and admitted by counsel for the wife that the Court in the previous proceedings, or at any rate the President of that Court, had declared itself to be satisfied that the wife was a liar.

There then followed an assertion by the husband that the wife had signed a false declaration for money.

The witness who was called to substantiate this very serious allegation was Miss B

She had, she said, known the wife for a long time, but had, in more recent years, just drifted away from her and the husband whom she had met and whom she described as a sociable, generous, nice person.

Asked to tell the Court what she knew of the false declaration, she replied that she had got her allegation completely wrong. She had indeed thought that the wife had signed a false declaration and had received money for it, but accepted before us that she had got the story all wrong.

In cross-examination the wife was asked about this and denied having made a false declaration. There is thus no evidence to support this allegation which therefore falls to the ground.

Furthermore, he claims, that the wife has no concern for the children's spiritual welfare and does not believe in God. Although he had suggested they should go to Church after they were married, she would not make the effort to do so.

Asked to comment on a letter from the Rev. Nicol to the effect that since March, 1992, a month during which she was at the matrimonial home the wife and children were regular members of the congregation of the Church of Scotland the husband commented, in evidence in chief that clearly at the present time she is prepared to make the effort for the children to attend and that she has no objection to religious instruction, but that when it becomes too much of a chore she may not take them. In his view, she was making an effort to counter a negative feature against her.

In cross-examination, he agreed that although he knew, from N, that the children were going to Sunday School, he did not take them when he had them on a Sunday. Asked why he did not find out where they were going, he replied, in part that he did not feel it was in their interests to make a show by taking them to another Church. Asked whether it was not in the children's interests to go, he stated that because of the amount of change they had had, and their ages he felt it better to leave it over until the question of custody, care and control had been sorted out. Nonetheless, this he said, was something he would wish to encourage regardless of the wife.

In assessing this evidence we bear in mind the husband's earlier statement that he was not, himself, a regular churchgoer.

It was further put to him in cross-examination that the wife went to House Communion with a neighbour. He knew nothing of this. Asked if he knew that the wife sang in a Church Choir prior to marriage, he stated that he remembered her saying she had sung in a Church Choir, as he had done. His wife, he said, was never a churchgoer when he knew her. The wife's evidence did not come up to the expectations aroused by this line of cross-examination. She stated that she had twice whilst at the family home been to House Communion, and had been to Sunday School herself, sung in a Church Choir between the ages of 13-15 or thereabouts and had been confirmed. It was hardly surprising that the husband was as vague or as ignorant as he stated.

On the other hand, she gave evidence that she is now a regular Churchgoer and that her regular attendance there is a source of comfort to her. On each occasion, she says, someone comes and speaks to her. In addition the children go on alternate

weeks to Sunday School and have settled in well.' Although we have no doubt but that this attendance is of recent origin, we are equally in no doubt but that it is of great benefit to the family as a whole.

There then followed a series of allegations arising from the notice to admit facts arising from the earlier hearing.

Some of these have been covered already, but the first, and most serious, is that the wife, on her return home, ignored the order of the Court made when she was permitted to return when it suited her to do so.

We do not, of course, know the full reasons which lay behind the Court's finding: but we should say, before considering this evidence that, in view of the state of feeling which clearly existed during the summer of 1991, an order permitting the parties to live together in the same house with the children, was, we believe, bound to place very considerable pressure and strain on the parties.

The husband's prescription for dealing with this period, which was bound to be difficult, was before she returned to the house to set down ground rules in order, he said, to reduce friction.

Asked by the Court whether he had asked his wife about these ground rules, he replied that he had simply set them down saying what he wanted. They were, he said, no different to the arrangements prior to her leaving the house. Had she behaved herself and not caused tensions in the house she could have stayed at the matrimonial home.

Among the rules was that he would bathe the children. To this, he said, she agreed; and he went so far as to complain that when on a couple of occasions he had not returned as early as usual, his wife had not used her discretion and bathed the children.

We find that this imposition of rules, without discussion even after so long a case and the inevitable feeling between the parties was bound to be provocative and to cause tension from which the children would suffer.

One of the tape recordings played to us made in this instance by the wife in February/March, 1992, demonstrated precisely this point. Although we realise that it was made without the knowledge of the husband we nonetheless wish to add in passing, that in our view, it shows the wife as being well in control of the children and the main person who was dealing with them and to whom they turned.

As we say, complaint is made by both sides of the conduct of the other. The husband's complaint may be summarised as being that his wife is quite careless of any order of the Court and that her conduct on her return supports the assertion that she treats with contempt any restraints imposed by law on her behaviour: and that she went out of her way by her language and behaviour to provoke him.

The incidents put before us by the husband are several. In our view, they range from the petty to the serious, though no doubt they weighed heavily on the nerves of the parties who had just endured 32 days in Court hearing an interlocutory application.

We turn first to the allegation that the wife is careless of the Orders of the Court.

Complaint is made that she approached the matrimonial home while injunctioned from so doing. It appears to be accepted that she remained outside in a car whilst her sister collected the children.

The second and much more serious, given the precise terms of the injunction, is that the wife admitted telling the Managing Director and another officer that the bank was at risk in employing the husband whom she described as, and fully believed to be, a compulsive gambler.

His opinion was that she did this in order to put him in a weak position financially as this would affect his ability to look after the children if he obtained custody: for if he did, he would need a housekeeper, whilst it would be easier for her to obtain States' accommodation. However, it does not appear to have lost the husband his employment.

In cross-examination the husband was pressed as to why he had left what was clearly a good position at Hambros.

He maintained that the relationship had been severely affected because the wife had alleged that he had acted in an underhand manner in a recovery situation (in which the bank was involved) and had tried to get a business at an undervalue, taking advantage of his position. Although he maintained that this was untrue the result, he said, was that his relationship with the bank had been eroded and he had resigned. He denied that he had been given an ultimatum to resign or be dismissed.

Having said that, he agreed that he had discussed the position with the Managing Director before giving notice, and had had the opportunity of putting his own side of the story, including, as we understand it, the assertion that what his wife

had said was untrue. He believed that his explanation had been accepted by the bank.

Nonetheless, despite this acceptance he had come to the conclusion that their confidence and the relationship had definitely been affected.

We have to say that we find his explanation totally implausible.

Had the wife made unfounded allegations, which the husband was able to refute, we can see no reason why he should contemplate leaving the bank, or why such allegations, made by a wife in a failing marriage should induce him to do so. Furthermore, given the general situation, both in the marriage, and in the wider business world, it was an extraordinary step to take voluntarily.

This was the more so, because his business of cleaning : brings in, he told us, £1,000 to £1,500 per month gross; he has the income from the flatlet until the matrimonial home is sold, or, as seems possible, repossessed, whilst his mortgage broking business has, so far, brought in nothing.

There were also, he claimed, two instances of assaults in defiance of the injunction. The first was an allegation that when he was leaving the house at 8.30 a.m. on 20th February, 1992, with the children, the wife slammed the door shut on his back. On his own evidence, the husband went back into the house and pushed his wife on the shoulder and said that he told her never to do it again. In cross-examination he agreed that he became annoyed and did lose his temper.

No evidence as to this was tendered by the wife, and we accept the husband's evidence.

The second followed on 24th April, 1992, and clearly precipitated the wife's departure from the matrimonial home. According to the husband, the wife had been systematically stripping the lounge of personal effects, in particular pictures of the children which had been hanging on the walls, ornaments, compact discs, scatter cushions, and other items. On the evening of 23rd April, having noticed that these were missing he stated that he asked the wife to return them and gave her 24 hours to do so threatening to go to her room and retrieve, in particular, it would seem, the scatter cushions.

The following evening, he said, he returned home to find that nothing had been replaced. The wife being upstairs in the bedroom, he knocked on her door threatening that if she did not return the items in half an hour he would drill out the lock of her door. He then got the drill and switched it on. It was put to him in cross-examination that this was provocative and

confrontational, to which he first replied that he was trying to let her know he was not joking and would do as he said he would do. Pressed on this, he agreed it was confrontational, but claimed that he had been provoked. Asked why he had not asked his lawyer to write as he had done before, he replied that he did not expect a confrontation. He added, as an afterthought, that if he had drilled the lock, then his wife would no longer have been able to lock her door, at least until she had found a locksmith. He started it, he said, without a bit.

He was asked if his wife had said "Don't threaten me". He first replied that she had not used that particular phrase; that she had given him the impression that she would not comply; that he could not recall specifically; and that he believed she did not say so specifically.

On his account, the wife then came out of the bedroom saying, according to the husband, "If you are going to do it in half an hour's time, you may as well do it now", to which he replied "Fine, O.K., I will".

When she went to go back into the room and tried to slam the door on him, he followed her and pushed into the room past her. He denied striking her: she did not, he said, swear or hold her face or complain that he had hit her, but just turned and left the room.

Shewn a police photograph taken, we were told, on 26th April which shewed bruising under the wife's left eye and on her upper left arm, the husband replied that he did not believe he caused the bruise. She might, he thought, have struck her face with her own hand. He was, he admitted, annoyed.

He then began to clear the items from the room whilst she went off to telephone. Whilst he did this, he could overhear her telling someone she had been assaulted. She was not, he said, in a state of distress when he saw her or when she was telephoning. She was annoyed but not screaming, shouting, or crying but, he put it, just telling fibs.

He continued to clear the cupboards in her room and when she started to pull at his arms, he reminded her of the injunction preventing her from molesting him. A fracas, seemingly very similar to those we have detailed above then took place during which the husband shook the wife off and took the photo albums downstairs.

It was put to him that in acting as he had he was taking the law into his own hands, to which he replied that at the time, he had thought that no confrontation of this type was likely and that this only occurred when his wife came out of the room and provoked

him. It was she, he claimed, who had provoked him by removing the items. It was his response to her provocation over weeks.

There was, he said, no threat of injury as he would not have used the drill on her. She knew, he said, that he was not aggressive or she would not have assaulted him in the past.

The wife's account in examination-in-chief confirmed, in general, the husband's evidence. His turning the drill on, she said, finished it off, by which we understood that this was for her the final straw. She went on to say that it was enough to scare anyone and frightened her to death, really. She felt frightened because of previous assaults as she had been punched and claimed to have been pushed downstairs. She did not, she said, know what was coming next, nor did she wish the children to see it either.

After her parents to whom she had telephoned arrived, the husband, she said, went berserk.

In cross-examination she freely admitted that, once again, she had been in contempt of the Court order in removing his belongings to her room. He had not, however, given her 24 hours notice of removal but had merely said in evidence that he had. She was firm in her assertion that the husband had intended to hit her as he passed: he could, she said, have drilled the lock at any time and did not have to wait for her to be in the room. As for his attitude, she was, she said, frightened of him assaulting her. He had hit her on the back of the head previously, and her opinion was that he could be aggressive if he could not get his own way, and with the drill in his hand he was, she thought, capable of anything. He frightened the life out of her. We accept her evidence that she was frightened.

We have to say that even if he were provoked, as indeed we are sure he was, and was intended to be, the husband's conduct went far too far.

Soon afterwards Police Constables Perchard and Breuilly came to the door. Both these police officers were called to give evidence.

The Court was particularly impressed with the evidence of P.C. Perchard, the senior of the two officers.

He stated that the wife's bedroom was furnished more as a living room than as a bedroom. When he saw the wife, her face was reddened, she was still upset and gave the impression that she had suffered a traumatic experience. She had been crying but had suffered no physical injuries of any seriousness, an impression confirmed by P.C. Breuilly, who spent more time with her and who

stated that there was a slight reddening of the left eye and the left hand corner of the mouth.

Both Police Constables came to the conclusion that the wife's injuries, such as they were, were caused by the husband's efforts to retrieve the photos and that he had forced his entry for that purpose rather than to assault her.

P.C. Perchard added that it was clear that the domestic situation was very tense and difficult and that things had come to a point where the wife did not feel that she could live in a normal house sharing situation with her husband. It was not, of course, possible to make a total judgment on the domestic situation, which in his view did not call for criminal proceedings.

He did confirm, however, that the husband had complained that the wife's behaviour in removing the photos was unfair and provocative.

The next day, the husband claimed, the wife laid a complaint and he was arrested whilst with the children, who were left with a W.P.C. He thought that his wife was claiming she was apprehensive that he might assault her. Centenier Boschhat, however, who seems to have been well appraised of the situation, ensured that he was not detained over the weekend and the matter would appear to have gone no further.

The wife decided to remove herself from the house on the Monday morning. In her evidence-in-chief and in cross-examination, her account of this incident is that on the Saturday morning, the husband had again threatened that if she did not take everything downstairs he would do the same again, so she went to the police station after which the police came and took him away. She thought he was told not to return again that weekend.

It was following this incident that the wife removed to the Women's Refuge, a move which the husband maintained was made for effect. When it was put to him that she believed she was under threat, he disagreed, reiterated that she had made it for effect (to put pressure on the Housing Department and possibly on their advice) and had exaggerated the threat from him.

The wife's evidence (in chief and in cross-examination) was that both the police and the Housing Department had advised her to go to the Refuge.

There are a series of other allegations, most of which in our view really relate to the marriage. Some of them share common ground with the incidents above. There are allegations, for example, that the wife attempted to throw a picture belonging to

the husband away, allegations and denials as to the state of the marriage and the efforts made to save it and as to whether the wife attempted to separate the children from their father. Quite a number of them seek to cast doubt on the wife's veracity by challenging the evidence which she gave in previous proceedings, these being separate from her admission of perjury with regard to her relationship with Mr. C.

There are a series of admissions, which we have to take into account where the wife admits being in contempt of Court. These include as the most serious the approach to Hambros and the removal of the belongings which precipitated the final scene on 24th April, 1992. We need not, we feel, detail these at length as many of them are already canvassed in the evidence.

What is clear from the admissions is that the wife admits that the husband is a loving, if not a devoted father (in the sense of being unreliable) but being perfectly adept at the usual domestic chores involving young children. In her evidence in chief she thought he acted with them like a robot with no feelings whatsoever. Children, she said, need to be cuddled. He was though, she conceded, a loving father in his own way.

To complete the husband's case, there were minor allegations which shewed only too clearly the state of the parties' relationship, if it can be so termed, after the wife returned to the matrimonial home in February, 1992, until she left it again on 27th April, 1992.

It was plain to us that the husband relied on the injunctions, maintained, or rather reimposed by the Court on 27th January, 1992, as shewn by his claims of her slamming the door on him, and the struggle when retrieving the photographs. What was not so clear to us was the tolerance which he, in return, was prepared to extend to the wife in those circumstances.

In addition, he now believes that the wife has formed an association with another man. We have dealt with her response to this allegation above. In cross-examination he admitted that he had himself formed a new association with a lady, but in his case, had been very careful, as we have stated above, not to make anything of it in front of the children.

Finally, and most importantly, it was put to the wife that she had manipulated the situation at the family home culminating in the scene of 24th April simply in order to put pressure on Housing: that N and J are the victims of this action and that she then sued to deprive the father of access, when he was, in terms, altogether the more suitable parent. This was met with an indignant reaction from the wife who complained that the reason J still wakes up as she does is because she was put out of the

house. She is, and has been willing to give generous access: although in her life he does not exist, in the children's he does.

As part of his evidence, the husband adduced some video recordings. These show the relationship which we had expected from the admissions of the wife, namely that the husband is a loving father, and, as reported in the report of the Children's Officer, the children respond well to him when they see him. He called a friend, Mr. T, a hotelier, who stated that the husband brings the children round once or twice per week to the hotel to play with his son. He described the husband's aptitude as very good, that he looks after the children well, that he is patient, not easily excitable and never heavy handed. We accept that evidence. He describes the children as to some extent insecure and both, but J in particular, as tending to cling. He had seen Mrs. Hart but believed that, although very pleasant, when she was speaking to him she was only doing so as a formality as her mind was already made up.

The husband was asked about the two reports, made by different Children's Officers. Not surprisingly, given their conclusions, he disagrees with them. He complains that Mrs. Hart, in particular, attempted, as he put it, to compress five years of marriage into 1 1/2 hours, and merely followed the report of Mr. Taylor. In particular, she was, he said, dismissive of his request for her to refer to Mrs. O and Miss T who had, he said, evidence to provide of serious allegations as to his wife's treatment of N.

Miss T, he told the Court, had provided quite serious allegations regarding the wife's treatment of N. On occasions she stated to him that she had arrived at the house, where she called quite frequently after the birth of N, until about 1 1/2 - 2 years ago and that she had seen that N would be marked, sometimes on the face and sometimes on the leg; and that the wife would admit that she had hit N sometimes with her hand and sometimes with a slipper.

In cross-examination, the husband who, after all had given evidence that he regularly bathed the children when small, confirmed his earlier evidence that he did not particularly see evidence of this, to his recollection, but felt that his wife was being aggressive to N. Pressed, he again confirmed that he did not see serious marks on her when she was very young.

Miss T, a mother of three children, the youngest of whom was born at about the same time as N, stated that she met the wife in the maternity unit where she found her uppity with staff, and giving her husband a lot of trouble and anguish when he called, apparently under the impression that he was seeing someone else.

After the wife returned home, one or the other lady would telephone. If the wife were having a rough week with N, it would build up to three or four times per week; or in a fair week three times and she might possibly visit the family home twice in a week.

The wife had had no family support when the witness knew her. She had not seen her recently. They fell out about 18 months ago over what the witness felt was a breach of confidence by the wife.

Quite frequently she said the wife would ring her and say she had had a terrible sleepless night and that N had cried all night, a statement not, as we recall, confirmed by the husband in his evidence. She often rang between 8 a.m. and 10 a.m. and found N crying on most occasions. She would take her three children with her, and her eldest daughter would do the wife's ironing, as she found it difficult to cope with the household chores.

She, unlike the husband, had seen a slipper mark on her face. The wife, she said, was rough with N, but what really upset the witness most, she said, was mealtimes. She dreaded them. If N, aged two/three years did not eat her meal she would be slapped and sent upstairs after 20/30 minutes and be presented with the food at the next meal.

On being pressed she conceded that the marks were fading when she left. It was not the way she would bring up her child.

As for the husband whom she saw from time to time, she considered the wife to be a very lucky lady: he was, she said, just the sort of dad she would have liked to have had for her little child. Unlike the wife (although she was lovely) he was a natural father. In spite of her stated concern, she had not, although she had discussed it, thought it necessary to tell the authorities, nor as far as we understood it, at the time, the husband.

She agreed that she had now fallen out with the wife over what she described as a breach of confidence.

Although she denied that her evidence was coloured by her lack of feeling for the wife, we formed the impression that the circumstances of the rift had left a good deal of feeling between the ladies. We, therefore, approached her evidence with some caution.

In her examination-in-chief, the wife made, in effect, a straight denial of Miss T's evidence; and in particular claimed (as had the husband) that N was not really a difficult child but really rather easy and had slept all night at five weeks. She admitted that Miss T had

called, but not as often nor for so long as she had claimed. As to striking N, she claimed that Miss T was not telling the truth; and neither was she telling the truth as to what happened at meal times. Almost the only point on which her evidence agreed with that of Miss T was that concerning the circumstances in which they fell out.

In cross-examination she repeated her denials. If she struck the children she would slap them on the legs or the bottom; and if she had gone too far would have telephoned her mother not Miss T whom she categorised as not liking her, or as having a personal vendetta against her. She would not have struck N for wetting herself. As for her evidence regarding meal times, she said that although, in the early days Miss T had called on a fairly regular basis, perhaps once or twice a week, and although she may have been there at lunch time, she was never there at tea time. As for her allegation that she had no family support, her sister, she said, was often there around lunch time.

Further doubt was thrown on Miss T's evidence, by the evidence of her daughter, Miss S T. She did not, she told us, get on at all well with her mother; and she neither did nor does like the wife.

Her version of events at the family home differed markedly from that of her mother. She had not seen either party to the case for 4 1/2 years. She thought the father made a pretty good dad and would have wished to be with him, because at the time N did seem to be better with the father, but there was a new baby and jealous feelings can arise.

As to the wife's treatment of N, she seemed to treat her very well, though after J's arrival she tended to ignore the older child. Before J arrived N got every assistance for eating or going to the lavatory, but after her sister arrived had to do it herself and grow up. She had, she said, seen the wife smack N if she had done something wrong or if she were in danger of hurting herself, but not when N's mother had lost her temper with her.

In cross-examination, she stated that they went around for less than one year; that she had done the ironing but only once or twice when badgered by her mother. She had rarely been there at meal times and never saw N slapped round the face. When it was put to her that her mother had said that the wife had slapped N when she had not eaten her lunch, she first replied no, and then stated that her mother and the wife did not get on, and, in terms, cast doubt on the veracity of her mother's evidence.

We agree with counsel for the husband who described Miss S T as a witness who seemed natural and without guile, and who seemed to mean what she said.

We agree with counsel for the husband when he submits that the evidence of Miss T, if accepted, would be of very great weight and have a very considerable influence on our decision. It is therefore right to say at this point that we do not accept it and, without hesitation, prefer that of the wife where it conflicts with that of Miss T.

Evidence was also given by Mrs. O who had, the husband explained, arrived at the house with a view to speaking to the wife on account of personal problems of her own and had instead spoken to him. In the course of conversation, having mentioned to her that he was having a custody battle for the children and that the wife had physically and verbally abused them, she replied, "Yes, I know, I have seen it". Once she told him, having come to the matrimonial home unexpectedly, before J was born, N had come to Mrs. O's side, trembling so much that Mrs. O had offered to take her away for the day which she did.

Mrs. O was duly called to give evidence. She confirmed that she had indeed on one occasion offered to take N - who is close in age to her own daughter - home for lunch and that N had indeed slipped her hand into hers. She (N) did not hold it tight and if her hand trembled it might have been on her (Mrs. O's) account.

She opined that she might have said that the wife was a bit down and lonely after she had had N; and thought that as she was very upset herself, on account of her own personal problems, she might have come over the wrong way to the husband. She had, she said, agreed to speak to Mrs. Hart, the Child Care Officer, but had told the husband that, despite his insistence, she really had not felt that she could help him.

The husband was then questioned as to his views on Mrs. Hart's report which recommends that the wife be granted care and control of the children, with joint custody to both parents. She had made the second report. He had seen her for 1-1 1/4 hours at her office when she had tried to cram 5 years into 1 hour. It was, he said, a very disjointed meeting. He had another meeting about a month later at the family home though there was a limitation on frankness as the children were there. The meeting lasted some 1 1/2 hours, but he had received, he said, the distinct impression that by this time Mrs. Hart had reached her conclusions e.g. she had said that it is sometimes better for the father not to have the children as the limited hours they have are more rewarding as there is no involvement in the drudgery (of bringing up children). Furthermore, she had said, at the first meeting, that she did not

know why she had been asked to prepare the report as the previous officer had been better qualified than herself.

He had subsequently sent her a letter which he had been composing when they met, to which he had received no response. In particular he complained that she had not been to see Miss T. : but that of course has been remedied in these proceedings as she has given evidence before us. He agreed that he had seen the finished report but complained that she had not given him the opportunity to make and justify points. All she had done, he maintained, was to repeat the exercise carried out by Mr. Taylor.

Mrs. Hart, a part time Child Care Officer was called. In her evidence in chief she confirmed the conclusions in her report, and stated that since the report and prior to the present hearing she had seen the wife at her new accommodation, and had seen the children again in the presence of the husband and of the wife, and N also at school. The children were happy and settled as they were at the time she had written the report.

She was subjected to a lengthy cross-examination. In particular she was pressed on the lengthy, and well-written letter the husband had sent her.

It became perfectly clear that she had seen a large number of witnesses, far more than was usual, some thirteen in all at the husband's request, the only witness whom she had not seen being Miss T. She agreed that were Miss T's evidence - to the effect that the wife was a less than capable mother - to have been substantiated this might have affected her judgment. She had not seen her as time was pressing.

The Court, however, has seen Miss T and finds, as we say, that her evidence carries no weight.

We do not think that we need to go through the cross-examination in detail. It is sufficient to say, we believe, that Mrs. Hart did not read Mr. Taylor's report nor the previous orders of justice as she wished to make up her own mind. As to the various points claimed by the husband she stated that she had not set out his case as, having listened to both parties the situation as the marriage broke up was clearly intolerable. She reiterated her conclusion that the children were very close to the mother and had a good relationship with the father. It was, she said, a different relationship: good with both, but being with their mother all the time, they needed their father's full attention when he was with them, but when with the mother it was close and they did not need, as she put it, to be crawling all over her.

She agreed that the husband had given his opinion that the wife was not capable, but that all the people he suggested she

should see had not actually been able to say that. Both parties, she added, always find something horrible to say about the other.

She was then questioned on the husband's long letter, which set out his position *in extenso*, in very much the same way that it was set out in his evidence.

Dealing with the wife's financial competence, she was dealing with the here and now, and the wife's statements suggested that she was now handling money well.

She had taken at face value what both had said, as it was difficult to do otherwise. She had not felt it fair to see the wife's mother, the husband's parents being then out of the Island.

She was pressed on the wife's family, but said that she had understood they were protecting a daughter. In particular her report was her opinion as she saw it: she saw the wife as a capable mother who could care for the children. She was trying to look at it with fresh eyes, and had to make a judgment on what she saw during the time she was involved.

She was heavily pressed but reiterated that with two little girls, both very young, where the husband has two jobs, is a hard worker, trying to set up businesses in a recession, and who would have to bring in a housekeeper, and where the children have been through an awful lot, the wife who works part-time and can organise herself better for them is the person who should have care and control, though the husband should have reasonable access. Even if the husband's case, which was put to her, were wholly proved, she was still of the opinion that the wife was in this instance the best person to have care and control.

Obviously a report of this nature was part hearsay and part admissible evidence of what Mrs. Hart had observed. She had clearly, in our view, placed considerable weight on this latter aspect and from what she had herself seen - as against her very considerable investigations (which did not disagree with her conclusions) - was quite clear and confirmed and maintained her opinion as expressed in the report.

She was heavily criticised by counsel for the husband in his closing address: and we feel it right to say that we found her evidence most impressive and were impressed also with the diligence and care which she took in preparing her report.

As for Mr. Taylor's report, he complained that it was made very quickly.

It appeared from interviews he had held he had received the impression that the wife was loyal and caring: and, to the greater part the husband would not disagree with that conclusion,

his case being founded on his view that the wife has shewn him that she can lose control of the children and hence herself, so that the children are at risk from time to time. What concerned him, he said, was not what made her lose control but the fact that she did. He did not accept that the wife would be more relaxed without him, because he (so he claimed) was very supportive of both his wife and the children.

It is this concern which persuaded him he should have care and control. If he did, then in the short term his parents would assist him to create a stable environment. If and when they were to return to England the only help he would need would be a housekeeper for cleaning duties. His wife, he envisaged, would have access in the afternoons from time to time, but he would object to staying access until the children were a little bit older. He thought this would be when they were about 5 years old when they would be old enough to advise if they were mistreated and for the wife to be considered reliable. He conceded, however, that there was no evidence of mistreatment since the wife left at the end of April and stated that she was being supported on a regular basis by her family. This did not prevent him from making an application during the hearing (through his counsel) requesting that he should have staying access three nights per week. When the wife counter-offered that staying access should not be on the night before a school day and that, as a condition, the husband should remain in the house overnight, or, as her counsel put it would be the babysitter, his counsel, on instructions, refused to guarantee that the husband would be there at night, but would ensure that someone with whom the children were familiar would be there. The Court took note of the refusal of what it considered to be a perfectly reasonable request in refusing this interlocutory application.

As for his employment, as he is self-employed, his hours he stated can be as flexible as he wished to make them, and it would be up to him to organise his work around the schedule. His work had to be done when the offices are empty, so it would normally be done in the evenings or at weekends. In our view this statement has to be read in the light of his refusal outlined above to undertake to be in the house if granted limited staying access. As to domestic duties, he was perfectly able to cook, clean and iron.

Towards the conclusion of his cross-examination the husband was asked what his Housing position would be. He believed, and produced a letter from the Housing Committee to the effect that he could rent or buy property provided he continued to reside in the Island. He stated that he had no intention of leaving Jersey, whether he was the principal carer or not, but that if he were to be the principal carer, he would attempt to raise a mortgage to buy out the wife's interest in the family home. This would, he conceded, be extremely difficult as he had no track record of

sufficient earnings through the company but had approached a wealthy ex-customer.

Counsel having agreed to make further enquiry as to his position under the Housing Law, and produced to us the husband's letter to the Housing Committee which we believe fairly sets out his position, we, therefore, accept counsel's statement.

Put generally, to sum up it was really the wife's aggression, her using the children in the matrimonial disputes, her swearing and lack of patience which concerned him.

Educationally and in general morality, they would receive better instruction from him.

In cross-examination, the husband described the children in October/December, 1991, when they were in the matrimonial home with him, as being generally fine, though once or twice J wet her bed. There were times when after access with their mother they were a little reticent, but generally they were relaxed with him and his parents.

He conceded, very fairly and to his credit, that when he sees the children (three times a week at the moment) they are reasonably relaxed again and settled into a new routine. They are now less "clingy" than before.

He still gave them meals, and said that he had noticed that N, previously always a finicky eater was now growing up and filling out a bit and (to his obvious pleasure) was eating better than ever before. He had no reason to believe that the children had been "abused" (in the broadest sense) by their mother. At the moment it appears that the wife is looking after them well.

As to their swearing, J does use the word "bastard" occasionally, usually when fighting with her sister. He made no report of other bad language, and it seemed clear to us that, if the mother had sworn, it was not done in such a way as to encourage any form of habitual bad language by the children. Evidence was given by Miss Nicola Logan, a nursery nurse who has known the children since they started at Nursery. During the three periods which most concern the Court, viz. October, 1991, to the end of January, 1992, from then until the end of April, 1992, and from then until now. She was unable to see any difference in behaviour during any period.

In the course of his closing address, counsel for the husband referred the Court to several recent cases. We have taken note of his submissions in this respect.

We think that the most useful remarks were those of Butler-Sloss LJ, in Re S (a Minor) August [1991] Fam. Law 302:

"BUTLER-SLOSS LJ, allowing the appeal, said that the child's welfare was the first and paramount consideration. There was no presumption that one parent should be preferred to another parent for the purpose of looking after a child at a particular age. It was likely that a young child, particularly a little girl, would be expected to be with her mother but that was subject to the overriding factor that the child's welfare was the paramount consideration. It was natural for young children to be with mothers but, in dispute, it was a consideration rather than a presumption".

Taking all this evidence and these factors into consideration, we are quite clear in our minds as to what our judgment should be.

It is quite true, and she shewed this in the witness box, that the wife is highly strung and excitable. It is equally true that in other proceedings she has lied to the Court; and equally that there have been occasions on which she has shewn deplorably little respect for the orders of the Court, a factor which she may care to take into account in her future behaviour. It is equally true that she attempted, as she has admitted, to remove the children in the summer of 1991 from the aegis of the husband, whilst her behaviour during that summer when the marriage was collapsing shews a severe lack of self-restraint, desperate though she may have been, as we accept, for love and comfort from her husband. It was put to her that she had single-mindedly manipulated the children for her own ends. It suffices to say that we accept her denial.

Against that it is clear that she is a loving and devoted mother, who has made a home for the children and brought her life and spending under control.

Against that the husband in our view shews up very poorly. It is clear to us from his evidence, and confirmed by her, that from the beginning of the marriage he shewed her little affection or understanding, particularly when she was under stress. In particular we accept the wife's statement that when under stress she was told off as if she were a child.

A main part of his case concerned allegations of three assaults on the children, which if they occurred at all were so minor in character as to be unworthy to be placed as evidence before us.

As to the wife's assaults on him in the summer of 1991, we consider, having heard him, that his manner and behaviour were such as to provoke his wife; and we note that when subjected to provocation, as in the assault occurring on or about 20th July, 1991, and in that of 24th April, 1992, he was prepared to use violence. We find that his wife had every reason to be frightened

of him on that latter occasion, and this is a factor which we bear in mind.

As to his evidence on his finances, we find his evidence particularly in the affidavit to be less than frank: and we are far from satisfied that he has this side of his life under control. For so intelligent a man we find the position he has placed himself in to be quite extraordinary, and far from the best interests of his family. We may add that his lack of frankness in this area reinforced our view of his evidence in general.

We accept that he is a perfectly competent father and that in his own way he loves his children. We were not, however, impressed with his commitment to a daily routine and agree with the wife's comment that he would find someone else to do the work. We note also his attitude towards the payment of maintenance for the children.

We have no hesitation in awarding care and control to the mother with joint custody to both parents.

Authorities

A -v- A [1988] 1 FLR 193.

Stovold -v- Stovold [1973] Fam. Law 14.

Re S (A Minor) August [1991] Fam. Law 302.

Bowley -v- Bowley [1984] FLR 791.

Hunt -v- Hunt (née Pallister) (1987-88) JLR N.5.

Williams -v- Williams [1985] FLT 509.

Casal-Farrapeira (née Arthur) -v- Casal-Farrapeira (1985-86)
JLR N.9.