

ROYAL COURT
(Matrimonial Causes Division)

41.

28th February, 1996

Before: P.R. Le Cras, Esq., Lieutenant Bailiff,
and Jurats Orchard and Gruchy.

Between:	Patricia Ann Strecker	Petitioner
And:	John Charles Simpkin	Respondent

**Respondent's appeal against the Order of the
Greffier Substitute of 25th August 1995.**

**Preliminary application by the Respondent for the
Court to hear the proceedings *de novo*.**

Advocate F.J. Benest for the Petitioner.
Advocate D.G. Le Sueur for the Respondent.

JUDGMENT
(on Preliminary Application)

THE LIEUTENANT BAILIFF: This is an appeal by the Respondent against
an Order of the Greffier Substitute in matrimonial proceedings.

5 The appellant, however, has made an application that the
Court should hear not the appeal, but the proceedings *de novo*.
Although this was not contained in the notice of appeal, no
objection was taken by counsel for the petitioner, the respondent
in the appeal, to this application being heard, and the Court has
agreed to take this as a preliminary point and to abridge time.

10 The application is made on several grounds: first that the
hearing began on 22nd May, 1995, when the petitioner and her
witnesses gave evidence. The hearing was then adjourned and it
was not clear whether the appellant's then solicitor was invited
15 to cross-examine, although he did cross-examine one of the
witnesses.

5 No evidence was heard from the appellant. Counsel conceded, as we think he had to from the record, that the appellant had had ample opportunity to appear, but not having been heard then, he wished to be heard now. He would be willing to give his reasons on oath. Alternatively, if we would not hear the case *de novo*, we should remit it to the Greffier for a rehearing.

10 In answer, counsel for the petitioner submitted that not having taken the ample opportunity to be heard before the Greffier, it was too late for him to be heard now. The law was clear that the facts should be heard out before the Greffier, and that this Court should act as an appellate court, and not hear the case *de novo*.

15 Here the proceedings were satisfactory, and the tape and the affidavits sufficient.

20 We agree that the law is clear. It is contained in Richomme -v- Le Gros (27th June, 1994) Jersey Unreported, which laid down the appropriate way to proceed, viz. that the case should be heard out before the Greffier.

25 The exceptions to the rule (see e.g. Ozouf -v- Salmon (16th September, 1993) Jersey Unreported and, indeed, Richomme -v- Le Gros (27th June, 1994) Jersey Unreported and, more recently, Harrison -v- Deeming (16th September, 1994) Jersey Unreported) were all cases where the lack of a transcript, or reasons, made it imperative, in order that justice might be done, that the case be heard *de novo*.

30 Here there is a sufficient transcript, the appellant was represented, he was given adjournments and ample time; no reason was advanced by him (as against the application by his solicitor) for his non attendance. Cases such as these must proceed if they properly can so that justice may be achieved between the parties. The law as put to the Court is quite clear: there is no ground on which we consider that this action should be heard *de novo* or be remitted to the Greffier for rehearing.

40 We will therefore sit to hear the appeal from the Order of the Greffier.

45 **JUDGMENT**
(on the Respondent's Appeal)

50 **THE LIEUTENANT BAILIFF:** This is an appeal by the respondent husband from a decision of the Greffier Substitute in matrimonial proceedings.

The Acte of the Greffier Substitute is dated 25th August, 1995, and, in terms, requires the respondent to transfer his joint

interest in No. 27, St. Mark's Road to the petitioner upon her assuming liability for the charges and arrears of income tax due thereon.

5 In his written judgment the Greffier Substitute stated that he did not take into account the husband's conduct during the marriage, but took into account the respective ages of the parties, the present financial difficulties of the wife and her inability to find alternative accommodation were the property to
10 be sold.

The respondent now appeals against this order. Put briefly, the grounds of appeal are:

- 15 a) that given the age differences, the usual rôle of husband and wife are reversed and it was the petitioner who inevitably provided the main source of income and assets;
- 20 b) the parties lived happily together for seven years before the property was purchased;
- c) no due weight was given to the gift of the half share of the property by the wife to the husband;
- 25 d) the Greffier refused to give due weight to the husband's affidavit;
- e) the Greffier was wrong to find that the petitioner would be
30 unable to find alternative accommodation;
- f) that the Greffier should not on the merits deprive the husband of an interest which "represented the sole asset of the marriage".

35 The parties were married on 8th August, 1977, at Nottingham. The husband was 18 and the wife, with at least one other marriage behind her, was 38. Her son, Jason, was then 8 years old.

40 The parties then lived in her house, "Villa d'Anglais", at Grouville. The wife owned this, having received it from a previous marriage settlement. It had charged on it a loan of £10,000. The parties lived in one half and the petitioner's brother, Mr. Strecker, in the other half.

45 The parties then moved to "Le Côtel" at Trinity, and the house was rented out as two units.

50 About three years later the parties made some repairs to "villa d'Anglais" at a cost of £12,000, of which £5,000 was borrowed and £7,000 came from the estate of the petitioner's father. At this time the husband was working as an apprentice at the Jersey Electricity Company, from which he eventually qualified

as an engineer, after six or seven years at the Jersey Electricity Company.

5 The petitioner's view, in her evidence, was that this would enable him to earn good money.

10 On the 30th March, 1984, at, so the petitioner claims, the urging of her husband, the "Villa d'Anglais" was sold. There was a net balance of £60,000 and this was used to purchase on the same day, by way of a joint tenancy between the parties, 27 St. Mark's Road, for £85,000. Conversion work was in progress.

15 There were two 2 bedroomed flats, one 1 bedroomed flat and a bedsitter.

20 In January, 1985, a further £32,000 was raised for the husband to go to Portugal to invest in a business there. The position was regularised by the repayment of the original bank loan, which was replaced, during March, April and eventually August, with loans totalling £69,000 at a high rate of interest, the gross being £10,425 per annum, and net, after deduction of tax, £8,340 per annum.

25 Very shortly afterwards, the wife became concerned and the upshot was that the venture in Portugal failed and the marriage broke up.

30 The wife claims that the business broke down because of the behaviour of the husband, a claim which he denied in his affidavit.

35 The long and short of it was that the business was sold at the end of 1986 or early in 1987 and each party received £20,000 in Portuguese currency.

40 Most of the wife's share has been lost, much in another venture in Portugal. Meanwhile the wife claims that the whole of the bar equipment and assets worth £20,000 were all taken by her husband.

45 Further evidence was given by the wife as to how she had used her share in part to pay off joint assets. In addition she has paid her share of the income tax on 27, St. Mark's Road, while that owed by her husband is outstanding and can be claimed by the comptroller against the property.

50 Mr. Le Sueur for the husband put his case in this way: the principal considerations on which the Greffier Substitute relied were:

1. the respective ages of the parties;

2. the financial difficulties of the wife; and
3. her inability to find alternative accommodation if the property were sold.

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The Greffier Substitute did not take the husband's conduct into account, although he should have done so, according to the law and precedents. This Court should not do so, no appeal having been raised against it, but even if we were to do so his conduct was not so repugnant as to disentitle him, on that ground, to a share in the matrimonial assets.

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Mr. Le Sueur's submission was that the Court should consider giving the husband an interest on the lines of the order made in O'Conner -v- Gosling (1974) JJ 179.

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Turning to his grounds of appeal, his first point is that inevitably the wife provided the main source of income and assets in the marriage. The wife could not have expected the husband to make any great contribution and, in terms, should pay him off.

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As to b) and c), he ran these together. They were happily married for seven years; and a gift is a gift (see Ingham -v- Quérée & Naffati (1969) JJ 1213). There was no complaint that the husband had not contributed what he could nor was there any gross and obvious conduct which would disqualify him.

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As to d), his affidavit was in and should have been considered; not all was rebutted by the wife, in particular the wife had not rebutted the assertion (see ground e)) that she spent time in Portugal. If that were the case, then it strikes at the heart of the Greffier Substitute's finding that she would have no roof over her head, were the appeal to be successful.

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As to f), it was quite wrong, given the history, to remove the whole of the assets from the husband. The proper order was either for no order to be made, or for the husband to retain a contingent interest as in O'Connor (see above).

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In answer, Mr. Benest for the wife submitted that all the capital had come from the wife who, at the time of the marriage, had a home and a going business.

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Once the step had been taken to sell "Villa d'Anglais" and purchase 27, St. Mark's Road, the borrowings had been increased almost immediately so that the £60,000 from the "Villa d'Anglais", invested in the new property, left an equity in that property, with the new borrowing of £69,000, of somewhere around £16,000, with a good deal of the balance converted into cash for the Portuguese venture and associated expenses.

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5 Out of the original equity therefore of £60,000 the husband had received £20,000 from the sale of the Portuguese business; had appropriated up to a further £20,000 and caused considerable financial distress to the wife by his behaviour. In terms, at the time of the break up of the marriage, he had received half at least of the equity arising from the "Villa d'Anglais" and it was only by her own efforts that the wife had managed to keep afloat.

10 There was ample evidence before the Greffier Substitute for him to make such a finding. The husband had not given evidence, although he had been represented and his client's evidence was not controverted, the Greffier setting out the circumstances thus in his finding at paragraph three on p.3 of his judgment:

15 *"In all, three applications have been made by the husband's lawyers to adjourn the case. The first was just prior to an order of the Court made on the 4th April, this year, when the husband was ordered to file an affidavit of means on or before the 2nd May. The case was adjourned on 20 22nd May, in order for the husband to give instructions to his lawyers. Last Wednesday, 23rd August, an application was made to adjourn in order for transcripts of evidence to be taken. This application was refused on the basis that it was an unreasonable request coming from the same 25 firm of lawyers who had originally acted for the husband, and therefore acquainted with the proceedings which had already been adjourned since 22nd May, 1995 in order for the husband to give instructions".*

30 Although the wife had not lived all the time at 27, St. Mark's Road, need and justice alike confirmed that the view of the Greffier Substitute was correct.

35 Both parties set out the basis on which the Court should approach the appeal. These grounds are well enough known for us not to have to recite them here.

40 In our view, given the facts and circumstances which faced him, we have to say that we cannot see that the Greffier Substitute erred in his finding. Indeed, we would go further and find that he was entirely correct. The husband has already received a substantial benefit from the matrimonial assets and is certainly not entitled to more.

45 We therefore dismiss the appeal and confirm the Order of the Greffier Substitute.

Authorities

Matrimonial Causes (Jersey) Law, 1949: Articles 28, 29.

Ingham -v- Quérée & Naffati (1969) JJ 1213.

Urquhart -v- Wallace (1974) JJ 119.

O'Connor -v- Gosling (1974) JJ 179.

Billot -v- Perchard & Chambers (1977) JJ 33.

Howath -v- McBride (1984) JJ 1.

Du Val -v- O'Brien (No.2) (1989) JLR 145.

Niedermeyer -v- Sprent (21st September, 1990) Jersey Unreported.

Gallichan -v- Gallichan (12th September, 1991) Jersey Unreported.

Cadorez -v- Neale (30th March, 1993) Jersey Unreported; (1993) JLR
N.8.

Harrison -v- Deeming (16th September, 1994) Jersey Unreported.

Richomme -v- Le Gros (27th June, 1994) Jersey Unreported.

Knight -v- Elwell (1977) JJ 177 CA.

Smith -v- Smith (1975) 2 All ER 19.

S -v- S (1977 1 All ER 56 CA.

Backhouse -v- Backhouse (1978) 1 All Er 1158.

Murphy -v- Gilson (25th April, 1991) Jersey Unreported; (1991) JLR
N.10.

Ozouf -v- Salmon (16th September, 1993) Jersey Unreported.