

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN EQUITY  
SUIT NO. E 89/96

IN THE MATTER of premises situated at 21  
Plymouth Avenue Kingston 6 in the Parish of  
St. Andrew registered at Volume 118 Folio  
154 of the Register Book of Titles.

AND

IN THE MATTER of the Married Women's  
Property Act.

BETWEEN            KEITH ANTONIE CAMPBELL            PLAINTIFF  
AND                    RUTH NAOMI DAVIS-CAMPBELL            DEFENDANT

Mr. Gordon Steer instructed by Chambers Bunny and Steer for the Plaintiff  
Mrs. Pamela Benka Coker Q.C and Mrs. D. McDonald instructed by Rattray Patterson and Rattray  
for the Defendant.

ORIGINATING SUMMONS  
IN CHAMBERS  
Judgment delivered June 15, 1998

HARRISON J  
Cause of Action

The Plaintiff is the registered owner of premises 21 Plymouth Avenue, Kingston 6 in the Parish of  
St. Andrew which is registered at Volume 1188 Folio 154 in the Register Book of Titles . He was  
married to Ruth Naomi Davis in September of 1979.

He has brought these proceedings by way of Originating Summons and has claimed to be the sole owner of the premises. He seeks a declaration as to their respective interest in this property.

Prior to their marriage two properties were purchased. There was Lot 860 Excelsior Avenue, St. Catherine and 228 Susan Avenue also in the Parish of St. Catherine. The former was registered in their joint names whereas the latter was registered in the husband's sole name. In February 1980, 21 Plymouth Avenue, was bought and registered in the sole name of the husband.

The wife claims to be the owner of half of the beneficial interest in the property at 21 Plymouth Avenue and has contended that they had discussions about the purchasing of this property. According to her it was agreed that both of them should contribute towards the purchase of it and that both should have an equal share in the beneficial interest.

### The Evidence

Affidavits were filed by both Plaintiff and Defendant in support of their respective claims and they were cross-examined on these affidavits. Written submissions were also submitted by both Counsel for the assistance of the court.

The evidence is quite voluminous but it will be necessary at times, to set out the affidavit evidence fully.

The Plaintiff has deposed in an affidavit sworn to on the 28<sup>th</sup> day of February, 1996 as follows:

“.....

3. Prior to the marriage we resided together at Lot 228 Susan Avenue, Bridgeport in the Parish of St. Catherine for about six months.

4. I had purchased Lot 228 Susan Avenue in about 1974 while I was

still married, but had been in a relationship with my wife who was then Ruth Davis.

5. Florence Clarke asked me to purchase Lot 860 Excelsior Avenue on her behalf and I and Ruth Davis signed the necessary documentation.

6. Florence Clarke was the grandmother of my then wife Veronica Campbell.

7. That the purchase of Lot 860 Excelsior was done by funds provided by Florence Clarke. The purchase price was \$11,000 and over a period of time the money was sent to me. Mrs. Clarke also sent money to me to do additions to the house.

8. The premises was eventually transferred into the names of Florence Clarke and Ethlyn Myers her daughter in July, 1979.

9. I purchased 21 Plymouth Avenue in 1978 prior to the marriage from my own funds and prior to transferring the property to Florence Clarke and Ethlyn Myers.

10. That neither I nor Ruth Davis received any money in respect of the transfer of Lot 860 Excelsior.

11. That I sold Lot 228 Susan Avenue after I had acquired 21 Plymouth Avenue.

12. That my wife has not contributed in any way to the acquisition of

21 Plymouth Avenue land because of this I did not place her name on the Certificate of Title. We had not been married at the time nor was I contemplating any marriage at the time, Miss Davis had two children for me born May 1972 and January 1974.

13. That the house is in the same condition since I purchased it. I alone have maintained the structure of the house over all these years.

14. The defendant conducts her business under a shed consisting of six concrete columns and a roof, no sides or doors.

In response to the above allegations, the Defendant filed an affidavit sworn to on the 3<sup>rd</sup> day of June 1996 and in which she states inter alia:

“.....

7. That in or about 1973 I saw an advertisement in the newspaper that West Indies Home Contractors (WIHCON) was selling houses in the Bridgeport area. My friend Barbara Jackson and I went to the offices of WIHCON on Harbour Street, Kingston and spoke to one Mrs. Burger who gave us information pertaining to the purchase.

8. That I informed the Plaintiff of the sale of the house. At the time I was expecting Diane and I was still living in rented accommodation at Lorraine Avenue, Kingston 10 occupying the small half of the house. Bearing in mind the expansion of our family I thought we should try to obtain accommodation of our own and therefore applied to purchase one of the properties from WIHCON. Our application was successful. I gave the Plaintiff a portion of the deposit on the purchase price in cash, the Plaintiff contributed the remainder. We both

attended the offices at WIHCON and signed the relevant documentation with regard to the purchase of same.

9. That in or about 1973 we purchased in our joint names property at 860 Excelsior Avenue, Bridgeport in the Parish of St. Catherine which property was rented and the rental proceeds used to cover the mortgage payments.

10. In or about 1974 the Defendant purchased property at 228 Susan Avenue which purchase was financed solely by him.

11. That at my expense I conducted general improvement work and maintenance to the property at Susan Avenue which included installation of lighting and other fixtures, sliding doors in the bathroom, awnings as well as regular painting of the house and decoration of the interior. That the property at Susan Avenue was later sold and proceeds used to purchase property at Plymouth Avenue.

12. That two of the Plaintiff's children resided with us. Throughout our relationship we shared expenses of the household. The Defendant paid the mortgage and utility bills whilst I paid for the food, general upkeep of the property and the wages of the gardener. I was responsible also for the purchase of clothing for the children and the Plaintiff, linen, appliances and other items of household necessity and use. We both paid school fees for the children whilst I paid for their extra-curricular activities namely private lessons and music training.

.....

16. That paragraph 8 of the Plaintiff's affidavit is admitted. In 1979 the Plaintiff asked me to sign documents for the transfer of 280 Excelsior Avenue to Florence Clarke and Ethlyn Myers. I do not know what the plaintiff did with the moneys received from the purchase.

17. That as to paragraph 9 of the Plaintiff's Affidavit I will state that in or about 1979 Susan Avenue was sold for approximately \$20,000.00. We both went inspecting houses for purchase and settled upon 21 Plymouth Avenue. The owner, Mr. Lloyd Subratie wanted \$20,000 up front for the light and fixtures. I gave the Plaintiff a cheque for \$5,000 and he contributed the balance.

18. That the balance of the purchase price was financed by virtue of a mortgage from the Bank of Nova Scotia Trust. At the time of the purchase of the property at Plymouth Avenue, the Plaintiff led me to believe that I was signing documents relating to the purchase of the property and giving me an interest in the property. I found out that my name was not on the title for the property when same went up for auction due to arrears in payment having been so advised by Mrs. Sonia McFarlane of the National Commercial Bank, University Branch.

19. That when I confronted the Plaintiff about it he said that in business you sometimes need property to borrow against and wives do not understand so he did not bother to put my name on the title.

20. That we later went to see Mr. Audley Russell, Attorney at Law to rectify same who advised us that it would cost a percentage of the

value of the property to effect a transfer. In the presence of the lawyer and myself he said that he did not have the money at the time but would find same in order to do so.

....

23. That we moved into Plymouth Avenue and a few days later we were married. After the marriage the Plaintiff told me that no wife of his should work as he was able to support me. I gave up my business and sold out my stock.

....

25. That I stayed home for a period of time attending to the needs of my family and whilst at home I started growing plants and flowers.

26. That during this period the Plaintiff gave me a monthly sum for maintenance. However soon the Plaintiff's cheques bounced causing me great embarrassment at the supermarket and other places I sought to tender same. Creditors with whom we conducted business for years refused to accept his cheques. I often settled the bounced cheques with my own money often with cash.

...

29. That in or about 1993 at the request and insistence of the Plaintiff I obtained a loan in my name from the NCB King Street branch in the amount of \$50,000 with the understanding that he would be responsible for payment of the amounts.

30. That in breach of an oral agreement/understanding the Plaintiff refused to make the monthly payments with the consequence that the same fall into arrears and I was constantly harassed by the Bank manager...and was forced to make expenditures from my own pocket so as to settle same.

The defendant further deposed that at various times she would have to borrow moneys from the Bank or other Financial institution in order to assist the Plaintiff in his business. On other occasions she lent him sums of money and assisted him in obtaining loans for use in his business. Then she states:

35. That due to financial difficulties I went back to work operating initially from my car selling jewelry and other items and continuing to save and contribute to the household. I did this to keep our family going, making contributions to the household, lending him money and substituting cheques.

....

37. That at the time of purchase of the property at Plymouth Avenue same comprised of 4 bedrooms, 4 bathrooms, kitchen, dining and living rooms, laundry area and swimming pool and was in good condition.

38. That during the marriage the following were added to the premises a 4 car carport, 1 pool-side bar, gazebo with fountain all at my expense.

39. That I also paved the driveway twice, did general repair and



maintenance which included fixing of the roof. I also installed ceiling fans, a satellite dish and paid for the interior decoration of the property.

42. That by virtue of the matters aforesaid I verily believe that I have made substantial contribution both directly and indirectly towards the purchase, improvement, maintenance and repair of the property at Plymouth Avenue and am entitled to an equitable interest thereon(sic).

The Plaintiff filed an affidavit in response to the allegations in the Defendant's affidavit of the 3<sup>rd</sup> June 1996. He claimed that his wife had no knowledge of what he was doing when he purchased Plymouth Avenue. Neither did she give him \$5000 towards its purchase. He had purchased it for \$160,000 of which he had provided \$100,000 from his own resources. He contended that he had purchased all the appliances in the home and at no time did his wife give him \$46,000 to use in his business. He contended further that he has never received monies from her for use in his business but he has received assistance from her in securing loans but these loans were serviced by him at all times. He has also denied that his wife did any improvement or extensions to the house at Plymouth Avenue.

In her affidavit sworn to on the 5<sup>th</sup> day of June 1996, the defendant deposed further in relation to her continued assistance in obtaining loans on behalf of her husband's business. In one instance a sum of \$50,000 was borrowed from National Commercial Bank and it was agreed between them that he would make the repayments. He did not honour this agreement and she had to settle the loan.

The defendant's affidavit of the 2<sup>nd</sup> December 1996 indicate that she had no knowledge that her husband had purchased the house at Excelsior Avenue for Florence Clarke and neither was she aware of any monies received by him from Florence Clarke and at the time the property was transferred to her she got the distinct impression that it was being sold to Florence Clarke. She has deposed that the details of that transaction were never explained to her by her husband.

The affidavit of the 29<sup>th</sup> April 1997 speaks to the Defendant exhibiting copies of receipts and other payments made by her towards the purchase of food and other necessities for the household and other expenses pertaining to the children

The Defendant also seeks to rely upon an affidavit sworn to on the 19<sup>th</sup> day of September 1997. In this affidavit she states inter alia:

“22. That even before we began the search for the property which was eventually 21 Plymouth Avenue, there was agreement between the plaintiff and myself regarding the property to be purchased. We discussed it and agreed that we would both own the property and would contribute to its acquisition. When we settled on 21 Plymouth Avenue, there was no change in the agreement.

23. That it was agreed that the house at 228 Susan Avenue would be sold to purchase the Plymouth Avenue property....

24. That I do not recall the exact sum of the deposit for 21 Plymouth Avenue. The vendor Mr. Subaratie asked for \$20,000 up front for lights and fixtures. I gave \$5,000 towards this payment.

25. That I do not recall in exact detail any other money which I provided directly towards the purchase price of the house but during the time of the purchase I gave the Plaintiff large sums of cash and I spent a great deal of my money on the house after it was acquired.

26. That throughout the relationship I had continued in my business of sales. I travelled to England, U.S.A and other countries to procure goods. I had a large client base and earned a good deal of money. I was not required to make a further direct contribution towards the acquisition of the premises because we were aware that

funds from the sale of Susan Avenue were coming in. I was also aware that the majority of the purchase money was to be obtained from the Bank of Nova Scotia Trust Company Limited.

27. That the plaintiff would often bring piles of paper to me and say "Ruth sign these." Once I stopped to read them and he said "how can you do that? I am your husband, "don't you trust me?" We took possession of 21 Plymouth Avenue before completion, paying an agreed rent to Mr. Subaratie. We move into the house at 21 Plymouth Avenue in September 1979 and were married that same month.

28. That I would often give the Plaintiff money from time to time for the rent or some other obligation regarding the house and he would ask me for money saying e.g "I have a payment to make next week" and I would give him money.....

29. That after we moved to 21 Plymouth Avenue I went to New York during the summer of 1980. I did not realise that the Plaintiff had not been paying the mortgage. When I returned to the Island, I was told by a mutual friend, Sonia McFarlane, that the Bank was putting up the house for sale. Sonia McFarlane also told me that my name was not on the title.

30. That through Sonia McFarlane, who was Manger at National Commercial Bank a loan was arranged to avert the auction.

31. That I was extremely disappointed and angry that the Plaintiff had reneged on our agreement that my name was to be placed on the title as evidence of our joint ownership of the property. I remonstrated with the Plaintiff and expressed my anger in no uncertain terms. I also complained to my sister and other friends. The plaintiff apologized and took me to Mr. Audley Russell, Attorney-at-Law of Tenn, Russell, Chin Sang, Hamilton and Ramsay.

32. The Plaintiff told Mr. Russell that he had not put my name on the title as “when you are in business and need money quickly sometimes the wives do not understand. Mr. Russell told us the cost of putting my name on. The Plaintiff stated that he would do so but said he did not have the money at that time.

33. That in the years that followed, I asked the Plaintiff about my status on a regular basis. He kept saying that he was going to correct the omission as soon as he sent out a particular shipment or completed some other transaction.

34. That at Plymouth Avenue, at first we shared living expenses, I would go to the supermarket, I purchased clothes for everyone in the family, I purchased appliances and sometimes paid light and telephone bills. When the Plaintiff’s cheques bounced I would make payments. The Plaintiff continued to pay the mortgage.

35. That my continued and substantial financial assistance over the years enabled the Plaintiff to make the mortgage payments for 21 Plymouth Avenue. I have helped the Plaintiff in every way that I could, as I believed that my contribution I made was for the benefit of us both and also because I was convinced by the Plaintiff that 21 Plymouth Avenue belonged to both of us and that I had an interest in same.

....

38. That in or about 1989 things were difficult at home financially. The devaluation of the dollar by the crawling peg system negatively affected the Plaintiff’s export business. I started selling jewellery to offices and used the money to support the house. I purchased food and paid bills and when he asked, gave the Plaintiff cash. His cheques bounced frequently and I took over the payment of water, telephone and electricity. The only payment I did not actually make myself at the relevant office was for the mortgage. I however gave money for this purpose from time to time. I bought

food items in bulk.....

39. That my name was still not on the title but it was accepted that I had a half interest. The issue of the title was a sore point between us. When I raised it, the Plaintiff would say "Don't worry your name is on the will." I told him I was not satisfied with that.

....

41. That I made several substantial improvements to Plymouth Avenue from my own money. During the 1990's I installed a 5,000 gallon water tank which I purchased from Tankweld. This included a pump and pressure tank. I also built a base for the tank and paid for the extensive repairs to the roof. The improvements were financed from the proceeds of my jewellery business.

42. That I started the flower business in the mid to late 1980's. I began growing roses, gerberas , anthuriums and other blooms delivering same to Oceana Flower Shop. I also made and sold hanging plants for Barbican Gardens.

43. That the business grew by leaps and bounds and I moved the gardening outside the home in or about 1990.

44. That after this I built the four (4) car carport. ....I paid for the construction of the pool bar and gazebo. I purchased all appliances including 3 televisions, 2 video cassette recorders, satellite dish and attachments, fridge, stove, freezer, washing machine and dryer. I paved the driveway, installed drapes and painted the house several times.

That I felt free to spend my money and make these improvements and purchases as I knew, based on the history of the relationship that I had a half interest in the property. I continued to contribute to household expenses and continued to give the

plaintiff money. He continued to have gambling problems...”

The Plaintiff was cross-examined extensively. He denied that his wife was the one who had transacted business with WIHCON and although the property was bought in their joint names, she signed the documents as Florence Clarke was too old to qualify for a mortgage. He maintained that she did no improvements to the Excelsior premises. He admitted that improvements were done to the Susan Avenue premises but his wife did not contribute any money to those improvements. There was no discussion with his wife for her to start looking for another house as the family was getting bigger. Neither did he start searching with her for a house. He admits however, that on a Sunday evening he would pick her up and look at houses but he did not do this with any intention so as to enable her to remove from Susan Avenue. He denied that there was any discussion with his wife about them purchasing a house together. He claimed that the purchase price for Plymouth was \$140,000, that he paid a deposit of \$90,000 and that he borrowed \$40,000 from Scotia Trust. According to him, his wife did not know when he was purchasing those premises and neither did she give him \$5,000 towards its purchase. He agrees that she did raise the issue of her name not being on the title and that there were quarrels about this. He also agreed that he had taken her to Mr. Russell's office but he did not take her there to put her name on the title and neither was there any agreement by him to put her name on the title when he could afford to do so.

He denied that she contributed monies towards the expenses at Plymouth Avenue albeit that he admitted that she did purchase food for the household. She did not pay any bills, she never purchased clothing for him although she would do so for the children. She had not bought any appliances for the house and neither did she do any additions to the house and that it was his monies which added the carport. He also said that she had not repaired the roof but she had paid for the construction of a pool bar and gazebo. He has denied that her assistance at Plymouth Avenue enabled him to meet the mortgage payments.

He admitted that he was having problems with creditors; that he drew cheques which were dishonoured sometimes and that he was a gambler.

He also admitted telling his wife that everything would be alright because her name was on the will.

The Defendant was also cross-examined and I must say that she too was cross-examined extensively. She agreed that when she met the Plaintiff he was an established businessman. She was engaged in the business of buying and selling which was done mainly from her motor car. She had worked at Courts Bros and at the Treasury Department for about one year. She agreed that her husband had assisted her in opening a store at Hughenden but this was not for any long period. She continued buying and selling however, even after the store was closed.

It was also her evidence that they did everything together. Bank accounts were opened in their joint names but most of the times when his cheques were lodged to these accounts they were dishonoured. On one occasion he had suggested that she borrowed \$2,000,000.00 from The Jamaica Citizens Bank for him. Due to the fact that her name was not on the title for Plymouth Avenue this application was not pursued. On another occasion she had borrowed money from the Bank of Nova Scotia, Riverton City and that they both re-paid the loan with him paying most of it.

She has insisted that there was an agreement between them that they would have purchased Plymouth Avenue and that she had given him money towards the purchase. It was also her evidence that the mortgage payments were in arrears for those premises.

### Submissions

Mr. Steer stated inter alia, in his written submissions:

“...if the defendant is to be believed the only contribution she gave towards the deposit was \$5,000 which she stated went towards fixtures (and not the purchase price). She further states that she gave large sums of cash to him from \$5,000 to \$100,000. How can this be believed if at all as being attributable to the acquisition of the

premises? Bearing in mind that the amount taken by way of mortgage to complete the purchase was \$65,000. That the evidence clearly shows that the defendant assisted the applicant with applications for loans which had nothing to do with the acquisition of the property but with his business. The evidence is also clear that he was responsible for and paid the loans. The defendant has brought no evidence of ever having \$100,000 anywhere at all.

The defendant clearly has no contribution towards the acquisition of the property at 21 Plymouth Avenue.

That the deposit having been paid by the applicant it is for the defendant to show that she contributed directly or indirectly towards the mortgage dues. It is clear that he alone paid the mortgage as well as contributing to the expenses of the household. The defendant would assist out of her "little savings" that she had. Can the things done by the defendant be sufficient to give the defendant an interest in the home.

When one looks at the valuation of the property and the value of the work done by the defendant this is minuscule. The premises was valued for \$14,230,000 out of this value the pool- bar and carport was valued at \$230,000 it therefore means that the defendant made a 1/62 improvement to the premises. This clearly cannot be improvement of a substantial nature which is what would be required to give the defendant a share in the premises at 21 Plymouth Avenue. The building of the car port was used by her in her business at the plant nursery so the construction of the car port was also for her benefit. Because as she stated although the applicant had contributed



substantially to this business profits was solely what is mine is mine and what is yours is ours. He the applicant was twice married before her and kept everything to himself. How therefore could there have been any express or implied agreement?

Mrs. Benka Coker submitted inter alia :

“...the demeanour of the plaintiff presented to the Court was one of a haughty and cold man, without any residual affection for his wife, and who was prepared to lie to this Honourable Court on the simplest of issues as long as he achieved his main objective, namely that of being declared the sole beneficial owner of premises 21 Plymouth Avenue.....”

She also submitted that the defendant/wife had successfully proven her case on a balance of probabilities in keeping with the decisions of *Gissing v Gissing* and *Grant v Edwards* [1986] 2 All E.R 428. She therefore asked the Court to make the following findings of mixed law and fact:

- “1. That the husband and wife expressly agreed that the wife should share in the beneficial interest in 21 Plymouth Avenue.
2. That this agreement took place prior to the marriage.
3. That the wife contributed to the acquisition of Plymouth Avenue directly and indirectly.
4. That the husband made representations to the wife that her name would be placed on the title to Plymouth Avenue, prior to and subsequent to their marriage.

5. That the wife relied on these representations and acted to her detriment by directly and indirectly contributing to the acquisition of Plymouth Avenue....

That when account is taken of the wife's contribution as wife, mother, helper, Financial supporter of the household, financial supporter of the husband's business, processor of loans, assistant in repaying loans, it is right and just that she be awarded a half share of the beneficial interest in the property 21 Plymouth Avenue...."

#### Appraisal of the evidence and application of the law

The relevant law in these proceedings is stated by Lord Diplock in *Gissing v. Gissing* [1970] 3 W.L.R. 255. At 267 he states as follows:

"Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based on the proposition that the person in whom the legal estate is vested holds it as trustee on trust to give effect to the beneficial interest of the claimant as cestui que trust."

There is no evidence of an express trust in this case. Consequently the wife/defendant can only succeed in her claim to a beneficial interest in this property if she can establish on the balance of probabilities the existence of a resulting, implied or constructive trust.

To establish such a trust, the wife must show that there was a common intention that both should have beneficial interests and also that she acted to her detriment on the basis of that common intention and in the belief that by so acting she would acquire a beneficial interest.

The claimant must also establish that he/she has contributed directly or indirectly to the acquisition of the property the subject of the claim.

It is appropriate therefore, I think, at this point to quote Lord Pearson in *Gissing v. Gissing*

[1970] 2 All E.R. at 788, (1971) A.C. at 903:

“Contributions are not limited to those made directly in part payment of the price of the property or to those made at the time when the property is conveyed into the name of one of the spouses. For instance there can be a contribution by arrangement between the spouses one of them by payment of the household expenses enables the other to pay the mortgage instalments.”

In *Falconer v. Falconer* (1970) 3 All E.R. 499 at 452 Lord Denning M.R. said:

“It does not matter who pays what so long as there is a substantial financial contribution to the family expenses, it raises the inference of a trust.”

On the question of the common intention of the parties, the following statement of Lord Diplock in *Gissing v. Gissing* (1971) A.C. 886 at 906 B-C is relevant:

“the relevant intention of each party is the intention which was reasonably understood by the other party to be manifested by that party's words or conduct notwithstanding that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party.”

Counsel for the defendant urged the Court to find that there is evidence which would enable the Court to find that there was a common intention that the parties would share equally in the beneficial interest of 21 Plymouth Avenue. She also asked the Court to find that the wife had relied on certain representations and acted to her detriment by doing the following acts:

- a) Making improvements to the home at Plymouth Avenue, car-port, gazebo, pool-bar.
- b) Buying many appliances for the house.
- c) Buying food for the home.
- d) Paying utility bills.
- e) Buying clothes for the family.
- f) Giving large sums of money to the husband to be used in the household and for the household.
- g) Giving the husband money to be used in his business.
- h) Assisting the husband in obtaining loans for his business.
- i) Assisting the husband in re-paying some of the loans.
- j) Making good on cheques drawn by the husband which are dishonoured.”

On the question of loans from the wife to the husband, Mr. Steer submitted it does not form part of the proceedings under the Married Women’s Property Act and has to be pursued elsewhere. He places reliance on the authority of *Crystall v Crystall* [1963] 2 All E. R 330. He also submitted that the defendant could not say with any “proof or conviction” that she enabled the applicant by her contributions to household expenses to re-pay the mortgage attributable to the acquisition of 21 Plymouth Avenue.

### Findings

Having carefully considered all the evidence and the submissions by both counsel I am clearly of the view that the husband/plaintiff is not a witness of truth. Why would he pick up Miss Davis on a Sunday to look at houses if he had no intention of moving from Susan Avenue? He agreed that they had quarrels about her name not appearing on the title for Plymouth Avenue, so why did he take her to see the Attorney at Law, Audley Russell? Why did he tell her that everything was alright as her name was in his will? I am satisfied, having carefully assessed his demeanour that he has not been quite frank and outright with the Court.

I am satisfied on the other hand, that the Defendant has been honest and truthful. I accept her evidence that prior to their marriage she had assisted in the acquisition of property at Excelsior Avenue, St. Catherine and that she had been involved in carrying out improvements at that premises as well as premises at Susan Avenue also in St. Catherine.

I also accept the Defendant's evidence that it was intended that both her husband and herself should have a beneficial interest in 21 Plymouth Avenue. Her evidence in my view, and I so hold, shows that she had acted to her detriment on the basis of that common intention and in the belief that by so acting she would acquire a beneficial interest. I find that she:

- a) Provided \$5,000 towards the purchase of premises at Plymouth Avenue and made improvements to the home including the adding of a car-port, gazebo and pool-bar.
- b) Bought several pieces of appliances for the house.
- c) Bought food for the home.
- d) Paid utility bills.

- e) Bought clothes for the family.
- f) Gave substantial sums of money to the husband to be used in the household and for the household.
- g) Gave the husband money to be used in his business.
- h) Assisted the husband in obtaining loans for his business.
- i) Assisted the husband in re-paying some of the loans.
- j) Made good on cheques drawn by the husband which were dishonoured.
- k) Signed documents relating to the purchase of Plymouth Avenue and was led to believe that she would acquire an interest in that property.
- l) Quarreled with the Plaintiff constantly concerning the placing of her name on the title and that the Defendant took her to his Attorney-at-Law in order to regularise her position on the title but failed to honour his promises.
- m) She was told by the Plaintiff that she should not worry as her name was in his will.

On a totality of the evidence I find that the contributions made by the wife, were in my view substantial. The evidence before me reveals that she was a working person before they got married; he stopped her from working after they got married, but when he fell into financial difficulties she had

to resume selling in order to make two ends meet at home. I get the distinct impression that she was more "business-like" and one who seemed to have saved for the "rainy day." I hold that her contributions were such as to relieve her husband from expenditure which he would otherwise have to bear and which enabled him to pay the mortgage instalments on occasions. In all the circumstances, it would be inequitable for him, the legal owner, to claim sole beneficial ownership. It does not matter that he could have afforded the mortgage payments. Lord Denning MR said in *Hazel v. Hazel* (1972) 1 All E.R. :

"It may be that he does not strictly need her help - he may have enough money of his own without it - but if he accepts it, she becomes entitled to a share."

It is also my considered view, that the wife had relied on certain representations and acted to her detriment by directly and indirectly contributing to the acquisition of Plymouth Avenue.

The Defendant went far beyond the call of "wifely/maternal" duties. I do agree with Mrs. Benka-Coker when she stated in her written submissions that when account is taken of the wife's contribution, she was wife, mother, helper, financial supporter of the household, financial supporter of the husband's business, processor of "loans, and assistant in repaying loans." I cannot agree with Counsel for the husband, that such contribution was not substantial for her to acquire an interest in the property. It is right and just therefore, that she be awarded a beneficial interest in the property 21 Plymouth Avenue.

I accordingly hold that the wife is entitled to a share in the property at 21 Plymouth Avenue, Kingston 6 in the Parish of St. Andrew. I must now endeavour to determine her share. Having regard to all the circumstances of this case, I am of the view that the parties' interests should be apportioned equally. In the circumstances I would put her share as one-half ( $\frac{1}{2}$ ) the value of this property.

Conclusion

The court makes the following Declarations and Order:

1. The parties' beneficial interests in the land situate at 21 Plymouth Avenue, Kingston 6 and registered at Volume 1188 Folio 194 of the Register Book of Titles is as follows:

Plaintiff	½
Defendant	½

2. The Plaintiff holds the said property upon trust for the Defendant and himself in equal shares.

3. The said property be valued by a valuator agreed between the parties and in the absence of such agreement by one appointed by the Registrar of the Supreme Court and both parties to share equally the cost of such valuation.

4. The Defendant be paid the value of her interest within 3 months of date hereof.

(5) That failing (4) above the premises be sold and the proceeds thereof applied as follows:

(a) Payment of costs of the sale

(b) Balance of the proceeds to be shared equally by the parties.

(c) All mortgage debts due and owing on the title to be deducted from the husband/plaintiff's one-half (½) share and if the mortgage left exceeds his one-half (½) share the plaintiff is to be responsible for the excess.

6. In the event of sale and either party refuses or is unable to sign the documents in respect of sale and transfer the Registrar of the Supreme Court be empowered to do so.



7. No order as to costs.

8. Liberty to apply.