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IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO: 13/84

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Ross, J.A.
The Hon. Mr. Justice Wright, J.A. (Ag.)

BETWEEN	IVAN JOSEPHS	DEFENDANT/APPELLANT
A N D	EVELYN JOSEPHS	PLAINTIFF/RESPONDENT

W.B. Frankson, Q.C. for the Defendant/Appellant

C. Rattray, Q.C. & Mrs. J. Hobson-Hector for the Plaintiff/Respondent

September 25, 26 & October 30, 1985

ROSS, J.A.

The parties were married on 20th May, 1960. The husband was then a farmer and shopkeeper and during the marriage was engaged in a variety of enterprises in some of which he was assisted by his wife. Their efforts were successful and by 1982 when the wife left the matrimonial home the husband had become the owner of a substantial amount of property, real and personal.

In 1983, the wife instituted proceedings in the Resident Magistrate's Court for the parish of St. Ann seeking an enquiry under sections 16 and 17 of the Married Women's Property Act to determine what interest, if any, she had in the property. After hearing evidence from the parties, the learned Resident Magistrate made certain findings of fact which he summarized as follows:

(1) At the time of the marriage of the parties the husband carried on business at Norwood, St. Ann and the wife worked in the business after her marriage.

(2) Prior to the marriage the husband owned land at Thatchwalk with a house on it. This house was remodelled and a shop was also built there in which business was carried on after the marriage. The wife made some contribution to the remodelling of the house which at the time of the hearing was valued at between $50,000.00 and $60,000.00.

(3) The husband purchased a truck in 1964 for about £1,600 and used it for haulage. He obtained a loan from the Bank of Nova Scotia Brown's Town, for this purpose. Income from the truck was used to repay the loan and to invest in the business at Thatchwalk.

(4) In 1969 the business was on the verge of bankruptcy and the wife left for the United States of America where she worked for 22 months. During this period she sent money to her husband and on her return she gave him (U.S.) $4,000.00 to invest in the business. At about this time, too, husband bought a second truck and established another business at Cave Valley in rented premises, in 1975 he bought these premises for $9,000.00.

(5) About 1972 the business at Cave Valley was registered as a limited liability company - Josephs Hardware and Furnishings Limited. The wife owns four shares in this company and is or was a director of the company.

(6) The husband bought four acres of land at Pos Hole for $4,200.00 and a parcel of land at May Pen for $6,000.00 in about 1980.

(7) The husband has about five heads of cattle and had been raising cattle even before he met his wife. He has a mini-bus which is not roadworthy.

(8) There is a joint account in the names of the parties at the Bank of Nova Scotia Brown's Town which was opened in about 1963.

(9) The assets of the company referred to above consists of:

(a) stock-in-trade in the business at Cave Valley,

(b) three trucks bought in 1964, 1970, 1981,

(c) one B.M.W. motor car.

(10) The company owns no real estate.

Having made these findings of fact, the learned Resident Magistrate then decided:

(1) He would make no ruling in relation to property belonging to the company as the parties are shareholders and the wife is a director.

(2) The property at Thatchwalk is to be sold and the wife is to be paid $10,000.00 from the net proceeds of sale;

(3) The property at Cave Valley, the land at Bog Hole and the Land at May Pen are to be sold and the wife to be paid a half share of the net proceeds of sale;

(4) The minibus is to be valued or sold and one half the proceeds paid to the wife;

(5) The wife is to be paid one half the amount standing in the joint account in the Bank of Nova Scotia, Brown's Town on 30th April, 1982.

In the last paragraph of his judgment, the learned Resident Magistrate stated:

> "In any case where it is ordered that property be sold, such property may be valued by a qualified valuator to be agreed by both parties and half the net value thereof be paid to the plaintiff."

Against this judgment both parties appealed. At the hearing of the appeal, however, although it was not specifically stated, the plaintiff appeared to have abandoned her appeal, as the arguments adduced by Mr. Rattray sought only to support the

decision of the Resident Magistrate and no submissions were made in support of the grounds of appeal filed on behalf of the wife. This being so, I will make no further reference to the appeal by the wife.

The four grounds of appeal filed by the husband are:

> "1. That the judgment of the learned Resident Magistrate is not supported by the evidence adduced on behalf of the plaintiff/respondent.
>
> 2. That the judgment of the learned Resident Magistrate in relation to property at Thatchwalk is without foundation, unsupported by the evidence and unreasonable.
>
> 3. That the judgment of the learned Resident Magistrate in relation to the following properties: (a) Cave Valley, (b) Bog Hole (c) May Pen is contrary to the evidence, unreasonable and without any foundation in law or in equity.
>
> 4. That in all the circumstances and having regard to all the evidence the judgment of the learned Resident Magistrate is in every respects unreasonable."

In his submissions in support of these grounds Mr. Frankson argued that the evidence of the wife as to her financial contributions was vague and inconclusive and that the learned Resident Magistrate did not examine the evidence carefully. He submitted that the wife had almost ruined her husband by 1969 when she left Jamaica and went to the U.S.A. and that when she returned nearly two years later, the husband was prospering again. The learned Resident Magistrate, he said, had dealt too kindly with her when he accepted her evidence as to the amounts sent by her to her husband while she was away as well as to the amount which she gave to her husband when she returned; further, there is no evidence as to which specific property her cash contributions were to be applied assuming that she did in fact, make these contributions.

The company was formed in 1978 and the wife owns four shares in the company. This gives her, he submitted, a 4% share in the company and this percentage not only represents her contribution to the business but should be applied in regard to all other property, in the event that the court found she had an interest in the properties. It was, however, his submission that there was no joint enterprise between husband and wife; there was no significant contribution by the wife towards the purchase price of any of the properties, and so there is no basis on which it can be said that she acquired any equity in any of the properties. He conceded that in so far as the Thatchwalk property there may be some slight equity in it for the wife, but the amount awarded to the wife far exceeded her interest in this property.

On the other hand Mr. Nattray submitted that the contribution of the wife was twofold: she made financial contributions and she also contributed her labour in the business; what is more, he said, her work in the business showed the joint nature of the enterprise as she did not work for a salary but it was agreed that she could take money from the business.

In regard to the house at Thatchwalk when it was being erected she said that she contributed £100 which she had in the bank and her mother gave them a cow, a pig and a truck load of lumber. A shop was also built at Thatchwalk and she worked in the business without pay until 1969 when business was down and she went to New York.

There was therefore evidence of contribution of money and materials to the erection of the building and of the contribution of the services of the wife in the business which together made a substantial contribution to the improvement of the Thatchwalk property. The learned Resident Magistrate accepted this evidence and bearing in mind as well that this

property was acquired by the husband before marriage awarded her $10,000.00 to be paid out of the Thatchwalk property.

Speaking for myself, that seems to be a fair and reasonable award on the evidence accepted and there is no basis for disturbing this award by the learned Magistrate. Ground 2 therefore fails.

Mr. Rattray further submitted that the application by the learned Resident Magistrate of the maxim "Equality is equity" in regard to the other properties was correct: these properties, he said, were purchased out of the profits of the joint enterprise of the parties, the contribution of the wife cannot be quantified, but it is a substantial contribution made up of the money given to the husband from her earnings in New York and her unpaid services in the business from the time of her return from New York in 1971 until about 1982 when they separated.

It was urged on the Court that this was a typical joint enterprise situation: the evidence presents a picture of a husband and wife working together; while the husband is operating the truck the wife is involved in the running of the shop and bar. There is further support for this in the evidence of a joint account in the bank in the names of the parties which was operated from 1963 up to the time of this action.

Mr. Rattray referred to the case of Gissing v. Gissing (1970) 2 All E.R. 780 and submitted that this case is authority for saying that once there is evidence to support a substantial contribution by the wife whether in money or services or both, then the maxim "Equality is equity" applies and the learned Magistrate was correct in coming to the decision which he did.

When we look at the grounds of appeal we note that in each ground the complaint is that the Resident Magistrate's findings of fact and conclusions in law are unsupported by the evidence. This is not borne out by a perusal of the evidence. It is clear from the judgment of the learned Magistrate that he preferred the evidence of the wife to that of the husband and where there was a conflict he accepted the wife's evidence. He set out his findings of fact and these were based on the evidence of the parties; then he made his decision on the facts which he found proved. It cannot therefore be successfully argued that his decisions were unsupported by the evidence.

As I understand it, it was suggested that the learned Resident Magistrate's decision was unreasonable in that having regard to the present value of the properties the contribution of the wife was insignificant. Thus the evidence is that the present value of the Thatchwalk property is between $50,000.00 and $60,000.00 and that the contribution of the wife (apart from her services) consisted of £100, and a cow, a pig and a truck load of lumber; these articles were given by the wife's mother and should be considered as a part of the wife's contribution. In considering the significance of the wife's contribution, one should look at it at the time when it was made in the early sixties and the probable cost of building a house such as the parties would have built at that time and bear in mind the effects on real property of the inflation which has ravaged Jamaica over the past twenty years or so. Viewed in this light, the contribution made by the wife and on her behalf to the property at Thatchwalk assumes far more significance.

Turning to the property at Cave Valley a similar situation exists. In 1969 the business at Thatchwalk went downhill and the wife left for New York where she earned a substantial sum of money which she gave to her husband to use in the

business. During the period of her absence, the husband left Thatchwalk and set up business in Cave Valley which appeared to be flourishing by the time of her return. Where did the capital come from to do this? Not from the business at Thatchwalk which had failed. The most likely source would seem to be the moneys sent home by the wife; the fact that on her return to Jamaica she started to work in the business with her husband would tend to support her evidence of a significant contribution to the business. As she said:

> "I return with (U.S.) $4,000.00 .....
> I gave them to defendant .....After
> I gave defendant the money I observed
> that defendant bought more goods."

The evidence is that the wife held four shares in the company and it was submitted that this represented 4% of the assets of the company and that this percentage should be used by the court to determine the interest of the wife in the assets owned by her husband. There is no logical basis for this submission, particularly when it is borne in mind that there is no evidence as to the number of shares issued by the company and that the only evidence in regard thereto was given by the wife; this is what she said:

> "A company was formed in respect of the
> business, this company was formed for
> the operation of the business. Defendant
> told me that I had four shares in the
> company. I do not believe that four
> percent of the assets of the company
> represents my interest in the company."

Her ownership of four shares of the company taken by itself would not seem to offer a basis for determining her share in the other property owned by her husband.

The learned Resident Magistrate having found that there was a substantial contribution made by the wife to the business decided that in the circumstances the maxim "Equality is equity" should apply and ordered that the property be divided between the

parties in equal shares. We will now have to look at the cases.

In Nixon v. Nixon (1969) 3 All E.R. 1133 Lord Denning, M.R. said:

> "The case raises this point of principle. What is the position of a wife who helps in the business? Up and down the country, a man's wife helps her husband in the business. She serves in the shop. He does the travelling around. If the shop and business belonged to him before they married, no doubt it will remain his after they marry. But she by her work afterwards should get some interest in it. Not perhaps an equal share, but some share. If they acquire the shop and business after they marry - and acquire it by their joint efforts - then it is their joint property, no matter that it is taken in the husband's name. In such a case, when she works in the business afterwards, she becomes virtually a partner in it - so far as the two of them are concerned and she is entitled, prima facie, to an equal share in it. Test it this way: if the wife had gone out to work and had earned wages which she brought into the family pool - out of which the shop and business were bought she would certainly be entitled to a share. She should be in just as good a position when she serves in the shop and receives no wages, but the profits go into the business. The wife's services are equivalent to a financial contribution. And it has repeatedly been held that when a wife makes a substantial contribution she gets an interest in the asset that is acquired."

The learned Master of the Rolls went on to say that the principle in these cases is that:

> "When husband and wife, by their joint efforts, acquire property which is intended to be a continuing provision for them both for the future, such as the matrimonial home or the furniture in it, the proper inference is that it belongs to them both jointly, no matter that it stands in the name of one only. It is sometimes a question what is the extent of their respective interests, but if there is no other appropriate division, the proper inference is that they hold in equal shares."

In this case the facts were that for some ten years prior to his marriage in 1938 the husband ran a market stall. After his marriage he bought, in his own name, a house for £560 paying £170 cash (£100 savings and £70 from his mother) and mortgaging the property for the residue. The wife helped to run the stall on the three market days each week and the husband collected the produce for the stall. The husband paid the wife no wages but paid her £3.10/- each week for house keeping. By their joint efforts the mortgage was paid off. In 1948 the house was sold for £1,850 and with the proceeds and some savings (£150) a shop and house were bought, again in the husband's name. The wife helped in the shop six days each week. In 1950 the shop and house were sold for £6,500; the profit on the sale being derived in part from the wife's help in the shop. The husband bought another house for £2,000 and invested £4,500 in a building society in his own name. Later they opened a stall at another market; the wife running the stall on the one market day each week and the husband collecting the produce for sale. In 1955 the husband bought a half share in B.H. farm for £475 out of the profits of the earlier sale of the shop and house. In the same year he sold the house in which they were then living for £3,000 and bought a cottage in their joint names for £850. In 1960 the cottage was sold for £2,500 and S. farm was bought, in the husband's name for £5,600 drawing £3,100 from the building society account for that purpose. The wife helped on the farm. In 1964 the husband purchased W.T. farm for £1,500; this was financed privately. In 1965 the husband left the wife. On application by the wife under section 17 of the Married Women's Property Act 1882 claiming a half interest in each of the three farms, it was held that:

(1) the acquisition of S. farm was the result of the joint efforts of the husband and wife in the business; accordingly, the proper inference was that the wife had a beneficial interest in what was acquired and her beneficial interest was not restricted to the extent of her interest in the cottage;

(2) in view of the husband's ownership of the market stall for ten years before the marriage and his cash contribution to the first matrimonial home, the court would restrict the wife's interest to the S. farm (in which she would have a half share) and she would not be given any interest in either of the other two farms.

In the instant case not only did the wife contribute her services with no wages for many years but she also contributed cash and materials to the joint enterprise. In regard to the property at Thatchwalk it was owned by the husband [illegible] prior to the marriage but when the property was being developed she contributed money and materials and served in the shop until the business declined and she went to New York in 1969. The learned Resident Magistrate decided that in all the circumstances she was not entitled to a half share and awarded her $10,000.00 out of the Thatchwalk property valued by the wife at $60,000.00

With respect to the other properties (i.e. the property at Cave Valley, Bog Hole and May Pen and the minibus) the learned Resident Magistrate awarded the wife a half-share of these properties. As I understand this award it is based on the fact that the wife contributed a substantial amount of money (earned in New York) which was given to the husband soon after he commenced business at Cave Valley; then on her return she contributed U.S. $4,000.00 and her services without wages to the business and from the profits of this business the other property was acquired. Although all this property was in the name of the husband (except for the company in which the wife held four shares)

the wife had made a substantial contribution in money and services which could not at this stage be quantified. The above authority, as I understand it would suggest that in these circumstances the only fair and reasonable course is to give a half share of the property to the wife.

In Rimmer v. Rimmer (1952) 2 A.E.R. 863, Romer L.J. said:

> "Cases between husband and wife ought not to be governed by the same strict considerations, both at law and in equity, as are commonly applied to the ascertainment of the respective rights of strangers when each of them contributes to the purchase price of property, and the old established doctrine that equity leans towards equality is peculiarly applicable disputes of the character of the present one, where the facts as a whole permit of its application.

The facts of this case were that in 1934 the husband and wife, both of whom throughout their married life were wage earners, were married. In 1935 a dwelling house was bought in the name of the husband for £460, to serve as the matrimonial home. The wife provided the deposit of £29, and the rest of the purchase money was borrowed on the security of a mortgage from a building society in the name of the husband, £151 of the principal of the mortgage money was repaid out of house-keeping money provided by the husband, and the remaining £280 was repaid by the wife out of her own money while the husband was on war service. The wife provided all the furniture for the home out of her own resources. In 1951 the husband left the wife and in 1952 the house was sold for £2,117. On a summons under the Married Women's Property Act, section 17 to determine how the proceeds of sale should be divided it was held:

> "The question was: on all the facts, what was the fair and just answer to be given to the question posed, having regard not merely to what occurred at the time when the property was originally purchased, but also to the light which the whole conduct of the parties had thrown on their relationship together as contributors to the property which was their joint matrimonial home? In some cases it might well be that the amounts which they respectively contributed ought to conclude the question of the shares in which they should partake in the proceeds, but on the facts of the present case it was not possible fairly to assess the separate beneficial interests of the husband and the wife by reference to the contributions which they had made towards the purchase of the house, and, in all the circumstances the proper and equitable course was to divide the proceeds of sales between them in equal shares."

In the course of his submissions Mr. Frankson referred to the case of Pettitt v. Pettitt (1969) 2 All E.R. 385. In this case the freehold of a cottage had been purchased entirely out of moneys provided by the wife and the property stood in her name. The husband undertook internal decoration work and built a wardrobe in it. He also laid a lawn and constructed an ornamental well and a side wall in the garden. On the question whether, on a summons under section 17 of the Married Women's Property Act 1882, the husband was, by reason of his labour and expenditure, entitled to claim a beneficial interest in the proceeds of sale of the property, it was held that the husband's claim failed because:

(i) a husband was not entitled to an interest in his wife's property merely because he had done in his leisure time jobs which husbands normally did,

(ii) the improvements carried out were nearly all of an ephemeral character,

(iii) there was no justification for imputing to the spouses a common intention that the husband should acquire some beneficial interest in the property in respect of the work that he did,

(iv) in the absence of any agreement with his wife, the husband could have no monetary claim against her and since no estoppel or mistake was suggested he could have no charge on or interest in her property.

The case of Pettitt and Pettitt is readily distinguishable from the instant case as the facts in the latter are completely different. Here, the wife had made substantial contributions of money, materials and services to the business over a period of years and there was clear evidence from which a common intention could be imputed to the parties that the wife should acquire some beneficial interest in the joint enterprise from the profits of which the properties in question were acquired. This was recognized by the husband when he apportioned to the wife four shares in the company he formed in 1978.

In the instant case the decisions of the learned Resident Magistrate are supported by the authorities and I would not disturb them. I would dismiss the appeal and affirm the judgment of the learned Magistrate.

WRIGHT J.A. (Ag.)

I have read the judgments in draft of my brothers Carey and Ross JJ.A. and find myself constrained by the state of the evidence to agree with the conclusion not to disturb the judgment of the Resident Magistrate. However, I wish to make a brief comment.

Concerning the Thatchwalk property it is obvious that to do justice to the wife resort must be made to the rough and ready method. However, the learned Resident Magistrate in awarding her $10,000.00 net of the proceeds of the sale of this property has not indicated how he arrived at that figure. And I must confess that I have a very strong feeling that the valuation put on this property by the wife is highly suspect. My doubts are fuelled by the facts that she had claimed a share in two properties at Spanish Town and Mamee Bay valued by her respectively at $30,000.00 and $35.000.00 which the learned Resident Magistrate found do not and did not exist. How then can any valuation by her, and even her evidence for that matter, be free from doubt?

But the situation is compounded by the failure of the appellant's husband to give any evidence as to the valuation of this property.

The submission by Mr. Frankson that the Respondent's share-holding in the company determines her share in any investments made out of the profits of the company seemed quite attractive until upon close scrutiny it is observed that there is no evidence of the respective contributions of the parties to the cost of acquiring these new properties viz, Cave Valley, Bog Hole and May Pen. The respondent could give no assistance in this area and all the appellant would oblige with is that these properties were acquired out of the business. A joint enterprise is thus predicated and without evidence of proportionate contributions the application of the principle of "Equality is equity" seems to me eminently fair and just.

CAREY, J.A.:

I also agree but out of deference to the arguments of counsel, I desire to add a few observations of my own.

This appeal is concerned with a dispute over real property the legal title to which vests undoubtedly in the husband (the appellant) but in respect to which the wife (the respondent) claims a beneficial interest. The orders of the learned Resident Magistrate in respect of which submissions were made before us, were these:

> "1. The property at Thatchwalk is to be sold and the plaintiff is to be paid $10,000 from the net proceeds of sale;
>
> (Here the maxim equality is Equity does not apply as the defendant owned the land prior to marriage).
>
> 2. It is ordered that the undermentioned properties be sold and the plaintiff be paid half share of the net proceeds of sale:
>
> (a) Property at Cave Valley
> (b) Land at Bog Hole
> (c) Land at May Pen".

The husband contended before us that there was no material on which the learned Resident Magistrate could come to the conclusions which he had. As to the property Thatchwalk, he had no quarrel with the fact of an order but he questioned the basis on which $10,000 was adjudged as representing the wife's equitable interest. With respect to the half share declared to be the wife's interest in the other properties, he pointed to the fact that the wife's contribution emanated from her 4% share-holding in the family business and logically therefore, her interest in the acquisitions from that share could not exceed 4%.

For the wife, it was urged that once the learned Resident Magistrate found (as he did) that the wife's contribution to the acquisition of the properties at Cave Valley, Bog Hole and May Pen was substantial although not

quantified, then he was entitled, in reliance on the maxim "Equality is equity", to declare the half shares he did. In respect of the property at Thatchwalk, it was said that the wife's contribution had been financial and in addition she had assisted in the running of the business; consequently, the amount of $10,000 awarded should not be disturbed.

As is usual in these matters, only the parties gave evidence before the Resident Magistrate. So far as is material for the purposes of this appeal, he found that prior to the marriage, Mr. Josephs owned land at Thatchwalk on which there was a house. This house was remodelled after their marriage and to that effort the wife contributed. The learned Resident Magistrate did not make a specific finding as to the nature of the contribution which he found the wife made, but the wife had said in evidence that she contributed £100., and also worked in the shop. The husband said that the wife made no financial contribution whatever to the remodelling of the house, but acknowledged that the wife worked in the business.

The evaluation of a spouse's equity in property where the contribution is indirect is invariably beset with difficulties and at best, the court is constrained to resort to a rough and ready method to achieve a just result. Lord Reid in Gissing v. Gissing [1970] 2 All E.R. 780 at p. 782 with characteristic pithiness observed:

> "It is perfectly true that where she does not make direct payments towards the purchase it is less easy to evaluate her share. If her payments are direct she gets a share proportionate to what she had paid. Otherwise there must be a more rough and ready evaluation. I agree that this does not mean that she would as a rule get half a share. I think that the high sounding brocard 'Equality is equity'

> "has been misused. There will of course be cases where a half share is a reasonable estimation, but there will be many others where a fair estimate might be a tenth or a quarter or sometimes even more than a half".

But the Court, despite the inherent difficulties, must do the best it can; it is obliged to cut the Gordian Knot. See per Lord Denning in Nixon v. Nixon [1969] 3 All E.R. 1133 at p. 1136. This case, it must be said, has been made all the more difficult because of the paucity of evidence. The learned Resident Magistrate's assessment of the wife's interest at $10,000 in the Thatchwalk property, represents a 1/5th or 1/6th interest therein. The wife gave evidence of the present value of the property as between $50,000 to $60,000., but she gave no evidence of the value of the remodelling. The husband for his part, maintaining that the wife made no contribution whatever, not unnaturally provided no evidence in this connection. He did acknowledge, however, that she worked in the business. What was further vouchsafed by him was that prior to their marriage, the extent of his holding at Thatchwalk was a shop with one room. After the marriage the parties resided in that room. The remodelling resulted in a house with two bedrooms, a living room and a verandah. A shop was also built. The learned Resident Magistrate regrettably was less than explicit as to how he arrived at the $10,000 interest. Nonetheless, it is, I think, tolerably clear that he placed great store on the fact of the wife's unpaid services in the shop. She said that the husband drove the truck; I kept the business. When she left Thatchwalk for the U.S.A., in 1969, she would have been working in their shop for some nine (9) years. I think that the approach of the learned Resident Magistrate is not difficult to appreciate.

He applied in the circumstances of this case, the rough and ready evaluation that is a technique sanctioned by authority. See Lord Reid in Gissing v. Gissing (supra) at p. 782.

The wife in this case is entitled, to some interest in the property on two bases (a) her direct contribution, viz., £100. and (b) her unpaid assistance in the business. Lord Denning in Nixon v. Nixon (supra) at p. 1136 expressed his opinion as to (b) in this way:

> "What is the position of a wife who helps in the business? Up and down the country, a man's wife helps her husband in the business. She serves in the shop. He does the travelling around. If the shop and business belonged to him before they married, no doubt it will remain his after they marry. But she by her work afterwards should get some interest in it. Not perhaps an equal share, but some share. If they acquire the shop and business after they marry - and acquire it by their joint efforts - then it is their joint property, no matter that it is taken in the husband's name. In such a case, when she works in the business afterwards, she becomes virtually a partner in it - so far as the two of them are concerned and she is entitled, prima facie, to an equal share in it.
>
> Test it this way: if the wife had gone out to work and had earned wages which she brought into the family pool - out of which the shop and business were bought - she would certainly be entitled to a share. She should be in just as good a position when she serves in the shop and receives no wages, but the profits go into the business. The wife's services are equivalent to a financial contribution. And it has repeatedly been held that when a wife makes a substantial financial contribution, she gets an interest in the asset that is acquired".

This wife's services are no less equivalent to a financial contribution and must, therefore, be brought into account with her initial contribution of £100. The fair and reasonable thing in all the circumstances of this case, with respect to the property at Thatchwalk, is not to over-rule

the learned Resident Magistrate's order. His approach was correct and there was, in my view, material on which he was justified in making the order he did.

I propose now to consider the half share declared to be the wife's interest in the other properties. The learned Resident Magistrate plainly applied the principle that 'Equality is equity'. The basis for that conclusion must have been his view that the acquisition of these properties was as a result of the joint enterprise of the husband and wife. The question which must then be answered is - in what proportion must they share? For while Mr. Frankson contends that that joint effort should result in no more than a 1/25th interest in the property, Mr. Rattray says the wife's contribution was substantial albeit not quantified, and accordingly, the equitable principle of 'Equality is equity' was properly applied, and should not be disturbed.

The learned Resident Magistrate found that the wife was a share-holder and a director in the company. On the evidence, the wife did not deny that she had been allocated four shares. She herself said that a share of 1/25th did not truly represent her interest in the company but she never took any steps to challenge this. This situation has existed since 1978. Although in stating his defence, the husband said that the wife owned 4% of the shares, he himself gave no evidence of this. But I am prepared to accept for these purposes that the wife's interest in the company was 4%. What is the legal result of that fact?

In so far as the properties at Cave Valley, Bog Hole and May Pen are concerned, these were all placed in the

husband's name. But there can be little doubt that the three (3) properties were purchased from the joint contributions of the husband and the wife. The wife's direct financial contribution was as intimated earlier, the profits derived from her 1/25th share in the company. But she worked in the business for a considerable period, some eleven (11) years, receiving no wages for her services. It was doubtless a benefit to the company but more importantly, it was of great assistance to the husband who was the majority share-holder because it released him to promote his other business enterprises profitably. It is right to point out that she really managed the business. The question of what interest each should have in the acquisitions, was plainly never agreed to nor indeed discussed during the course of the marriage.

It is true that we are not concerned here with the wife's proprietary rights in what for convenience I would refer to as 'family assets'. The properties under review were acquired as a business proposition; the matrimonial home was at Thatchwalk. The Court might be the more inclined to infer a common intention that the proprietary rights should be shared equally if the asset falls into the class conveniently called 'family asset' than if they were not. Lord Denning in Nixon v. Nixon (supra) at page 1137 dealing with 'family assets' observed:

> "It is a compendious phrase to express the principle that when husband and wife, by their joint efforts, acquire property which is intended to be a continuing provision for them both for the future, such as the matrimonial home or the furniture in it, the proper inference is that it belongs to them both jointly, no matter that it stands in the name of one only. It is sometimes a question what is the extent of their respective interests, but if there is no

> "other appropriate division, the proper inference is that they hold in equal shares".

Lord Diplock in Pettitt v. Pettitt [1969] 2 All E.R. 385 at p. 414, in reference to the question of ascertaining proprietary rights of spouses where they have expressed no view and formed none, said this -

> "Unless it is possible to infer from the conduct of the spouses at the time of the concerted action in relation to acquisition or improvement of the family asset that they did form an actual common intention as to the legal consequences of their acts on the proprietary rights in the asset the court must impute to them a constructive common intention which is that which in the court's opinion would have been formed by reasonable spouses".

What has been said in relation to family assets applies equally, in my judgment, to any other property which spouses acquire by their joint efforts and in respect of which they have made no agreement regarding their respective shares. Lord UpJohn who deprecated the compendious phrase 'family assets', observed in Pettitt v. Pettitt (supra) at p. 407:

> "But where both spouses contribute to the acquisition of a property, then my own view (of course in the absence of evidence) is that they intended to be joint beneficial owners and this is so whether the purchase be in the joint names or in the name of one. This is the result of an application of the presumption of resulting trust. Even if the property be put in the sole name of the wife. I would not myself treat that as a circumstance of evidence enabling the wife to claim an advancement to her, for it is against all the probabilities of the case unless the husband's contribution is very small.
>
> Whether the spouses contributing to the purchase should be considered to be equal owners or in some other proportions must depend on the circumstances of each case: ..."

In the absence of express agreement on the part of the spouses, the Court will presume or impute that having jointly contributed, they intended to share equally.

That proportion will be altered only where either the share can be precisely ascertained or the contribution is trifling.

Mr. & Mrs. Josephs were obviously both hardworking people who lived together for a period in excess of twenty years. But for the period of one year and ten months when she worked in the U.S.A., she spent her days and her nights working in the business. They have now separated. She says he drove her from the matrimonial home and has installed another woman.

Her unpaid services demonstrate in my view, cogent evidence of the joint nature of their endeavours, and ought not to be dismissed as a trifling contribution. There is also to be added her share of the profits. I would characterize the wife's total contribution as substantial. It is neither fair nor just that her efforts should count for naught and she should be driven out, if the husband had his way, empty handed.

The observations of all three members of the Court of Appeal in Rimmer v. Rimmer [1952] 2 All E.R. 863 is still, in my view, good law and nothing said by their Lordships in the House of Lords subsequently in Pettitt v. Pettitt (supra) and Gissing v. Gissing (supra) in any way militates against those observations:

> "I appreciate that to fall back on what may be called a Solomonesque judgment is, as counsel for the husband said, perhaps to yield to obvious temptation to shirk more difficult computations, but I do not think that is a just criticism of the conclusion at which I have arrived where the Court is satisfied that both the parties have a substantial beneficial interest and it is not fairly possible or right to assume some more precise calculation of their shares, I think that equality almost necessarily follows".
>
> (per Lord Evershed, M.R., at p. 867)

> "It seems to me that when the parties, by their joint efforts, save money to buy a house which is intended as a continuing provision for them both, the proper presumption is that the beneficial interest belongs to them both jointly".
>
> (per Denning, L.J. (as he then was) at p. 869)

Romer, L.J. expressed sentiments in a like vein at p. 870 and I would remind of his view that -

> "cases between husband and wife ought not to be governed by the same strict considerations, both at law and in equity, as are commonly applied to the ascertainment of the respective rights of strangers when each of them contributes to the purchase price of property, ...".

In my judgment, where parties have laboured jointly in acquiring property and the wife's contribution is largely indirect, for example, in providing unpaid services to a joint business which thus allows the husband to derive profit or to increase his earning capacity, and thereby to make a direct contribution larger than the wife's, the right and just approach is that the parties share equally.

This principle is plainly applicable to the circumstances of this case and I for my part, would not disturb the order of the learned Resident Magistrate in respect of the shares in the three properties. I would accordingly dismiss the appeal with costs fixed at $50. to the respondent.