

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO. 2/79

BEFORE: THE HON. MR. JUSTICE ZACCA, J.A.  
THE HON. MR. JUSTICE MELVILLE, J.A.  
THE HON. MR. JUSTICE CARBERRY, J.A.

BETWEEN: MYRTLE MOWATT - PLAINTIFF/APPELLANT  
AND : MILTON MOWATT - DEFENDANT/RESPONDENT

Mr. Eric Frater for the Plaintiff/Appellant.

Mr. Horace Edwards, Q.C., for the Defendant/Respondent.

February 2 and 21, 1979

CARBERRY, J.A.

This is an appeal from the Judgment of Her Honour Miss A.E. McKain, Resident Magistrate for the parish of Manchester. We heard this appeal on the 2nd February, 1979, and dismissed it, confirming the Judgment in the Court below, with costs to the Respondent in the sum of \$50.00.

The point is said to be novel, and we were asked to put our Judgment in writing, and we do so now.

The Plaintiff/Appellant, Mrs. Myrtle Mowatt, on the 8th of February, 1977, filed in the Resident Magistrate's Court for the parish of Manchester a plaint under Section 16 of Cap. 239 (now The Married Women's Property Act) seeking to have determined questions as to the ownership and possession of the house and furniture of the matrimonial home, 54 Manchester Road, Mandeville. She did so after the marriage between herself and the Defendant/Respondent, Milton Mowatt had already been ended and the decree absolute determining the marriage had been granted. When this happened does not appear on the record, but having regard to the present state of our legislation it is

immaterial.

The relevant words of the Section provide:-

"16. In any question between husband and wife as to the title to or possession of property, either party, ..... may apply by summons or otherwise in a summary way to a Judge of the Supreme Court or (at the option of the applicant irrespectively of the value of the property in dispute) to the Resident Magistrate of the parish in which either party resides; and the Judge of the Supreme Court or the Resident Magistrate, as the case may be, may make such order with respect to the property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit:...." (followed by three provisoes that are not material).

As the Section indicates, this summary procedure is only available to determine questions arising between persons who are husband and wife at the time that the application is made. Our Section follows almost verbatim Section 17 of the U.K. Married Women's Property Act, 1882. Such cases as have arisen on this point in England have usually been cases in which the proceedings have been brought between the decree nisi and the decree absolute, and the question at issue has been whether the decree absolute would automatically terminate proceedings already begun while the parties were still married, but not concluded before their divorce became absolute. It has been decided there that so long as the parties were still married at the time that the application was first made, the proceedings may continue to completion despite the intervention of the decree absolute terminating the marriage. But it has always been regarded as beyond question that if such proceedings are commenced after the decree absolute, they fail in limine, as the parties are no longer married and must therefore seek other appropriate remedies to determine their respective rights:

See Hichens V. Hichens (1945) P. 23; (1945) 1 All E.R. 452 (C.A.);

Fribance v. Fribance (1956) P. 99; (1955) 3 All E.R. 787; Strachan v.

Strachan (1965) 2 All E.R. 77 (C.A.). A short passage from the

judgment of Lord Pearce giving the Judgment of the U.K. Court of Appeal in Strachan's case at page 78 will illustrate: He said:-

"Section 17 of the Married Women's Property Act, 1882, is a procedural Section whereby questions between husband and wife as to property may be decided in a summary way in the interests of broad justice between parties. "In any question between husband and wife", it says. In my view the parties must be husband and wife when the summons is taken out....."

These decisions appear to me to be correct, and I would respectfully adopt and follow them on this point.

The cases cited above have been met to a considerable extent by the U.K. Matrimonial Property and Proceedings Act 1970, which in Section 39 provides that the summary remedy of Section 17 of the Married Women's Property Act, 1882, may be brought by either party to a marriage notwithstanding that their marriage has been dissolved or annulled so long as the application is made within three years of the dissolution or annulment. Jamaica, though it has adopted some recent U.K. amendments, e.g. that contained in Section 8 of the U.K. Matrimonial Causes (Property and Maintenance) Act 1958 (see now Section 17 of the Jamaica Married Women's Property Act, inserted by Act 33 of 1969) has not yet adopted the time extension in the 1970 U.K. Act.

Consequently the learned Resident Magistrate correctly ruled that there was no jurisdiction under Section 16 of the Married Women's Property Act to entertain an application made after the parties had ceased to be husband and wife.

This wife must seek her remedy by some other appropriate remedy, probably in the Supreme Court, depending on the value of her interest in the disputed property.

ZACCA, J.A. - I agree.

MELVILLE, J.A. - I agree.