

THE HIGH COURT

BETWEEN

R. F.

PLAINTIFF

-v-

M. F.

DEFENDANT

Judgment of Mr. Justice D'Arcy delivered the 1st day of December
1982 .

In this case the parties were married on 27th June 1954. The wife came from L then aged 29 years; she had a secretarial training and prior to marriage was a clerical worker. The husband was the same age, 29 years; he came from an agricultural background in T and prior to marriage was employed by the Department of , seconded to the S Office. On the marriage the parties purchased a house at 10 S. Road, M which became, if anything did, the matrimonial home. It is not necessary to go into the details of that house beyond saying that it was purchased in the name of the defendant; the wife (the plaintiff) put up the deposit of £370.00, the husband says he paid the expenses, and there is some suggestion that part of the legal expenses were a wedding present. The balance, the bulk of the purchase money of

that house, was borrowed from the New Ireland Insurance Company on the security of the house itself and two life policies on the husband's life. In the main the plaintiff paid the interest and the premiums on the policies. It would appear that for one and a half years he did not pay them. I think that some of the purchase money for that house had its origin anyway in presents from an aunt of the wife. This house is only peripheral to the issues I have to try, because whilst the husband claimed interest in the house he has now withdrawn all such claim to any interest in this house, and has undertaken to waive any claims under the Succession Act insofar as it concerns that house.

Shortly after the marriage the husband had applied for a position in the A I, which he did not get, and he reverted to his ordinary employment as an A Adviser in the Department of

and was given as his territory N C I or part of

N C D Both parties are of very strong personality and both have very strong characters. Both their acquisitive capacities are developed to an extremely high degree. I am only interested in these unusual characteristics insofar as they throw any light on the issues before me. In addition, unfortunately Mrs. F from the very inception of the marriage and right through at all times suffered from a

delusion that her husband was giving money to his own family. This she objected to. This drove her to strange and cruel behaviour. Early in the marriage Mr. F gave some pecuniary help to an unfortunate sister of his who had been delivered of an illegitimate child. Mrs. F objected and still objects to that charitable act. Mr. F has sworn, and I believe him, that Mrs. F drove that unfortunate girl out of Dublin. That was in the beginning of the marriage. At all times throughout the marriage there seems to be an undercurrent of Mrs. F wrongfully accusing Mr. F of siphoning off money and giving it to his own family. But in addition she at times accused a brother of Mr. F of stealing five heifers from the lands which I shall refer to in a few minutes, which accusation is completely baseless. Also, which shows her mentality at all times, at a late stage in the marriage, twenty years on, she invaded Mr. F house and there took the seats of chairs, but not the chairs; she stated in evidence that the reason for this extraordinary behaviour was just to spite Mr. F. She also from time to time accused Mr. F of amusing himself or messing around with other women, a baseless and groundless accusation; and on one occasion, again very late in the marriage just before the final break-up, she accused Mr. F of raping a

niece of hers. These accusations were completely without any foundation and no attempt was made to stand over them in this Court. I accept, however, that accusations were made and that throughout this marriage they were made in a nagging and persistent way. The accusations of impropriety may have been spasmodic but the accusation of helping his family with money was persistent throughout the marriage and raised its ugly head frequently. Apart from those characteristics I think I should say both Mr. and Mrs.

F struck me as being honest witnesses. They both sought to tell the truth. Their evidence often varied but I think this was due to them looking at the same incident through different ends of a telescope. There has been an accusation by Mrs. F against Mr. F that he assaulted her. I accept her evidence on this point, that he did assault her at times, but I am quite satisfied that those assaults were provoked by her nagging conduct which I have already referred to. One independent witness only, a Mrs. McC who lives in the same road opposite Mrs. F was called as a witness. She gave evidence of the assaults. In the main I accept her evidence but I think it has been a little coloured with the passage of time.

Now there were no children of the marriage, and subsequent to the marriage Mrs. F did not work; perhaps if she had done so,

merely as a therapeutic exercise, she would have less time to brood over imaginary grievances. Anyway, shortly after the marriage there was this business of Mr. F applying for a position in the Institute and not being successful. It was then mooted that they would buy some land and that of course was a very good idea with Mr. F training and background. One would have thought it would have fitted in rather nicely. Anyway, they looked around for land, they looked at several places and eventually found a place which seemed to suit them called Leestown, which was (land containing 35 acres 1 rood 32 perches and on which there was a bungalow.) We have not had much detail of the bungalow but I have the impression it was not in good repair. Anyway, it was there, and I am satisfied that initially it was the intention of both parties that they would sell 10 £ F where they were living and would go and live on the lands. I think that is obvious because the lands were about ten to fourteen miles away and the intention was to run a dairy farm, which would mean cows being milked twice daily. It was not big enough to carry employees; one man was employed part-time for a couple of days a week. It seemed to be obvious that for anyone with an agricultural background the obvious thing to do would be to go and live there, in the beginning anyway.

Regarding the purchase of the lands, which really are the principal part of the case, there was very little difference in the evidence which illustrates how near the evidence of both are except they put a different slant on the same facts. The husband's account of how those lands were purchased was that the wife put up £1600.00 in cash, the husband £370.00 and the Munster & Leinster Bank advanced £3,700.00. The wife's account is she put up £1,100.00, the husband put up £200.00 and the rest was advanced by the Munster & Leinster Bank. There is very little in the difference and twenty years later it is not surprising to find some difference as to how the money was advanced. The lands cost £4,400.00 including fees, and the balance of about £1,200.00 was necessary as working capital and to buy stock. Finding the lands and the negotiations for the loan all took time but finally the lands were registered on 24.7.1962 and they were registered in Mrs. F name. Now it may be thought that greater importance depends on that and it has been suggested by Mr. Butler that she took some sort of trust for herself and her husband and that there was an advancement there of a beneficial interest in the land, and that she was a trustee for the parties who put up the money. It was suggested she was a trustee for Munster and Leinster Bank who put up about three-quarters of the money.

I think that point has been decided by Mr. Justice Kenny in Hely -v- Hely 1977 Irish Reports in which he held the presumption of advancement does not apply where money is borrowed by one spouse to the knowledge of the other. But I don't think it is necessary for me to resolve that problem because it will resolve itself at the next stage of the transaction. Their idea was that they would work this place, initially going to live there. The first thing that went wrong was that Mrs. F refused to go and live there. I accept his evidence on that. That made things very difficult, farming a place fourteen miles away, a dairy farm. Then the dairy account was put into Mrs. F name and she had control of the finances of the farm. If the husband, who was running the farm, wanted to pay labour or buy anything she had control of it; she used this power and on one occasion 'froze' the bank account. The advance was a joint and several one to both of them. They were both liable to the Bank for the balance of the purchase money, which was the main bit, and anyway this venture - co-venture- became totally unworkable by reason of Mrs. F freezing the bank account and not going to live there. Then, to add insult to injury, she started on her complaints about the husband's family and accused his brother of taking the five heifers. Now, when that state of affairs arose, any reasonable person on

looking at it would say this adventure has failed and can we do a salvage operation that will get people out of it with the least injury? Accordingly discussions started. It was suggested that the land be transferred by Mrs. F to Mr. F and that she would get out of the lands anything she put into it, and then the thing would become workable with one manager. Those discussions were not anything that happened overnight, they went on for a year and a half and involved four Solicitors. They eventually ended up with a transfer of 28 May 1965 under which Mrs. F transferred the lands to Mr. F. On the face of it that transfer looks a voluntary transfer but in reality I am quite satisfied that it was not an improvident transaction, it was anything but; and also that it was a transaction for valuable consideration because it was only part of an arrangement. The transfer itself on the face of it looks a voluntary transfer but it was part of a bigger arrangement under which Mrs. F was to get paid anything she had put into the lands and, more importantly, she was to be relieved of her liability to the Munster & Leinster Bank to pay the balance of the purchase money, about £3,700.00, and in fact she got that valuable consideration. It has been suggested and it is pleaded that that transfer was effected by the undue influence of the husband. It is well

to look at the transaction leading up to the actual transfer. It was not something that happened - that one influenced another for a day or two. For a solid year and a half before the transfer Mrs. F had been changing her mind, sometimes agreeing, sometimes disagreeing. She consulted two Solicitors Messrs. Crowley, Bolger & Cusack, we have no information what advice they gave her, and she was also advised by Messrs. Crozier; from the latter, Mr. Dunne actually witnessed her signature to the transfer. It is clear from the correspondence that she saw Solicitors on a number of occasions and was advised by them. If the transaction were a voluntary one, which I hold it was not, but if so, I am quite satisfied she had independent advice. The husband at the time appears also to have been advised by an independent Solicitor, Mr. Gallagher. But there is a further point about this transfer that really is very illuminating. The transfer is dated 28th May, 1965 and the first recorded objection to the transfer is twelve years afterwards, during which time Mrs. F must have known Mr. F was in possession of the lands because during part of the time they were living together, part occasionally living together and part separated, and for twelve years nothing happened. This lady sat by and allowed this deed to take effect. During that time it is quite clear from Mr. F

evidence that the ordinary thing happened - he attended to the lands, worked them daily and she stood by and allowed him to do this work for twelve years. It has been suggested that I should regard Mrs. F claim as statute barred. I have doubts about whether she is statute barred or not because if it was a genuine trust the trust property was in the possession of a Defendant trustee. There was also the question that laches was involved. It is very like laches which is an equitable way of pleading statute limitations, but I don't feel it necessary to decide on this point. I think it quite suffices, that the lapse of time, and, this acquiescence is evidence of the validity of the deed, taken in conjunction with all the other facts, because anything a party does subsequent to a transaction provided it is against his interest, is admissible against him, but not admissible evidence in his favour. But if you take the surrounding circumstances before it was done, and for twelve years, there is one conclusion only, that there was no coercion at the time of this deed, that it was a valid deed and it still is a valid deed. Furthermore Mrs. F got paid and accepted anything she was entitled to. There was a plot of 1 rood on the land on which the bungalow was; it was sold, she got the purchase price, Creamery cheques and money for the sale of cattle, and I am quite satisfied she got

everything which she put up to buy these lands. I hold that the transfer of 28th May 1965 is a valid transfer.

The next piece of premises we have to deal with is 9 O. C .

This gives rise to a rather more difficult problem. The parties, despite their differences - if I might use a colloquialism, appear to have kept in touch with each other. They separated in 1964. From 1964 to 1974 they were separated but an on and off relationship existed. Then a more unusual thing happened. In 1964-74 and 1979 the husband came to Mrs.

F for his dinner three or four nights a week. So it would appear at all times, certainly most of the time, they were in touch with each other until 1979 when there was a complete break. Mrs. F

continued at all times to live in 10 Sl. F. and is still living there, and the mortgage is completely paid up. Mr. F . . . after a

while, appears to have bought a house called 'T L ' near Malahide where he went and lived by himself. This does not complicate the story -

he just happened to live there for a couple of years and then he sold it, presumably at a profit, and purchased 9 O. C . The parties have

given two different dates (24 and 29 November 1976) for the transfer of

O. C but this does not matter. (O. C. was transferred into the name of Mr. F. and Mrs. F. joint names.)

It is common case Mr. F provided the purchase money either by cash or money he raised. Mrs. F claims a special advancement to her and that she is entitled to a moiety of C C ..

The ordinary law of simple facts is that if a husband purchases either a house or any other property whether real or personal in the name of his wife or joint names of himself and his wife the law will presume an advancement and the wife will either be presumed to take it all or take one-half. That is based on a rebuttable presumption of advancement and the presumption is based on the fact that the Courts presume the husbands to have natural love and affection for their wives. But it is a presumption and it is rebuttable. In fact nowadays 'across the water' it is so easily rebutted it has ceased to exist altogether, except in exceptional circumstances. The House of Lords based their decision on the changed nature of social conditions. I don't think social conditions here have changed yet to justify the view of the House of Lords, I think the law of presumption of advancement still exists, but it has been whittled down in this country. In the case I referred to earlier, Hely -v- Hely 1977, Mr. Justice Kenny held it did not apply where the purchase money had been borrowed by the husband to the knowledge of the wife. There is no evidence here that the purchase money for C

C was borrowed and certainly none that it was borrowed to the knowledge of the wife. But I must look at all the circumstances of the case to see whether the circumstances rebut the presumption. I start with the proposition that simply by putting the property half in her name the husband was presumed to have advanced to her. But look at all the other circumstances. What are they? This transaction took place at the end of twenty years of a tumultuous marriage during which the parties were fighting more often than peaceful. The matrimonial home at 10 St R had already been transferred into the sole name of Mrs. F. It is not suggested that this transaction involved the selling of S F and using the proceeds to pay off whatever was owing on O C. It was going to be left aside as her personal sole property. This is not a case of a man providing for his wife who has no means. The wife in this case had possession and legal ownership entirely to the matrimonial home, and furthermore she had an income from flats. The husband - one would really wonder why the husband ever put the property in her name - but when he did normal presumptions followed. The husband gives evidence that the reason for this perhaps unusual behaviour in the circumstances on his part was due to the fact that the wife would not come to live with him in O C unless he put the

property in joint names. She agreed to come there if he put it in the joint names. He put it in joint names and she did not come. That explanation by the husband seems a pretty rational one in the circumstances and there is outside evidence which shows that he bought a motor-car for the wife to enable her to come to C. C., and in fact taught her to drive. And then she did not come. The reason she did not come appears to be that she was piqued because he went in there first and they didn't go in at the same time. That seems to be the only rational reason. It is suggested he never issued a formal invitation to come on a certain date; she never announced she would come on a certain date. All that to my mind is completely and utterly unreal. The two people at this time were living together in S. R., or for part of the time, and I don't think a formal invitation has to be issued between a husband and wife living in the same house. But I do expect there was an invitation in a general way and I think there was a refusal by the wife to go there, and the refusal was for most frivolous grounds, the fact is she did not want to. In the circumstances, to try and put that transaction into legal terminology, my view, is that the husband purchased O. C. in his wife's name with the intention that they would both reside there and there resume their marital relations. The conveyance was made on this

definite condition, the wife failed to comply with it and accordingly in the events as they happened the wife holds her share of 0 . C as a trustee for the husband.

The next item is this question of the wife's income tax prior to 1974. There would appear to be liability. There is a possibility of liability, that the husband may be liable for that if the Revenue Commissioners ever pursue it. Also it has been argued before me, suppose there is a liability, whether a husband must now pay his wife's income tax without recourse to an indemnity by her notwithstanding a recent decision by the Supreme Court in Murray's case. It opens up a big vista and I confess I am unwilling to face it. I don't think the matter has been argued and I propose making no order under that heading, but liberty to apply.

The next point is the maintenance for the wife. The husband I must say at all times seems to have honoured his obligations regarding maintenance and he has paid £200.00 a month without any great pressure, which has been increased to £220.00 a month lately. I have got to take into account the relevant capital possessions of both parties and the wife of course is now the sole owner of S . R . I have no evidence as to how much it is valued at but nowadays it must be worth

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a considerable amount. In addition she has a half-share of a house in flats from which she gets about £20.00 a week, say £1,000.00 a year. The husband is still an A . . . A and he has given evidence suggesting that his net salary less income tax is £8,000.00 a year. I will be entitled to think it is not any less but I have no evidence as to what his salary is. I would have thought it could be ascertained from the Directory of State employees obtainable at the Stationery Office; it would be out of date by a year, but we will take it at £8,000.00 a year, £650.00 a month. The farm accounts which have been produced show that the husband's income from the farm is £1600.00 a year which works out at £133.00 a month. I may say that this £1600.00 a year income from 35 acres, which gives less than £50.00 an acre, if true, which I doubt, shows how hard-up some farmers must be. However, the evidence is uncontested. I make the husband's income £783.00 per month and I am certain it is not any less than that. He claims credit for £121.00 a month he pays to the Agricultural Credit Corporation as interest in repayment of loan. I don't think he is entitled to credit for that because I think for the purposes of measuring a person's income for assessing maintenance a husband is not entitled to arrange his financial affairs so that he diminishes his income at the cost of a wife in order to increase his

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capital. I am going to ignore that. That gives still £783.00 a month.

I will allow the wife £300.00 a month free of tax, first payment to be made today.

No order as to costs - both parties bear their own.

(Counsel agreed on division of furniture with liberty to apply if any subsequent disagreement)

Certified true record:

B. Sniet

Official Stenographer

Approved
Jan A. V. A. J.

20th Jan. 1983

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BEFORE THE HONOURABLE MR. JUSTICE D'ARCY

AT THE HIGH COURT, ORMOND HOUSE, DUBLIN

ON WEDNESDAY, 1st DECEMBER, 1982

R.F. -v- M.F.

Counsel for the Plaintiff : Mr. Blaney SC
Mr. Sweeney BL

Counsel for the Defendant : Mr. Lardner SC
Mr. Butler SC
Mr. Horan BL