



J. C.

.v.

J. H. C.

JUDGMENT delivered the 4th August 1982 by Mr. Justice Keane.

Three issues arise for determination in this case. The first is as to the ownership of a dwellinghouse in Killiney, County Dublin. The second is as to whether the Plaintiff is entitled to be maintained by the Defendant and if so at what weekly rate. The third is as to the ownership of a pure bred bull terrier.

The Plaintiff is Australian. The Defendant is English by birth but resided for many years in Australia, where he met the Plaintiff. The Defendant had been previously married, but that marriage was dissolved by a decree of the Family Court of Australia on the 25th March, 1978. The Plaintiff and the Defendant were married in a Registry Office in England on the 6th May, 1978.

It was accepted by both parties that the Australian divorce was granted by a Court of competent jurisdiction and should be

recognised by this Court. It was submitted on behalf of the Defendant, however, that the English marriage was invalid and that the parties were therefore not husband and wife. No evidence was adduced in support of this submission, which I have no hesitation in rejecting.

The parties having spent some time travelling eventually settled down in this country where the Defendant set up a business of a model photographic agency and hairdressing salon, the Plaintiff also participating in the running of it. This venture ultimately proved unsuccessful and it is clear that disagreements as to its management contributed significantly to the deterioration in the relationship between the Plaintiff and the Defendant, which culminated in the former's leaving the matrimonial home in March, 1982. There were no children of the marriage.

I shall deal with the three issues raised in the proceedings in turn.

1. The dwellinghouse in Killiney

This house was bought in October 1977 for £38,380. It is agreed that it was purchased entirely out of monies provided by the Defendant. I was told that it was conveyed to the Plaintiff and

the Defendant as joint tenants, although the actual conveyance was not produced.

The Plaintiff said that she understood at the time that the property would belong to the Defendant and herself in equal shares and that he thereby intended to give her some security in the event of his pre-deceasing her. (The Plaintiff at the time the parties met was twenty-one and the Defendant thirty-seven). The Defendant said that his object in having the property conveyed into their joint names was to ensure that if he died before the Plaintiff, she would be the sole beneficiary of his estate.

Where property is taken in the joint names of two or more persons, but the purchase money is advanced by one of them alone, the law presumes a resulting trust in favour of the person who advanced the purchase money. This presumption may however be rebutted; and in particular the circumstance of the person into whose name the property is conveyed being the wife of the person advancing the money may be sufficient to rebut the presumption under the doctrine of advancement. However, it has been said in one English decision (Pettit .v. Pettit (1970) C. 777) that these presumptions are inappropriate to transactions between husbands and

wives today and are readily rebuttable by comparatively slight evidence

In the present case, the evidence of the Plaintiff and the Defendant overwhelmingly reinforces the presumption of advancement which would arise if there were no other evidence pointing to the intention of the parties. It is clear that the Defendant intended the property to be jointly occupied by the Plaintiff and himself during their lifetimes but also intended the legal ownership to devolve upon her if he predeceased her. It is quite plain that he intended to give it to her; and that accordingly the property has been held from the beginning and is held now by the Plaintiff and the Defendant on a joint beneficial tenancy. There will be a declaration accordingly.

## 2. Maintenance

It is not in dispute that the Plaintiff left the Defendant in March, 1982. It is claimed, however, on her behalf that her leaving was the result of conduct on the Defendant's part which should properly be regarded as constructive desertion. I am satisfied that the tensions between the parties did lead to occasional scenes of violence; and that in particular on one occasion on July 4th, 1981, of which two other witnesses gave

evidence, the Defendant assaulted the Plaintiff with sufficient violence to cause other people present to intervene. I have come to the conclusion that the strains between the parties had led at the time of the Plaintiff's departure in March 1982 to occasional outbursts of violence on the Defendant's part which justified the Plaintiff in leaving him.

It follows that the Plaintiff is entitled to maintenance. I am satisfied that the sum of £82.00 per week claimed by her is the minimum which she would require; and while I accept the Defendant's evidence that his present income is only £97.00 per week, I am satisfied that a re-arrangement of his assets will enable him to produce sufficient income to support his wife at this rate.

### 3. Ownership of bull terrier.

It is claimed on behalf of the Plaintiff that the dog had been given to her by the Defendant as a pet, although they were engaged in breeding terriers as a business. The dog was at one time registered in the Kennel Club in London in the joint names of the Plaintiff and the Defendant but the last title document produced was a consent by the Plaintiff to the transfer of the dog into the Defendant's name solely. While the Plaintiff said that she had not

signed this document, I would not be prepared to hold that it was fraudulent without more convincing evidence. I am satisfied that from the 17th January 1982 onwards, the Defendant was solely entitled to the ownership of the dog and there will be a declaration accordingly.

*Rena Keane*