THE HIGH COURT

1983 No. 228 Sp C.6.

BETWEEN:

C.R.

Plaintiff

-and-

D.R.

Defendant

Judgment of Mr. Justice Lynch delivered the 5th day of April 1984

This is a claim brought under the Family Home Protection Act, 1976, the Married Women's Status Act 1957 and the Partition Act 1876.

THE FACTS

The plaintiff is the wife and was born in 1935. The defendant is the husband and was born in 1933.

The husband is a Veterinary Surgeon. In the year 1958 the husband was a Veterinary Science Student at U.C.D. and was friendly with another such student, one P.J.M. a brother of the wife. Through his friendship with P.J.M. the husband met the wife and they married on the 4th May, 1958 when the husband was still a student.

At the time of the marriage the wife was already some months pregnant with their eldest child and there were issue of the marriage six children namely:

William (Billy) born 28th September, 1958

Sara (Sally-Ann) born 6th May, 1960

Denis (Donnchadha) born 2nd June, 1962

Donal born 25th June, 1963

Joseph born 18th September, 1964, and

Keith born 17th September, 1965

On the marriage the wife's father gave a dowry of £500 to the wife. This was used to pay for the marriage and the honeymoon in a hotel in Aherlow, County Tipperary and to support the parties for a short time probably a few weeks only in a flat in Ranelagh, Dublin 6.

As the social climate at that time frowned upon pre-marital pregnancy the wife went to England where she remained until about six weeks before the birth of the eldest son when she returned to Ireland in or about the beginning of August, 1978. The wife would probably have spent five to six weeks in England at that time and when over there she supported herself whilst the husband

continued his studies in Dublin and supported himself.

The husband obtained summer work with a Veterinary Surgeon a Mr. B. in Scarriff, County Clare, in the Summer of 1958. His job included provision for his living in the house of the said Mr. B. and as he was still only a student and therefore not entitled to do T.B. testing work on cattle his wages were £10 per week only. On returning from England sometime at the beginning of August 1958 as aforesaid the wife went to live in lodgings in Killaloe, where she had board as well as lodgings and which she paid for herself. The exact length of time spent by the wife in these lodgings was not stated in evidence but it would appear to have been very short and perhaps no more than a couple of weeks because the said Mr. B. then invited the wife to come and live with the husband in his house. At that time the said Mr. B.'s wife was ill and was away from home and hence the husband and wife resided together in Mr. B.'s house for some time the length of which was not determined in evidence but was probably relatively short. Unfortunately the husband became seriously drunk on one occasion during the course of this stay at the house of Mr. B. and while drunk he did serious damage to

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the bedroom occupied by himself and the wife. As a result of this the husband gave up the job and the husband and wife returned to live in Dublin. This return to residence in Dublin was probably prior to the birth of the eldest son on the 28th September, 1958.

The husband and wife then continued to live in Dublin until about the month of January, 1959. In the meantime the husband had qualified as a Veterinary Surgeon in the month of December, 1958. During this period of residence in Dublin the wife had to borrow money to provide for the support of herself, the husband and their child but such borrowing was repaid by the husband very shortly after he qualified as a Veterinary Surgeon.

When the husband qualified as aforesaid he went down to work in Roscommon as an assistant to a Veterinary Surgeon there one Mr. D. The wife and their child accompanied him and he rented a house in Church Street, Roscommon, where the husband, the wife and their child lived for about one year. The rent for this house and the living expenses of the family were paid for by the husband out of his earnings as an assistant to the said Mr. D.

The husband's father had been a Veterinary Surgeon in Kilmallock. In the year 1959 he was a very elderly man and his practice as a Veterinary Surgeon had dwindled away until it was virtually non-existent. The husband had from the time of his marriage to the wife a serious drink problem which was gradually deteriorating and the wife was accordingly very unhappy during the period of their stay in Roscommon. In fact it is quite clear that the husband was by that time already an alcoholic and he would go on drinking bouts and then would abstain for a time in between such bouts but the periods of abstinence were becoming shorter and the drinking bouts longer. The husband's alcoholism was seriously affecting his work-life and his home-life and imposed a great strain on the wife. Accordingly the wife endeavoured to persuade the husband as also did her parents and the husband's own parents to return to work in Kilmallock and take over the remains of his father's veterinary practice.

In or about the month of December, 1959 the husband and the wife and their child went to live in Kilmallock where the husband took over the remains of the former veterinary practice of his father. The husband rented a flat in Kilmallock for the wife,

their child and himself and the husband paid the rent and the living expenses of the family and also during this period employed for the first time domestic help namely a girl called B.A. During this time however the husband continued to suffer from alcoholism and accordingly an extra burden of work and strain was thrown on the wife both in relation to the home and in attempting to cover up for the husband in relation to his veterinary practice.

In the year 1960 a house which had only been constructed about two years previously in Kilmallock came on the market for sale. This house was situate on about four and half statute acres of land and was clearly very suitable as a residence for the husband and the wife and their family. Both the husband's parents and the wife's parents wanted the husband to buy this house as the family home. The husband did not have the money to pay cash for the house and he also had difficulty in arranging for a loan to enable him to buy the house but the wife's father came to his assistance and guaranteed him in the Bank for the amount of the purchase money of this house which was accordingly bought by the husband and in his sole name in the year 1960. The purchase price of the house was in or about

the sum of £2,500. Neither a copy of the contract for sale nor of the conveyance was produced in evidence but it was accepted by both parties that the house was bought in the sole name of the husband for the price aforesaid. If the wife's father had not agreed to guarantee the husband's indebtedness to the Bank to enable him to purchase the house he would have had difficulty in arranging such facilities but it would not necessarily have been impossible for him to do so. Whether he would have succeeded in raising such finance without the assistance of the wife's father or not is something which was left uncertain on the evidence before me.

The debt due to the Bank in respect of the purchase price of the said house and lands was in fact paid off fully by the husband during the period from 1960 to 1966 and no liability in respect of such debt was in fact incurred by the wife or her father or any member of her family. The furnishing and redecoration of the house was likewise financed by the husband and nobody else.

The husband's practice as a Veterinary Surgeon in Kilmallock at this time was very limited and required to be built up since it had fallen away almost to the point of disappearance with the

advancing age of the husband's father. The efforts of the husband to build up this practice were hampered by his alcoholism in that when he would make a little progress towards building up the practice he would lose it again by going on drinking bouts and becoming unreliable. In order to earn money the husband sought work at testing cattle for T.B. which was a very lucrative form of work and accordingly he commenced to do that work as assistant to a Veterinary Surgeon in Mountbellew, County Galway. During all this time the husband and the wife continued to have domestic help to assist in the home and with the children and accordingly the wife would on quite frequent occasions accompany the husband on trips to County Galway in order to ensure that he would not drink because on many occasions when he went off without being accompanied he would in fact indulge in drink and not return home. As a result of this drink problem the husband lost his employment as an assistant to the said Veterinary Surgeon in Mountbellew who thereafter threatened to report the husband to the Veterinary Council but was dissuaded from doing so by the intervention of the wife.

Having lost that employment in Mountbellew the husband

undertook and continued to do for some years testing of cattle for T.B. in County Offaly and the same arrangements applied and the wife would from time to time accompany the husband on trips to that area.

During this period in addition to accompanying the husband on cattle testing trips the wife looked after such activities as were carried on on the four and a half acres. These activities included milking one cow and at times two cows, sending about two gallons of milk daily to the local creamery which was exchanged for butter or other dairy products and also sometimes keeping poultry and also sometimes keeping calves varying in number from two to five. Sometimes also the wife would make butter from the surplus milk instead of sending it to the creamery. The evidence as to the extent and value of these activities did not establish any more precise account of them than the foregoing nor any figure for their value in money terms either in themselves or relative to the husband's earnings as a Veterinary Surgeon.

Ultimately the husband joined the organisation known as Alcoholics Anonymous in or about the year 1964 and with the help of this organisation succeeded in overcoming his alcholism as a

result of which the husband has not taken an alcoholic drink since the month of July, 1965. Prior to joining Alcoholics Anonymous the husband had been an in-patent for alcoholism on two occasions in hospital once in Dublin and once in Limerick.

Once the husband overcame his alcoholism the family began to prosper. The debt on the house was paid off by the year 1966 and domestic help continued to be employed as well as some help in connection with the books of the veterinary practice. In addition the family had two cars although the wife complained of sometimes not having either available to her. All of this was financed solely by the husband through his earnings in his practice as a Veterinary Surgeon and during this time the wife had no gainful occupation apart from her work on the 4½ acres already referred to. In fact the wife had had no gainful occupation from the time when she returned from England, where she had supported herself, to join the plaintiff in Killaloe/ Scarriff in the Summer of 1958.

In the year 1973 the wife wished to have some form of independent occupation of her own and accordingly opened a boutiq in Killmallick. This was partly financed by the husband who

gave to the wife £500 to assist her in opening this business. The boutique was run successfully and profitably by the wife for some years but ultimately it was closed down by her in December 1977.

In the year 1975 the wife entered into an adulterous relationship with one Mr. O'D and from that time on the relationship between the husband and the wife deteriorated to such an extent that there was little or no communication between them although they continued to live in the same house though in separate bedrooms. In the month of March 1978 the wife ultimately left the husband and has not returned or sought to return to live with him ever since and both the husband and the wife have since that time lived completely independently of each other. Following her departure from the husband in March 1978 the wife cohabited with one Mr. W and the husband has cohabited with another woman living with him in the house in Kilmallock.

No claim was made by either party against the other following their separation in the month of March, 1978 until the wife instructed a solicitor to act for her and he wrote a letter of claim to the husband on the 18th August, 1982. No other

correspondence took place between the parties between that date and the issue of the Special Summons commencing these proceedings on the 5th day of May, 1983.

THE LAW

A. I now turn to the law applicable to the foregoing facts. I should however first point out that in the course of cross-examination the husband agreed that when he acquired the property he regarded himself as acquiring it as the family home and regarded the wife as a partner and the house as jointly owned. It is not however by reference to the vague ideas that the parties will have of their respective property rights at a stage when all is going well with the marriage that I must decide this case. I have to decide this case on the basis of the true facts and the law applicable thereto. Mannix -v- Pluck (1975) IR. 169 and McGill -v- S. (1979) I.R. 283 at p.294.

B. The main claim of the wife in this case is set out in paragraph 2 of the Special Summons as follows:-

"Pursuant to the Married Women's Status Act 1957 and in particular Section 12 thereof:-

(a) An Order that the plaintiff is entitled to the

beneficial interest in and ownership of the premises and lands known as "A" Kilmallock in the County of Limerick as her own property entirely or in such portion or share with the defendant as to this Honourable Court shall seem just.

(b) An Order that the plaintiff is entitled to the beneficial interest in and ownership of the furniture, fittings and effects in the said family home as her own property entirely or in such proportion or share with the defendant as to this Honourable Court shall seem just."

In the course of argument I was referred to the following authorities:-

C. -v- C. (1976) I.R. 254

K. -v- K. (Finlay P. 24th October, 1978)

McGill -v- S. (1979) I.R. 283

W. -v- W. (1981) 1 L.R.M. 202

G. -v- D. (Keane J. 28th April, 1981)

H.D. -v- J.D. (Finlay P. 31st July, 1981)

M. -v- M. (Carroll J. 1st February, 1982)

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O'K -v- O'K (Barron J. 16th March, 1982)

S.D. -v- B.D. (Murphy J. 19th March, 1982)

At the conclusion of the evidence and submissions on the 22nd February, 1984, I reserved my judgment. On the 29th March, 1984, the Supreme Court delivered their reserved judgment in the case of McC. -v- McC. and this judgment is very relevant to the legal issues arising in this case in which I had reserved my judgment. Accordingly I relisted this case for further argument on the 3rd April, 1984 and on that date I heard further submissions from Counsel for each party in the light of the said judgment of the Supreme Court.

C. It is clear from the foregoing authorities that if a wife directly contributes to the acquisition of a house out of her own savings or out of monies earned by her from third parties she will thereby become entitled to a share in the property to the value of such contributions relative to the total value of the property.

Moreover if a wife indirectly and significantly assists in the acquisition of property by paying out of her own savings or out of monies earned by her from third parties family expenses

which would otherwise have to be paid by the husband thus increasing the funds available to the husband to pay for the acquisition of the property she will thereby become entitled to an interest in the property to be calculated on a similar basis to that already indicated in the absence of any express or implied agreement to the contrary.

Furthermore if a wife by her work in the husband's enterprise such as a farm or a business significantly increases the family income from such enterprise thus increasing the funds available to the husband to enable him to pay for the acquisition of the property she will probably thereby become entitled to a similar interest as already described in the property in the absence of any express or implied agreement to the contrary and will certainly become so entitled if there was any understanding however informal between the husband and the wife to that effect.

D. In the present case the wife had no savings apart from the initial dowry of £500 given in 1958 no part of which was actually used in the acquisition of the property. Moreover the wife in the present case had no earnings from third parties at any time relevant to the acquisition of the property.

The wife's contributions to the family funds by sending some two gallons of milk per day to the creamery and by sometimes keeping calves and poultry and making butter for the house were no doubt welcome to the husband but were nevertheless so small relevant to the monies which I am satisfied the husband was earning as a Veterinary Surgeon even during the period when he was suffering from alcoholism that they cannot be regarded as entitling the wife to a share in the property the acquisition of which was directly financed solely by the husband's earnings. Such contributions by the wife in this case are not comparable to the contributions which the wife of a farmer whose sole means of livelihood is farming would make from similar activities.

E. It is however furthermore submitted that the burdens which were imposed upon the wife by and during the period of the husband's alcoholism in relation to the home and family and in relation to covering up for the husband in his veterinary practice are sufficiently proximate to the monies earned by the husband in his veterinary practice and used by him in the acquisition of the property to entitle the wife to a share in that property.

It is clear that the husband in fact earned all the monies used in the acquisition of the property and in its re-decoration and improvement. It is also clear that the wife was of great help to the husband in relation to his veterinary practice during the period of his alcoholism but it is not clear that the husband would not have been able to earn the necessary funds to acquire the property if his wife had devoted her energies solely to the home and the family and dispensed with the domestic help which enabled her to assist the husband in relation to his veterinary practice. If the property had been acquired solely by the wife with funds provided by her family then it would of course be clearly her sole property but the burdens imposed on her by the husband's alcoholism would be exactly the same as those which were in fact imposed on her in this case. I do not think therefore that the fact that the wife had these burdens thrust upon her by the husband's alcoholism means that I can regard part of what he undoubtedly earned by his own personal work as a Veterinary Surgeon as being partly earned by the wife and applied to the acquisition of the property.

F. I have come to the conclusion therefore that the wife in

this case has failed to make out the claim under the Married Women's Status Act 1957 and the Orders sought by her under that Act are accordingly refused, both as to the premises known as "A" and the furniture, fittings and effects therein.

G. The wife also claims in her Special Summons an Order pursuant to the Partition Acts for the sale of the property and the distribution of the proceeds to her or in such proportion or share as to the Court should seem just. As the wife has failed to make out her claim to an interest in the property pursuant to the Married Women's Status Act 1957 this claim under the Partition Acts also fails and is refused.

H. The wife in her Special Summons also claims pursuant to the Family Home Protection Act 1976 relief in the following terms:-

"(a) An Order for the protection of the family home situate at Kilmallock in the County of Limerick and known as "A" and an Order restraining the defendant from interfering with or disposing of or in any way alienating the interest of the plaintiff or the infants in the said family home.

(b) An Order pursuant to Section 9 of the said Act

restraining the defendant from interfering with or disposing of or selling or mortgaging or in any way alienating the interests of the plaintiff in the furniture fittings and chattels in the said family home."

It is quite clear, and indeed was not disputed that the property in question is the "family home" within the meaning of that term as defined in Section 2 (1) of the Family Home Protection Act 1976. There is however no evidence whatever of any intention by the husband to dispose of the property or deal with it in any way to the detriment of the wife or of the children of the marriage and there is no basis upon which any injunctions as claimed should be granted. The claim in this paragraph is thereofore refused but of course this refusal is without prejudice to the right of the wife to apply again for such relief in case that circumstances were to change in the future in such a way as might indicate an intention on the part of the husband so to deal with the property as to affect the wife's rights to it as the family home.

I. Finally the wife in her Special Summons claims an injunction

restraining the husband from assaulting, threatening, molesting or in any way putting in fear the plaintiff either directly or indirectly.

There is a conflict as to whether the husband assaulted the wife on the day that the wife finally left the family home in March, 1978. It is quite unnecessary for me to resolve this conflict. It is sufficient to say that that is now over six years ago and that no untoward incident has been suggested as having happened between the parties since then. Indeed it would appear that the husband and the wife have met on only three occasions between March, 1978 and the date of the hearing of this action namely at the funeral of the wife's father, at the conferring of the eldest son and at the conferring of the eldest daughter. It is not suggested that anything untoward occurred on any of those occasions and the husband's evidence which was uncontradicted on this point was to the effect that he and the wife got on quite well at the last meeting which was the conferring of the eldest daughter.

Accordingly there is no basis for granting any such form of injunction as claimed by the wife in this paragraph of her

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Special Summons.

The plaintiff's claim is therefore wholly dismissed subject to the right already mentioned to re-apply for appropriate relief in case that circumstances should change in relation to the family home.