1981/15

ROYAL COURT 22nd October, 1981.

MATRIMONIAL CAUSES DIVISION

Appeal Reported

BEFORE Sir Frank Ereaut, Bailiff
Jurat R.E. Bailhache, O.B.E.
Jurat G.N. Simon, T.D.

**Between**

**Monica** Ferbrache petitioner

**and**

**David** Julien Bisson respondent

Advocate A.J. Olsen for the petitioner
Advocate W.J. Bailhache for the respondent

On 17th May, 1979, the petitioner was granted a decree nisi on the ground of the respondent's cruelty. His cross-petition on the ground of cruelty by the petitioner was rejected.

On 12th July, 1979, the respondent was ordered to pay the petitioner the sum of £50.00 per month pending suit or until further order.

The Court now has to decide a summons brought by the petitioner seeking the remaining ancillary relief sought in the prayer of her petition.

The relief sought consists of:-

1. Maintenance for herself;
2. The transfer to her of the ownership of the property "La Chaumière", the former matrimonial home, on condition that she assumes responsibility for the capital and arrears of interest of the simple conventional hypothec in favour of the States of Jersey; and
3. Costs of the present summons.

The property was bought in the joint names of the parties during the marriage, but in 1974 the petitioner conveyed her half-share to the respondent for the sum of £500.00.

On 13th July, 1981, the Royal Court found that that conveyance was the result of duress, and declared it void ab initio.

The result is that the property is now once again owned equally by the parties.

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The property was informally valued by an Estate Agent last year at £35,000. Although the respondent regards that as a conservative estimate, we consider that that valuation is sufficiently accurate for our purposes.

The total of the capital and outstanding interest on the mortgage is now £4,821.49. The equity of the property is therefore £30,178.51, and accordingly the half-share of each party in the equity is £15,089.25.

The respondent is in arrear with maintenance payments to the extent of £1,000. Furthermore, he has failed to comply with an order that he pay the costs of the petitioner in the case, amounting to £2,840.42.

He therefore owes the petitioner £3,840.42 under these two heads.

From that sum, however, there should be deducted the £500.00 which the petitioner received for her purported conveyance of her share of the property to the respondent in 1974. The balance therefore owed by the respondent to the petitioner is £3,340.42, and if this figure is then deducted from the respondent's share of the equity in the property, the resulting equity share is £11,748.83.

It is now proposed on behalf of the petitioner that the respondent's half-share of the property should be transferred to her, in consideration of which she would be responsible for the payment of the capital and outstanding interest on the mortgage, and furthermore she would surrender any claim to maintenance.

The petitioner, who is aged 43, lives in the property. None of the four children of the marriage lives with her, although one stays with her when he returns to the Island.

The respondent claims to have no assets apart from his share of the property. We are not at all sure that we can accept his affidavit of means as being the whole truth, but he claims to be insolvent, because he owes a Bank the sum of £26,474.60. That sum is made up of an original loan of between £8,000 and £9,000, the rest being accumulated interest. The loan was registered on the property when the respondent was the sole owner of it, but since the Act of the Royal Court

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annulling the 1974 conveyance the loan has ceased to be so registered, and is now unsecured.

Counsel for the respondent argued that if the respondent's share of the property were now to be transferred to the petitioner it would be unfair to the Bank and other creditors, for the respondent would then be without assets. Such a transfer would also be unfair to the respondent himself because his share of the equity thus transferred would be the equivalent of 20 years capitalised maintenance at £10.00 per week.

Counsel therefore suggested that the fair course, both for the respondent and his creditors, would be for the Court to order the property to be sold and the proceeds divided equally between the parties. In addition, the respondent could be ordered to pay a nominal sum of £5.00 per week for the maintenance of the petitioner.

We are satisfied that if the respondent's share of the property were to be transferred to the petitioner, she does not have the means to pay back to the respondent any lump sum as an off-set.

The only means by which she can be enabled to continue to live in the property is by the transfer of the respondent's share to her.

Under Articles 28 and 29 of the Matrimonial Causes (Jersey) Laws 1949 to 1978, the Court is specifically required to have regard, not only to the actual and potential financial circumstances of the parties, but also to all the circumstances of the case, including the conduct of the parties. That is a specific direction to us to have regard to the conduct of the parties.

In deciding to grant the petitioner a decree nisi we found that her conduct during the marriage was not perfect. Nevertheless, we did find that the cruel conduct of the respondent was of a grave and weighty nature.

Our task is to decide what is fair to both parties, taking into account the conduct of the respondent which, as we have found, has led to the break-up of the marriage.

The petitioner has lived in the property for many years, where she has brought up her children and she is not, and will not be in the future, able to buy another home.

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We think that fairness requires us to adopt a course which, if possible, enables the petitioner to continue to remain in the property. Although this inevitably means that the petitioner will receive the transfer of the respondent's substantial equity in the property, we do not think this unfair, having regard to the conduct of the respondent and to the fact that the petitioner surrenders her claim to any maintenance.

Because we think this is fair as between the parties, the position of the creditors is not relevant.

We therefore order -

1. that the respondent conveys to the petitioner his undivided half-share in the property "La Chaumière" subject to the petitioner assuming responsibility for the balance of capital and interest outstanding on the simple conventional hypothec charged thereon in favour of the States of Jersey;

2. that the petitioner's prayer for contribution for support be dismissed; and

3. that the respondent do pay the costs of this action.