C9a.

(19)

SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 9 of 1987

BETWEEN :

DUNCAN RICHARDSON - Appellant

and

JANKIE RICHARDSON - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Bishop
The Honourable Mr. Justice Moe

Appearances: Mr. J.S.B. Dear Q.C. and Mr. S. Commissiong for the Appellant
Mr. O.R. Sylvester Q.C. and Mr. M. Williams for the Respondent

1988; March 23,
July 18.

JUDGMENT

BISHOP, J.A.

The parties to this appeal were married in San Fernando in the Republic of Trinidad and Tobago, according to Hindu rites, on the 17th November 1970, when each of them was 22 years old.

It would seem that, in the view of Duncan Richardson, there was more than the usual wear and tear of married life over the years, for on the 2nd August 1983 he walked out of the matrimonial home with a suitcase, and he never returned or resumed cohabitation.

On the 26th June 1984, he filed a petition for dissolution of the marriage which, he alleged, had broken down irretrievably because his wife had behaved in such a manner that he could not reasonably be expected to live with her.

On the 10th October 1984 Jankie Richardson answered the petition and also prayed for a cross decree.

The matter was heard on the 30th September 1985. Duncan Richardson abandoned his petition and a decree nisi was pronounced in favour of Jankie Richardson, on the ground that her husband had behaved in such a way that she could not reasonably be expected to live with him.

The decree nisi was made absolute on the 2nd October 1986.

In May 1987 the parties appeared before the Judge for the issue of a settlement of the assets of the marriage to be determined.

/The Judge... ...

The Judge had before him for consideration not only the affidavits of Duncan Richardson and Jankie Richardson sworn to on the 30th January 1986 and 26th March 1986 respectively, but also their testimony on oath when they were cross-examined on those affidavits, in May 1987. In his decision the learned Judge pointed out that the cross-examination of each party was lengthy, and that having seen and heard each of them, he felt "on safer ground" accepting her evidence in preference to his, whenever there was conflict between them.

In his decision given on 15th May 1987, Singh J. indicated that the affidavits disclosed the assets of the marriage to be (1) the matrimonial home at Rose Cottage, St. Vincent, (2) TT $237,000.00 representing the proceeds of sale of their former matrimonial home in Trinidad, (3) a Mitsubishi motor car, (4) a Piper Cherokee 140 light aircraft, and (5) U.S. $20,000.00 abroad; however later in the judgment he wrote:-

> ".....my first task is to determine what are the net assets of this marriage. In this regard I find the Piper Cherokee aircraft, the proceeds of the sale from Trinidad property, the matrimonial home in St. Vincent and a U.S. account with now some $11,000.00 to be the assets of the marriage. I do not find the Mitsubishi car of the respondent to be such an asset. I accept her evidence and I find as a fact that she acquired that car as a gift from her brother in Trinidad."

The Judge made the following order (the respondent being Jankie Richardson and the appellant being Duncan Richardson):-

> "(1) The matrimonial home at Rose Cottage is to be forthwith vested in the respondent absolutely, free of any share of applicant. Failure on the part of the applicant to effect the transfer of his half share, the Registrar.....is hereby ordered to do so.
>
> (2) The respondent will be solely responsible for paying off the arrears and meeting all future mortgage payments on the property.
>
> (3) The monies remaining in the Trinidad account of approximately T.T. $25,000.00 less the equivalent in Trinidad currency of E.C. $3,000.00 being the balance of the lump sum award after the set off aforementioned will go to the applicant absolutely.
>
> This equivalent in Trinidad currency of E.C. $3,000.00 will remain with the respondent absolutely.
>
> (4) The U.S. account of some U.S. $11,000.00 will remain with the applicant absolutely.
>
> (5) The Piper Cherokee aircraft will remain with the applicant absolutely.
>
> (6) The Mitsubishi motor car will remain with the respondent absolutely.
>
> (7) Each party will bear his or her costs of their suit."

/The Judge

The Judge was of the opinion that the ends of justice would be met by this order though the parties may have "to cut down on their standard of living".

The lump sum referred to in paragraph 3 was an amount of E.C. $60,000.00 and the Judge pointed out that the applicant's half share of the equity in the matrimonial home amounted to $57,000.00 because there was no dispute that the equity was $114,000.00. (The evidence actually revealed it to be $115,782.93). Then, according to the Judge:-

> ".....in keeping with the principle enunciated in the case of Dunford (i.e. DUNFORD v. DUNFORD (1980) 1 All E.R. 122) on ensuring a "clean break" between the parties I would order that this sum of $60,000.00 be set off against the sum of $57,000.00 ordered by me to be paid by the respondent to the applicant for his half share in the matrimonial home."

Duncan Richardson appealed against the decision on seven grounds, but at the hearing before us, learned Counsel informed this Court that the gravamen of the appeal concerned what he called "the case of the missing T.T. $237,000.00". Counsel emphasised that the appellant was not disputing that the matrimonial home vested in them jointly, and he urged that this appeal turned on "how to deal with the T.T. $237,000.00."

On behalf of the appellant it was contended that although Jankie Richardson testified on oath to the effect that she had spent the sum of T.T. $237,000.00 on medical expenses and on normal living expenses (including paying the wages of a gardner and a maid) not provided by her husband, yet she failed to produce at the trial any supportive documentary evidence of the medical expenses allegedly incurred abroad. Counsel expressed the view that it was unreasonable for Jankie Richardson to seek medical attention outside of the Caribbean more especially beyond Barbados or Jamaica.

Mr. Dear drew our attention to the following statements of Jankie Richardson:-

> "Duncan came to my house and took all the bills for everything I ever done.
>
> Whenever I left my home he would come in and take what he wanted."

These were the answers given when she was being cross-examined on those aspects of her affidavit that dealt with her expenses, and in particular the medical expenses. Learned Counsel asked this Court to note that they were given after Duncan Richardson had been cross-examined and that he had not been asked a word about the allegation. Counsel argued that Duncan had not been given an opportunity to answer the allegation, it was not tested, and then the learned Judge made an unfortunate and unfair statement and comment in his Judgment, as follows:-

/"...she has....

> ".....she has been cross-examined at length on this and whilst Mr. Commissiong seems to feel that the Court should approach her expenses under this heading with some mathematical exactitude, I do not feel I can use that approach. I accept her evidence that during her absence the applicant removed her bills and receipts from the matrimonial home. There is no evidence rebutting this from the applicant....."

Counsel submitted that it was not good enough to accept evidence which may be legally admissible but which was not put to the other side. As I understood him, such evidence, though admitted, ought to be regarded with caution.

I think it must be stressed that the part of the testimony quoted earlier and criticised by learned Counsel for the appellant was not evidence in chief, but was given as a result of her being cross-examined on her affidavit, on behalf of the appellant, who had been himself cross-examined on his affidavit. It was Mr. Commissiong who brought out the answers and the facts connected to the expenditure incurred by Jankie Richardson; and so it was a matter for the trial Judge to evaluate all the facts given by Jankie Richardson using the same yardstick he used for the evaluation of all the facts given by Duncan Richardson.

On the question of her normal living expenses, learned Counsel referred to evidence of Duncan Richardson, given under cross-examination, to the effect that between 2nd August 1983 and 2 March 1984 he gave his wife E.C. $10,900.00 for her maintenance and for payment of telephone bills; and that after 2nd March 1984, according to the evidence of Jankie Richardson, under cross-examination, she spent E.C. $1,200.00 to $1,500.00 per month for living expenses* since her husband ceased to provide for her (2nd March 1984) was, at best, E.C. 54,000.00 for the three year period. Therefore she was required to account for the balance of the T.T. $237,000.00 which she claimed was spent on medical attention and passages abroad. Counsel contended that when the sums of money which Jankie Richardson alleged she spent on medical and other expenses were added together the total was "nowhere near T.T. $237,000.00"; and he suggested that if the Court fixed a total of T.T. $100,000.00 it would be acting generously.

However, Counsel submitted further, when the evidence in its totality was considered the Court would be left - as indeed he was left - to speculate upon where the sum of T.T. $237,000.00 had gone after it fell within the control of Jankie Richardson who said it was all exhausted. Counsel opined that it could either have been frittered away by unnecessary and extravagant expenditure or it could have been "stored" away to await the outcome of this appeal. In any event, the Court could only speculate and it would be wrong so to do.

/On this.....

On this aspect of the appeal learned Counsel for Jankie Richardson drew attention to the documentary exhibits which were produced by her at the trial, and stressed that she had produced all the documents which she could produce, bearing in mind, as the trial Judge found, that her husband removed bills and receipts from the matrimonial home when she was not there. Mr. Sylvester submitted that the decision of the learned Judge was clear and ought not to be disturbed.

There was no clear or positive evidence before the Judge to show that either the specific treatment received or the major operations performed abroad were available to Jankie Richardson at the material times (when received or performed) either in Jamaica or in Barbados. Nor was there evidence of the comparative costs of such medical attention and care as were given over the three year period from 1983. Further, there was evidence that her illness, which is on-going, required - then and now - strict care and still necessitates visits to doctors every six months or so. It was also elicited from Jankie Richardson, under cross-examination, that whenever she went abroad to the United States of America or to the United Kingdom for necessary medical attention, she did so on the specific recommendations of her Caribbean doctors (in Trinidad or Barbados). On one occasion her mother-in-law made such a recommendation. Thus it was clear, in my view, that, generally speaking Jankie Richardson was and is suffering from a serious form of cancer for which she has had to have treatment and surgery and to take medication; and she will have to continue to take prescribed drugs for the remainder of her life.

It is also my view that it is now common place and indeed has been so for years that West Indians seek medical attention and ~~receive~~ undergo operations for a variety of serious complaints, not only in Jamaica and Barbados but in Canada and North America in particular, where, as a rule, the most modern methods of treatment and surgery are readily available. So that quite apart from the fact that Jankie Richardson did not act on her own but on the advice of her doctors, I would not regard her decision to go beyond Jamaica or Barbados, in the circumstances of her illness (revealed in her unchallenged and uncontradicted testimony) as unreasonable.

What did the trial Judge decide about the proceeds of the sale of the Trinidad property? Among other things, he said this:-

> "I find as a fact that whereas this sum of $237,000.00 was always at the disposal of both parties, except for $25,000.00 still remaining the rest was used up solely by the respondent.....
>
> I find as a fact that the respondent exhausted almost the entire purchase price .....during the period 1983 - 1986 and that when she did so it was as a matter of necessity rather than 'squandermania' as the applicant seems to suggest.....since before 1983 and up to now this respondent has been seeking and obtaining medical attention, taking tests, undergoing

> operations on several occasions in Miami, U.S.A., England and Trinidad.....
>
> I also find as a fact that apart from this expenditure on herself, from March 1984 to date the applicant gave no assistance, financial or otherwise to the respondent or towards the maintenance and upkeep of the matrimonial home and apart from the every-day maintenance of the property the respondent ~~alway~~ always had repairs done to the house including a major one.....
>
> When the evidence is taken as a whole, whilst it may be that with a little bit of 'penny pinching' she might have been able to keep a little more than the $25,000.00 left over from the $237,000.00. I do not see that I can make the finding that she negligently frittered the money away.....
>
> I therefore conclude.....that the money earned from the Trinidad property was spent as part of the expenses of the every day life in the marriage and that the fact that it was used up solely by the respondent ought not to militate against her in my consideration of her right to financial relief. It will have some bearing as to quantum if any order for financial relief is to be made."

I believe that in the conclusion just quoted the learned Judge meant to say that part of the money earned from the Trinidad property was spent as expenses in the every-day life of the marriage rather than that that money was spent as part of the expenses of every-day living. It is clear however that the trial Judge bore in mind the fact that Jankie Richardson alone used the proceeds of the sale when he reached his decision.

In my view, an arithmetical calculation of the sums mentioned in the evidence of Jankie Richardson is not a proper method of determining what she actually spent on medical expenses. The amounts were given, in part, in U.S. currency, and so not only would there have to be the relevant conversion to T.T. dollars but consideration would have to be given to the Government tax then charged for the exchange and the cost of return passages whenever she went abroad. Further, in the absence of the documentary evidence - which the Judge found was removed by Duncan Richardson - she could not be expected to render as accurate or as valuable assistance as if the bills and receipts were available; and, as I understood Counsel for the appellant, he agreed that if it was properly found as a fact that Duncan Richardson deprived his wife of the use of the documents and then himself failed to put them before the Court, it would be open to the Judge to construe that omission in a manner unfavourable to him.

For the reasons given I can see nothing wrong in the finding of the Judge, based as it was upon evidence including that brought out by the appellant's Counsel that the relevant documents were taken from her possession by him.

/It is....

It is correct that upon a reading of the cold print of the notes of evidence there were a number of discrepancies in what Jankie Richardson stated, but it must be remembered that the trial Judge had the additional advantage over this Court of seeing and hearing her testify under cross-examination and re-examination - as indeed he had with the evidence of Duncan Richardson. In the absence of special reasons that would cast doubt on the merit of his conclusions or would indicate that he formed an erroneous impression, I would not alter his finding on the disposal of the greater part of the T.T. $237,000.00. I also share the view that it was proper to consider the fact that Jankie Richardson used most of that money to the near total exclusion of her husband, when determining ancillary relief. I say near total exclusion because her husband testified that he benefitted to an amount of $2,900.00 paid on a life insurance policy in Trinidad.

It may be helpful to point out here that the Judge found that although Jankie Richardson's affidavit was not "full", yet when her evidence was evaluated in the light of the findings that her viva voce answers were given "unhesitatingly and in a forthright manner", that for the duration of the marriage she was more closely involved in the daily domestic matters than her husband, and that his recollection of events was "more hazy" than hers, she could not have rendered more assistance than she did, without having the documents she had put aside. The trial Judge pointed out further that although he did not use it against Duncan Richardson, it was he who failed to make full and frank disclosure "when it only came out after long hesitations that he had the U.S. account not mentioned in his affidavit and that he lives with his family in Barbados".

Mr. Dear also criticised the award of a lump sum to Jankie Richardson. He pointed out that the Judge failed to show how he arrived at the figure of $60,000.00. It was his view that it seemed as if the trial Judge felt that she should have the house free from any interest of her former husband; and so he ordered him to pay her an amount approximately equal to what she would pay as his half share if she kept the house.

Learned Counsel urged upon us that the correct order in this case would be that the house Rose Cottage be sold and each party be paid half of the equity realised.

Learned Counsel for the respondent submitted that this Court ought to (a) uphold the award of a lump sum and (b) leave undisturbed and not vary as suggested the order transferring the matrimonial home to her. Counsel urged that to vary that order as was suggested, would in effect, give her no more than that to which she was initially entitled before the break up of the marriage, and more significantly, it would render her homeless.

Counsel submitted that the philosophy of the clean break, and what he called 'the concept of a roof over the head after the break up' were relevant to this case and ought to be followed. He relied upon passages from "The Family, Law and Society, Cases and Materials by Huggett and Pearl

(pages 225 to 227), from Matrimonial Property and Finance by Duckworth (pages 201 to 204) and from Property Distribution on Divorce by Goldrein and de Haas (pages 12 and 13). Like learned Counsel for the appellant he referred to passages in the Judgment of Cairns L.J. in MARTIN v. MARTIN (1977) 3 All E.R. 762. He also cited HANLON v. HANLON (1978) 2All E.R. 889.

Mr. Sylvester reminded us of facts contained in the evidence, that showed the conduct of the parties, more especially Duncan Richardson. He submitted that the trial Judge had a statutory duty (under section 25 of the Matrimonial Causes Act 1973) to consider such facts when exercising his powers to grant ancillary relief. Counsel mentioned, among other things, that (i) throughout the greater part of the marriage Jankie Richardson did not work and so did not earn any income, at the insistence of her husband who said his wife was not to work (ii) Duncan Richardson walked out of the matrimonial home in August 1983 saying he was going to work (iii) for 7 months thereafter she was paid $1,000.00 per month, not by her husband but by Specialised Aviation Services Limited, a company of which she was appointed director/secretary (iv) the payment of a monthly salary was alleged by her husband who formed and managed the Company, to be a tax avoidance scheme (v) the Company ceased to pay her in March 1984 (vi) she used her salary on the daily expenses in the home for normal living.

Counsel also pointed out that when the house Rose Cottage was acquired a deed was registered which showed unequivocally that the legal title thereto was vested in both of them jointly, and that the beneficial title was to vest in both of them in equal shares. Consequently from the outset the question of title between them was concluded for all times.

Mr. Sylvester recalled also that Duncan Richardson had remarried and that he and his second wife were residing - with four children - in a house in Barbados. Duncan Richardson denied that he had bought the house but he did not indicate whether or not it was rented.

As a matter of interest only, the learned trial Judge stated in his Judgment that Duncan Richardson "after much hedging admitted most reluctly that he lives in Barbados with his new family. He hedged so much..... that I am most reluctant to accept that the house they live in is not his own as he says and I do not accept it without more".

In his reply, Mr. Dear, as he had done in his initial address, referred to WACHTEL v. WACHTEL (1973) 2 W.L.R. 366 on the issue of the extent to which the conduct of Duncan Richardson was a relevant factor in determining the relief to be granted. He submitted that the Judge was correct in not considering it; and that as a result of Wachtel's case, the court was given wide powers to do justice in readjusting the financial position of the parties.

/As .....

As I perceived this appeal, this Court is now required to consider two matters: (i) the matrimonial home and (ii) the lump sum award. I have already indicated my agreement with the findings of the trial Judge so far as the $237,000.00 is concerned.

Under (i) above, the question to be answered is whether the justice of the case requires that the order made should be left undisturbed or whether it should be varied and Rose Cottage be sold, each party being paid one half of the equity realised.

Under (ii) above, the issues to be determined are whether or not a lump sum ought to be awarded Jankie Richardson and if so, should the amount of $60,000.00 which was awarded be supported or not?

Section 24 of the Matrimonial Causes Act 1973 deals with property adjustment orders and subsection (1)(a) thereof gives the Court the power to make an order that a party to the marriage shall transfer to the other party property to which the first mentioned party is entitled.

Section 23 of the said Act deals with financial provision orders, and by subsection (1)(c) the Court may make an order that either party to the marriage shall pay to the other such lump sum as may be specified.

Section 25(1) of the said Act indicates that it shall be the duty of the Court in deciding whether to exercise its powers under the subsections of section 23 or section 24 in relation to a party to the marriage, and, if so, in what manner, to have regard to all the circumstances of the case including a number of matters set out in seven paragraphs; "and so to exercise those powers as to place the parties so far as it is [illegible] practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down and each had properly discharged his or her financial obligations and responsibilities towards the other".

It is necessary only to look at the conduct of the parties. The appellant had no quarrel with the consideration of the several matters set out in the subsection; and it is clear that the trial Judge followed the relevant sections of the Matrimonial Causes Act 1973 - even though it may be fair to say that he did not always relate lucidly the application of the law to the facts to show how he arrived at the decision to order that Duncan Richardson transfer his title in Rose Cottage to Jankie Richardson, and pay her a lump sum of $60,000.00. Singh J. stated in his Judgment:-

> "Before I could use the conduct of the parties as a factor.....I have to find the conduct of either or both of them to be gross or obvious. It must be conduct repugnant to any-one's sense of justice. This does not arise here and there has been no evidence [illegible] as to conduct whether gross or obvious or at all.

[illegible]

If, as appeared to be the case, the Judge was influenced by and used expressions from Wachtel's case (to which he referred in his Judgment) it was not strictly correct to say that there must be conduct repugnant to anyone's sense of justice. A careful reading of the Judgment of Lord Denning M.R. showed that it was an order of Court requiring a party to support another whose conduct could be described as both obvious and gross that would be repugnant to anyone's sense of justice. This is what Lord Denning M.R. said:-

> "There will no doubt be a residue of cases where the conduct of one of the parties is....."both obvious and gross", so much so that to order one party to support another whose conduct falls into this category is repugnant to anyone's sense of justice". (Emphasis by underscoring is mine)

I thought it might be helpful to indicate the difference in order to avoid confusion over the level of conduct. The phrase "both obvious and gross" was used by Ormerod J. in respect of the conduct. The expression "repugnant to anyone's sense of justice" was that of Lord Denning M.R. in respect of any order calling for one party to support another when the latter's conduct was both obvious and gross.

In Wachtel v. Wachtel, Lord Denning M.R. went on to say that in cases in which the conduct of one party was both obvious and gross (so much so that to order the other party to support the former was repugnant to anyone's sense of justice) the Court was free to refuse financial support or to reduce the support that it might otherwise give. Then he continued:-

> "But short of cases falling into this category the Court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of an unhappy married life."

When he dealt with the lump sum provision Lord Denning M.R. said:-

> "The circumstances are so various that few general principles can be stated. One thing is, however, obvious. No order should be made for a lump sum unless the husband has capital assets out of which to pay it - without crippling his earning power.
>
> Another thing is this: When the husband has available capital assets sufficient for the purpose, the Court should not hesitate to order a lump sum..... This will reduce any periodical payments, or make them unnecessary. It will also help to remove the bitterness which is so often attendant on periodical payments..... The third thing is that if a lump sum is awarded it should be made outright."

Singh J. was clearly guided by that passage from which he borrowed some expressions, in reaching his decision on this aspect.

/Persons.....

HARNETT v. HARNETT (1974) 1 W.L.R. 219, like Wachtel's case was governed by the Matrimonial Proceedings and Property Act 1970, of which section 5 was almost identical to section 25 of the Matrimonial Causes Act 1973. In Harnet's case, on the question of the conduct of the parties, Cairns L.J. concluded that the intention of the Act of 1970 was "that conduct should be taken into account only in a very broad way.....only where there is something in the conduct of one party which would make it quite inequitable to leave that out of account having regard to the conduct of the other party as well in the course of the marriage"; and he explained why he so concluded:-

> "conduct of the parties is not one of the list of matters which are to be considered by the Court as matters of detail in arriving at the figures but finds its place only at the end in the words that the Court is to exercise those powers so as to "place the parties, so far as it is practicable and, having regard to their conduct, just to do so, in the financial position in which they would have been if the marriage had not broken down.....". In that context, I.....think it right to say that conduct should be considered only if there is some misconduct of a gross and obvious nature."

Under sections 23, 24 and 25 of the Matrimonial Causes Act 1973 the conduct of the parties is required to be considered in respect of lump sum award as well as in respect of property adjustment. MARTIN v MARTIN (see above) cited by learned Counsel on each side, fell within these sections, and in his Judgment Cairns L.J. said, when considering the relevance of the husband's conduct to the financial provisions after separation, that conduct either during or after cohabitation which had the effect of reducing the funds available to provide for the needs of both parties after divorce" must be taken into account because a spouse cannot be allowed to ffitter away the assets by extravagant living or reckless speculation and then to claim as great a share of what was left as he would have been entitled to if he had behaved reasonably".

In the instant case the trial Judge stated that on the evidence which he accepted, he could not conclude that Jankie Richardson frittered away the money which was at the disposal of each of the parties (see earlier). I agree that Jankie Richardson could not, on such evidence as was adduced, be said to have frittered away the T.T.$237,000.00 by extravagant living or reckless speculation or indeed in any other manner. Nor was there such evidence, in my view, which would allow the trial Judge to find that the conduct of Duncan Richardson justified the refusal or reduction of financial support for Jankie Richardson. Indeed there was evidence of facts which were capable of the construction that he demonstrated disinterest or indifference to her very serious illness and to her maintenance, leaving her to make use - as he knew she could do - of the money on their joint account in a Trinidad bank. For example, he gave her only two small sums of money in May 1983 (U.S. $1,800.00) and July 1983 (U.S. $2,000.00) he heard that in November 1983 she was seriously

ill and had gone to Trinidad for an operation - in fact she had cancer of the cervix and two operations were performed on the same day, in Trinidad; he did not know that she went to England for medical treatment; since November 1983 he personally rendered no assistance with her medical expenses, or with her normal living expenses, or with the repairs and maintenance of Rose Cottage where she was and still is living.

It was not disputed that the principle of 'the clean break' is applicable to both transferring title of the matrimonial home and to lump sum awards; and it is clear that the trial Judge was aware of and applied this principle to the facts of the case as he found them. In addition to such facts as I have already pointed out, the Judge found that Jankie Richardson intended to live at Rose Cottage indefinitely and that if she were ordered to leave she would be without a roof over her head. I may add that, in my view, if the house were sold and Jankie Richardson paid half of the equity realised, she would not be able to purchase another house for that sum. The learned Judge also found as a fact that Jankie Richardson was attempting to develop "a knitting business" at the home and she hoped to sell sweaters in order to earn enough money to live on. On the other hand Duncan Richardson lived in Barbados with a "new family" and he worked in St. Vincent and Grenada as the pilot of an aircraft spraying crops.

The trial Judge considered the criteria stipulated in section 25 of the Matrimonial Causes Act 1973 and in exercising his powers took into account the circumstances of the case. As far as it was practicable and just he tried to place them in the position that they would have been in if their marriage had not broken down and each of them had properly discharged his or her obligations and responsibilities towards the other.

I do not claim to have recited all the facts which were found by the trial Judge, and it was mainly on the question of conduct of the parties that I dwelt at any length. This was so because upon a careful analysis of the conduct of this appeal I realised that there was no serious difference between Counsel on the legal principles to be applied, nor indeed were the facts strenously contested. The appeal was argued essentially upon the figures of the money involved; and in this regard I can do no better than recall the words of Cairns L.J. in Harnett v. Harnett (supra) (at page 226 letter H):-

> "I do not say that if I had been responsible in the first instance for working out these figures I should have arrived at exactly the same result as that at which the Judge arrived. But what I do say is that I do not find any such defect in them as would lead me to the conclusion that the Judge was wrong and that the figures ought to be amended in favour of the husband."

Consequently the lump sum award ought in my view to remain as awarded.

/Briefly.....

Briefly then, I would not disturb the order in relation to the [illegible] home at Rose Cottage; nor would I decline to order the payment of a lump sum in the amount of $60,000.00.

The order of Singh J. ought, in my view, to stand.

The appellant ought also to pay the costs of this appeal which fails.

E.H.A. BISHOP,
Justice of Appeal

L.L. ROBOTHAM,
Chief Justice

G.C.R. MOE,
Justice of Appeal.