SAINT LUCIA #45

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1994

Suit No. 30 of 1991

BETWEEN: DEBORAH J. LANG Petitioner

and

PETER W. LANG Respondent

consolidated with
Suit No. 420 of 1994

DEBORAH J. LANG Plaintiff

v

1. PETER W. LANG
2. SUNSET MOTORS LTD

Defendants

APPEARANCES:
Mr. V. Cooper for the Petitioner and Plaintiff
Mr. A. Mc Namara for the Respondent and Defendants

1994: November 14;
December 7.

JUDGMENT

MATTHEW J. (In Chambers)

The Parties were married on December 22, 1979 and on July 14, 1992 the wife obtained a decree nisi for divorce.

On March 25, 1993 the Parties obtained a consent order in respect of ancillary proceedings. The order is as follows:-

"IT IS HEREBY ORDERED BY CONSENT:

1. That the Respondent will pay to the Petitioner the total sum of $2,750.00 per month for the maintenance and support of the children of the family which amount includes payment for the childrens' insurance policies which are to be paid by the Petitioner.

2. The Respondent will increase the said sum of $2,750.00 by any increase in the amount used for school fees for the children plus the cost of school books.

3. This amount will also be increased by such increased percentage as the cost of living index of the St. Lucia Gazette shall indicate.

4. The parties shall have joint custody of the children of the family namely: (1) Joanna Deborah Lang
(2) Jonathan Peter William Lang
(3) Jason Edward Denys Lang
with the said children being in the care and control and residing with the Petitioner, and the Respondent having reasonable access at all times.

5. The community property situated at Union in the Quarter of

Castries and registered as **Block 1050B Parcel 540** will remain the joint property of the Petitioner and the Respondent with the Petitioner having the use thereof for herself and the children of the family until such time as the last of the said children shall reach the age of 18 years or complete a course of further education.

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6. There shall be no order as to costs."

About fifteen months later the Petitioner, by a new solicitor, filed a summons for variation of the consent order. That summons was supported by a lengthy affidavit filed on June 14, 1994. The effect of the affidavit was to allege that the consent order did not take into consideration her community interest in the shares of Sunset Motors Limited. The Petitioner filed a supplementary affidavit on June 24, 1994 wherein it is alleged that between 1989 and 1991 she worked with Sunset Motors Limited and drew a monthly salary of $2,000 at first and later it was increased to $2,500.

On July 15, 1994 the Respondent filed an affidavit in reply in which he stated that the application by the Petitioner to vary the consent order is without basis and where he went on to explain that the shares in the company are his separate property. He went on to give the history of his acquisitions which began with a lease of land from one Ignatius Augustin to himself on May 7, 1979 about seven months before he got married to the Petitioner. The

Petitioner filed another lengthy affidavit in answer in which she alleged that whether the Court rules that the shares are separate or community property the provisions of the Divorce Act apply and she is entitled to an order under the Act in respect of the shares of Sunset Motors Limited.

On the said June 14, 1994 the Plaintiff filed a writ of summons against Peter Lang and Sunset Motors Limited praying for injunctions against the Defendants restraining them from concealing, dealing with, transferring or in any way keeping away from the Court or the Plaintiff any documents whatsoever to defraud the Plaintiff of her just rights. The Plaintiff also sought an order to compel the Defendants to produce certain documents in Court.

This was indeed a strange suit for it seems that it was meant to assist the Petitioner in her application for variation. So the High Court suit was subsidiary to the Chamber matter. The Defendants entered appearance on June 27, 1994. The Plaintiff then filed documents for an interim injunction as well as a list of exhibits and the Defendants filed an affidavit in reply on July 4, 1994.

The application for injunction never really got off the ground and on October 5, 1994 in Chambers it was ordered that both matters be consolidated.

Besides the affidavit evidence already referred to the Respondent called Martha Edmunds of Barclays Bank to produce a document which he referred to in his affidavit. Deborah Lang was cross-examined on her affidavit in support of the summons for variation and was re-examined by Mr. Cooper.

Peter Lang gave further evidence of how he acquired the shares in Sunset Motors Limited and he was cross-examined by Mr. Cooper and then re-examined by Mr. Mc Namara.

In his address Mr. Mc Namara submitted that there are three aspects which he needed to deal with namely:

(a) The effect of the consent order;

(b) The shares in Sunset Motors - whether they are separate or community property;

(c) In any event the Petitioner's entitlement to a portion of the shares in Sunset Motors Limited, under sections 24 and 25 of the Divorce Act 1973.

I am impressed with this orderly presentation and I wish to follow that route in coming to my conclusion though not in the order put forward.

WHETHER SHARES ARE SEPARATE OR COMMUNITY PROPERTY

I shall now consider whether the shares in Sunset Motors Limited are the separate property of Peter Lang or the community property of the Parties. In his closing address learned Counsel for the Petitioner asked the Court to award the Petitioner her share of the community property. Counsel who met to discuss the matter and who later drew up the terms of the consent order seemed to be of the view that only the matrimonial home situated at Union was community property and this no doubt was the reason for omitting the shares from the consent order.

In his affidavit Peter Lang traced the history of the acquisition of the shares. Appended to the affidavit were certain relevant exhibits.

On May 7, 1979 Lang entered into a ten year lease/purchase agreement with Ignatius Augustin in respect of a portion of land at Marisule containing 12,662.5 square feet of land. He was not then married.

On the strength of that lease/purchase agreement he seemed to have obtained a loan of $50,000 from Barclays Bank on April 6, 1979 to assist him in the construction of a building on the land.

Then in August 1979 he entered into a lease with Plantrac (St. Lucia) Ltd whereby he leased the building to the company.

Sunset Motors Limited was registered on September 18, 1985.

On February 3, 1986 Ingnatius Augustin executed a deed of sale of the said leased land to Sunset Motors Limited, Peter William Lang intervening, and it is important to note that the consideration was only $17,000.

So although it is true the property passed to Lang or his agent after the marriage the history of the transactions shows that Lang was for all practical purposes the owner of the building before that date.

The leased land and the building was the basis from which all the Respondent's investments flowed and if that was his property before the celebration of the marriage it is not an unreasonable view to hold that the shares in Sunset Motors Limited are his separate property.

If instead of the shares in Sunset Motors Limited the land and building were transferred to Lang they could hardly be said to have been acquired after the marriage. In a true sense Peter Lang had possessed the building and land on the day when the marriage was solemnized.

I am of the view that the shares in Sunset Motors Limited are the separate property of the Respondent.

THE IMPACT OF THE DIVORCE ACT

But as I have indicated the matter does not end here. The fact that they are his separate property does not remove it from the scope of the family assets which as I shall describe below include property acquired by one spouse.

In my judgment the shares in Sunset Motors Limited as also the matrimonial home, were family assets which had to be reallocated when the marriage ended.

Learned Counsel for the Respondent referred to **suit No. D49 of 1984** between **FITZ MARCELLIN V ANNE MARCELLIN** decided in this Court on June 10, 1987. In that case the Court ordered that a Castries property, which admittedly would be the community property of the spouses, should go to the wife exercising its powers under sections **24 and 25** of the **Divorce Act of 1973.** Counsel sought to distinguish that case by submitting that in the Marcellin case the Court ordered community property to be transferred to the wife but in the present case the shares are the separate property of the Respondent.

That submission cannot be entertained. Looked at closely, in **MARCELLIN** the Court was ordering the husband to give up what under the community would be his share of the home. Further in the many cases such as **WATCHTEL** where the Court exercises its powers under sections **24 and 25** of the Divorce Act there is no notion of separate and community property. Section 45 of the Divorce Act would seem to give the Court power to order the owner of separate property to make provision for the other party where the Court is satisfied that the other party made a substantial contribution to the improvement or preservation of such property.

In her notice of application for an ancillary relief filed on January 18, 1993 the Petitioner asked for maintenance for herself and a property order in respect of the matrimonial home and shares in Sunset Motors Limited.

Section 24 of the Divorce Act 1973 empowers the Court to make orders for transfer and settlement of property and **section 25** sets out certain matters to which the Court is to have regard in deciding what orders to make under **sections 22 and 24.**

Section 22 empowers the Court to make financial provisions for a party to the marriage.

Section 25(1) states:-

> **"It shall be the duty of the Court in deciding whether to exercise its power under sections 22, 23 or 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 the following matters, that is to say:-**

(a) the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;

(c) the standard of living enjoyed by the family before the breakdown of the marriage;

(d) the age of each party to the marriage and duration of the marriage;

(e) any physical or mental disability of either of the parties to the marriage;

(f) contributions made by each of the parties to the welfare of the family including any contribution made by looking after the home or caring for the family;

(g) . . . .

and so to exercise those powers as to place the parties, in so far as 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."

Under section 25(1) the Court is given a wide discretion in the exercise of its powers to make financial provisions orders or orders for transfer and settlement of property and the list enumerated above is not at all exclusive. The Court must have regard to all the circumstance of the particular case.

The consent order did not provide for any periodical or lump sum payments as could have been ordered under section 22 of the **Divorce Act**.

The Petitioner states that she is presently employed on a commission basis and she earns an average of $3,000 a month and the consent order provides a sum of $2,750 for the maintenance of the three children which amount is to be increased should there be any increase in school fees or school books or increase in the cost of living index in St. Lucia. The Petitioner was given the use of the matrimonial home for herself and the children until such time as the last of the three children shall reach the age of 18 years or complete a course of further education.

The Respondent stated that he was the Managing director of Sunset Motors Limited and owns 371,979 shares in that company, the other share belonging to his mother, Margo Lang. Under cross-examination he admitted that the assets of the company were presently in excess of three million dollars and went on to suggest that they are in the vicinity of six and a half million dollars including land, houses and vehicles. It seems to me that in the foreseeable future the Petitioner will continue to earn her living as outlined above and the company will continue to do well.

The Respondent stated that although the Petitioner worked while they were married she made no contribution to the maintenance of the family from her salary and he paid for food, maid, water, electricity and telephone. So it means the Petitioner now has to meet these expenses.

The Petitioner is 32 years of age and the Respondent is 7 years older and they were married for about 12 to 13 years. The Petitioner's romance started from an early age. She got married at 17 and she actually got to know the Respondent when she was between 15 and 16 and was then at school. Not unexpectedly she got pregnant while she was going to school and was unable to complete her secondary education at the Convent.

I note there is no physical or mental disability of either of the Parties to the marriage.

It seems as though the Petitioner during the marriage did not spend the amount of time that a wife should in the home. In fact the Respondent described her as a "party animal". He said frequently he had to stay home to care the children while the Petitioner was out and on one occasion the Petitioner returned home at day break. So I find the Respondent made a greater contribution to the welfare of the family and even now the children seem quite comfortably with him and spend a lot of time at his home. He stated, and that was not challenged, that the oldest boy Jonathan has moved out of the matrimonial home and resides with him and for the past three weeks before the date of hearing his daughter Joanna had been spending every night at his home. Even Jason, the youngest child, had been spending the nights with the Respondent.

As far as the contribution to the development of the company is concerned I have no doubt that the Respondent was the dominant force. It was his business acumen which led to the success of the company. The Petitioner worked with the company for a time between 1989 and 1991 at a monthly salary of $2,000 which was later increased to $2,500 but I believe her when she said she worked extra hours late at nights in excess of what a normal employee would do and that she even washed motor cars.

I reject the attempt of learned Counsel for the Respondent to quantify the half share interest of the Respondent to the Petitioner while the Petitioner lives in the matrimonial home with the children. In **EDGAR'S** case the wife was given a home in which she would live and take care of the children. The Petitioner cannot be given half of a home for the children and the Respondent to be given or credited with the value of the other half.

I have regard to the fact that the Respondent is at the moment building his home. The Petitioner had asked for maintenance but this was not specifically addressed in the consent order. Rather than order maintenance I think I would award a lump sum thus adopting the clean break principle as I said in suit **D43 of 1993** **CECILE JOSEPH V ANTOINE JOSEPH** decided on November 9, 1994.

In that case I also said that ancillary matters could not be decided purely on the law of separation and community property because of the enactment of the **Divorce Act No. 2 of 1973.**

In all the circumstances of this case if I had the jurisdiction I would order that the consent order should be varied to provide a large capital and/or financial provision for the Petitioner.

Learned Counsel for the Petitioner was quite concerned that after the last child had attained 18 years in the next ten years or so the Petitioner would be thrown out of the matrimonial home without a roof over her head.

And learned Counsel for the Respondent in the very last statement of his closing address was asking that the Petitioner's application be dismissed but in the event that the Court were minded to make any adjustment it should look at the community property which according to the consent order is the matrimonial home.

I would have made an order which would allay the fears of Mr. Cooper while taking the hint from Mr. Mc Namara.

I have already found that the Petitioner though earning a salary from her employment at Sunset Motors Limited did work in excess of what a normal worker would be called upon to do and this was at the time the business was in its infancy.

EFFECT OF CONSENT ORDER

Learned Counsel for the Respondent submitted that the Court should not vary the consent order because from the start the question of the shares was referred to in the Petitioner's affidavit and the Respondent in his affidavit had denied that she had an interest in them and the issue became more specific in letters exchanged by the solicitors of the Parties on March 17 and 19 of 1993.

He said negotiations went on where documents of title were examined and both parties had legal advice and were fully cognizant of the facts. Counsel referred to passages from the **14th edition of RAYDEN** on Divorce and to the case of **EDGAR V EDGAR (1980) 3 AER 887 C.A.**

In his closing address learned Counsel for the Petitioner submitted that no mention of the Divorce Act 1973 was made by the solicitors who drew up the consent order.

In **EDGAR V EDGAR** the parties had entered into a separation deed even though the wife's lawyers had advised her that she could obtain a better settlement in divorce proceedings. Under the separation deed executed on April 1, 1976 the wife obtained a house where she could live with the children and also payment to her of £16,000 per annum and further the husband had to make periodical payments for the children. In accordance with the negotiated agreement between the parties the deed contained a clause whereby the wife agreed that if she obtained a divorce she would not claim lump sum or property transfer orders. The husband fully carried out his obligations under the deed. In 1979 after obtaining a decree of divorce the wife proceeded with an application for ancillary relief in which she applied for, inter alia, a lump sum payment under section 23 of the **Matrimonial Causes Act, 1973**. The Judge who heard the matter decided not to give effect to the agreement and ordered the husband to pay a lump sum of £670,000. The husband appealed and the Court of Appeal dismissed the wife's application for a lump sum and allowed the husband's appeal.

The Court of Appeal held that the Court, when exercising the discretion given to it under section **23(1)** of the 1973 Act to order a lump sum payment, was required to give effect to a prior agreement by the wife not to claim a lump sum by treating that agreement as conduct of the parties which was to be taken into account when considering under section 25(1) of that Act what was just between the parties in all the circumstances. The Court went on further to state that in deciding the weight to be given to the prior agreement in order to do justice between the parties, the Court had to take into account, inter alia, the parties' conduct leading up to the agreement, their subsequent conduct, and the circumstances surrounding the making of the agreement such as undue pressure by one party on the other, exploitation by one party of a dominant position, the inadequate knowledge of one party, and any unforeseen or overlooked change in the circumstances existing at the date of the agreement. However, the Court said that disparity of bargaining power between the parties was not enough of itself to justify the Court in ignoring the terms of the deed.

At page 893 letter (c) **ORMROD** L.J. stated that inadequate knowledge and possibly bad legal advice are relevant to the question of justice between the parties.

When he gave evidence in chief Peter Lang spoke of a meeting in the precincts of the Court between himself and the Petitioner and their lawyers which took place before the hearing of the ancillary proceedings which lasted in excess of an hour and as a result of that meeting the consent order was drawn up.

This is a good indication of the haste with which the agreement was entered into. In **EDGAR** negotiations took place for several months. When one looks at the consent order there is no specific provision for the Petitioner save that while the children are below the age of majority she would be enjoying the use of the matrimonial home. I agree with Mr. Cooper that there seems to have been no consideration of the **Divorce Act 1973** whatsoever. It seems to me that the discussions were limited to the law of separate and community property.

Section 53 of the Divorce Act states:-

> **"Where a conflict exists between this Act and any other law the provisions of this Act shall prevail".**

Parliament did not enact that provision by chance. Cases like **WATCHEL V WATCHEL (1973) 1 AER 829 CA** spoke of family assets, not separate and community property. The term is defined at page **830** of **WATCHEL** to refer to things acquired by one or other or both parties with the intention that they should be continuing provision for them and their children during their joint lives and used for the benefit of the family as a whole. A similar definition is given at page **718** of the **twelfth edition of RAYDEN** on Divorce.

Although I reject the view of learned Counsel for the Petitioner when he emphasizes the wealth of the Petitioner as a ground for interfering with the consent order, because neither of the Parties nor their solicitors seemed to have regard to the Divorce Act justice would require me to relieve the Petitioner from the effect of the consent order. But have I the jurisdiction to do so?

The Petitioner's summons to vary the consent order could only be founded upon **section 29 of the Divorce Act**. Neither of the Parties made any reference to that section.

Section 29(1) states:-

> **"Where the Court has made an order to which this section applies, then, subject to the provisions of this section, the Court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended".**

Section **29(2)** states that the section applies to orders made under various sections but these do not include orders made under section 24 for the transfer of property or the settlement of property on the granting of a decree of divorce.

In his closing address Mr. Cooper referred to **DA SILVA V DA SILVA Civil Appeal No. 10 of 1991** and to a sub-section similar to sub-section **(7)** of our Act where it states that the sub-section gives a wide discretion to the Court in the exercise of its powers conferred by the section. But unless the particular order falls within the scope of the section it does not seem to assist the

Petitioner.

In **Da Silva's** case there was a consent order that a company transfer a property to the wife, the Respondent in the case. There was legislation empowering the Court to vary or discharge orders on the lines of section 29 of our Act. **Byron J.A.** said it was section 40 of the St. Vincent legislation. Sub-section (2) of section 40 stated the orders to which the section applied and that included an order for a settlement of property under section 32(1)(b) of the legislation. As he said at page 5 section 32(1)(b) provides for

> **"a settlement of such property as may be specified, being property to which a party to the marriage is so entitled, being made to the satisfaction of the Court for the benefit of the other party to the marriage".**

He went on to say that the statutory provisions in section 40 do not leave any room for doubt that the Court had power to vary the order in **Da Silva's** case.

Here lies the difference with the St. Lucia legislation. Note that section 32(1)(b) of the St. Vincent legislation is strikingly similar to section 24(b) of the St. Lucia legislation. Section 24 of the latter legislation is the one which provides for orders for transfer and settlement of property.

Sub-section (2) of section 29 states the orders which are capable of variation under sub-section (1).

A property order such as the one made by consent in this case in respect of the matrimonial home could properly be made under section 24(a) or section 24(b) of the Divorce Act on the granting of a decree of divorce but an order granted under section 24(a) is not within the scope of section 29(2); and although an order under section 24(b) is within the scope of section 29(2) it is only so when the order is made on or after the grant of a decree of judicial separation.

So unlike the position in **Da Silva** it cannot be said that the statutory provisions of section 29 do not leave any room for doubt that the Court has power to vary the order in this case.

It appears that my hands are tied. I might have been tempted to make a financial provision order in favour of the wife under section 22 but section 29 (1) states that variation applies where the Court has made an order to which the section applies and the Court did not make a financial provision order for the Petitioner under the consent order. And if I were tempted to make a better order for the wife in respect of the matrimonial home my jurisdiction is limited by section 29(2).

Counsel for the Petitioner also referred to the case of **B (GC) V B (BA) (1970) 1 AER 913**. This case emphasized that the Court had the widest possible powers under the MCA 1965, section 31, to vary orders for maintenance and the Court was not precluded from entertaining a husband's application to vary maintenance orders made by consent on the ground that they were based on a mistake as to his means and a mistake as to the amount of his liability to income tax.

This decision must be subject to the limitation expressed in the section itself which empowers variation. And it dealt with maintenance orders and not a property order as in the **Da Silva** case and the present one under consideration.

What I have been saying above is borne out by a passage at page 645 of the **14th edition of Rayden** on Divorce. It deals with variation of orders and lists which orders may be varied. The passage is as follows:-

"**142. What orders may be varied.** Aspects of variation have been dealt with in the individual sections of this chapter. The following orders, once made, are capable of being varied or discharged by the court and any provision in such an order may be suspended and, if suspended, may be revived:

(i) an order for maintenance pending suit for a spouse on the filing of a petition for divorce, nullity or judicial separation and any interim order for maintenance;

(ii) an order for periodical payments to be made or secured for a spouse or former spouse on the granting of a decree of divorce, nullity or judicial separation;

(iii) any order providing for payment of a lump sum by instalments whether in the case of a decree of divorce, nullity or judicial separation or failure to maintain;

(iv) an order (which may be made at any time before or after the granting of a decree or if the proceedings are dismissed after the beginning of the trial, either then or within a reasonable time thereafter) for periodical payments to be made or secured to or for a child of the family;

(v) an order as to the instalments by which a lump sum for a child is to be paid (the time when such an order may be made is as in (iv) above);

(vi) an order for the settlement of property for the benefit of a spouse and/or children of the family or an order varying a settlement for the benefit of the spouses and/or children of the family or extinguishing or reducing the interest of either spouse in such settlement where such an order is made after the granting of a decree of judicial separation and there are subsequent proceedings for rescission of that decree or for dissolution of the marriage".

Although what is stated above is relevant to section 31 of the English legislation it is interesting to note that, like our section 29, the order for settlement of property is related to a decree of judicial separation only.

The case of <u>LEWIS</u> V <u>LEWIS</u> 1977 3 AER 992 is another case which indicates the wide power of the Court when it acts under the equivalent of section 29 of our act to vary or discharge a periodical payment order but as I said earlier that does not assist the Petitioner unless she can put herself within section 29(2).

In the case of **<u>MINTON</u> V <u>MINTON</u>** 1979 A.C. 593 the House of Lords held that on its true construction section 23(1) of the Act (our section 22(1) equivalent) did not empower the Court to make from time to time a second or subsequent maintenance order after an earlier application had been dismissed and, although the consent orders dealt with other matters besides the dismissal of the wife's original application for periodical payments, they had the effect of discharging her claim in respect of them and effecting a clean break from the marriage in accordance with public policy.

Lord Scarman stated at page 608, letter E:

"Once an application has been dealt with upon its merits, the

Court has no future jurisdiction save where there is a continuing order capable of variation or discharge under section 31 of the Act".

The Hong kong case of de LASALA V de LASALA 1979 2 AER 1146 P.C followed Minton. This also related to financial provisions in a consent order. There is a relevant passage from the speech of Lord Diplock beginning at the last paragraph of page 1153 as follows:-

"Under the Matrimonial Causes Ordinance which was in force in 1970, the Court had power to make two different types of orders making financial provisions for a wife; (a) periodical payments, both secured and unsecured; (b) a lump sum payment. Orders of the former type could be varied or discharged by the Court on subsequent application by either spouse. Lump sum orders were once for all; they could not subsequently be varied. There was, however, at that time no power in the Court to make an order for the transfer of property between spouses or for the benefit of a spouse. The power to make transfer of property orders and settlement orders was conferred on the Court in 1972 by section 6 of the Matrimonial Proceedings and Property Ordinance. Like lump sum payments they are once for all orders; there is no power to vary them on subsequent application".

The case of THWAITE V THWAITE 1981 2 AER 789 C/A related to a property order. On April 30, 1979 the Registrar made a consent order which included a term that the husband would transfer his interest in the matrimonial home to the wife if he returned the children from Australia to England and thereafter the wife's other applications for ancillary relief would be dismissed from the date of the conveyance.

The wife returned the children to England but the husband took some time before he could convey the house so the wife returned the children to Australia where they remained.

In August 1979 the husband applied to the Registrar to vary the consent order. The wife cross - applied to enforce the transfer of the husband's interest. On March 12, 1980 the Registrar dismissed the husband's application and ordered him to execute the transfer.

The husband appealed to the Judge. The Judge expressed doubts whether there could be an appeal from a consent order and determined the matter under the liberty to apply reserved in the consent order. He allowed the husband's appeal from that part of the Registrar's order directing him to complete the conveyance of his interest in the house. However he dismissed the husband's appeal against the Registrar's refusal to vary the consent order.

He then went on to make a financial provision order in favour of the wife who did not consent to that course. The wife appealed.

The Court of Appeal held that the Judge was right to dismiss the husband's appeal against the Registrar's order refusing to vary the consent order and he was right to allow the husband's appeal against the Registrar's order that he execute the conveyance.

The Court of Appeal held also that the Judge had jurisdiction to hear the appeal from the consent order in the circumstances of the case as there was fresh evidence and he was entitled to make new ancillary relief in favour of a wife despite her refusal to consent.

At page 795 letter (a) **ORMROD L.J.** states the reason why the Judge was right to dismiss the husband's appeal in respect of the variation of the consent order. He said:-

> **"The dismissal of the husband's appeal from the Registrar's order dismissing his application to vary the consent order of 30th April 1979 was right. The order in question was a final order in the sense that it was not an order within section 31(2) of the 1973 Act (our equivalent in section 29(2)), so that there was no jurisdiction to vary".**

It seems that I am constrained by authority to dismiss the Petitioner's summons to vary the property order made by consent on March 25, 1993.

There shall be no order as to costs.

A.N.J. **MATTHEW**
Puisne Judge