

M.C.D.

17th June, 1985.

Miere and da Silva: Appeal against Greffier's Order
of 16th January, 1985.

Judgment of Deputy Bailiff:

DEPUTY BAILIFF: This is one of the cases where the parties have limited means and therefore whatever order the Court might make, it would not have the effect, in our opinion, of allowing either party to have sufficient capital to purchase another home and therefore I think there is much in what Mr. Boxall has said for the husband, that they are really in a renting position rather than a purchase position and English cases don't help us very much in that kind of situation but we are satisfied from looking at page 85 of the second edition of "Racousin & Hunt" on the distribution of matrimonial assets on divorce, that the courses open to the Court are threefold. We could allow the wife to remain in the house for the rest of her life and divide the proceeds. Well, I don't think we have the power to do that in any case as far as dividing the proceeds, except indicate what they should be and in any case neither party has asked us for such a long time. Second, we vest the house and the wife alone in return for agreeing to a clean break and that is not the position because here; the wife is receiving maintenance. Third, we increase the wife's share in the property in order of sale, either on the children attaining seventeen or ceasing their full time education; that is in fact, what the Assistant Judicial Greffier did, not so much increasing the wife's share but fixed share in the property and postponed at the time when the property could be sold to a third party. He used a means of achieving that position because the law doesn't allow us and nor does it allow him, to order the property be sold and the proceeds distributed in a particular proportion and therefore the form adopted by the Greffier Substitute seems to us to be an admirable way around the difficulty posed by the law. So really the question which this Court had to ask itself was whether the proportion reached by the Greffier in order four, that is as I say, 3/5's petitioner and 2/5's respondent was

course, bound by the $\frac{1}{2}$ rule and we have had sufficient authorities cited to us to satisfy us that in particular circumstances, the $\frac{1}{2}$ rule should not be adhered to. This is a particular case where the $\frac{1}{2}$ rule, indeed, should not be adhered to. On the other hand we are conscious of the fact that in this case which differs from the Hamilyn & Hamilyn and Martyn & Martyn, in several respects in as much as the husband is paying maintenance, it is not a clean break, and secondly in Martyn & Martyn, the parties had already owned the property fifty/fifty. Which is not the position here. On the contrary, in this case, the husband brought the property in to the marriage and the wife has made her contribution through services to the joint marriage which lasted some 12 years. We are conscious of the fact it is necessary for the children of the marriage to have a home over their head but because this is a rental position we think that a limited period of time should be allowed to the wife to find alternative accommodation with the assistance of the authorities or in the private sector. That should be a reasonable time and not as short as suggested by Mr. Boxall. Under the circumstances we are going to vary the order of the Greffier Substitute so that in the order in respect of the 2/5's and 3/5's will be substituted 55% to the husband and 45% to the wife. The wife will have the exclusive use of the property until the 31st December, 1990. Now, Mr. Boxall, you said you didn't want to address us on your appeal in respect of the third item of paragraph 7 of the order as regards recoverable costs but in view of the fact that your client is receiving quite a substantially larger proportion of the equity, I wonder if you wish to continue that point? We were minded not to allow the appeal on 7. Very well, therefore, we leave the order of the Greffier Substitute as regards the question of costs and as regards today's hearing, the husband will pay the taxed costs.