[2005–06 Gib LR 117]

MENEZ v. MENEZ

SUPREME COURT (Schofield, C.J.): October 19th, 2005

Family Law—property—property registered in one spouse's name—wife's beneficial interest in matrimonial home registered in husband's name established by evidence of express agreement at time of acquisition to share ownership with husband, with detrimental reliance by her on agreement

Family Law—property—property registered in one spouse's name—proportion of beneficial interest—if interest established by express agreement but no direct contribution to purchase price by wife, court to make best estimate of scope of interest—factors to consider may include wife's maintenance of family home, improvement of property and loan towards purchase price by her father

The wife sought a declaration that she be entitled to a half share in the former matrimonial home.

The property was purchased in the month before the parties' marriage and registered in the sole name of the husband. The purchase price of £137,000 was funded by a mortgage of £110,000 in the husband's name, a loan of £10,000 from his father, a loan of £5,000 from the wife's father and the remaining £12,000 from a savings account in the sole name of the husband. During their marriage, the husband and wife paid their salaries into a joint bank account and the husband maintained a separate account in his own name out of which he paid the monthly mortgage instalments. The parties separated after less than two years, whereupon the wife commenced the present proceedings under s.10 of the Married Women Ordinance claiming a 50% interest in the property.

She submitted that (a) the parties had always intended that the property be their joint family home; (b) the husband had acknowledged that it belonged to both of them in a document signed by him following a meeting to discuss their marital difficulties; (c) her father had lent them £5,000 and had made improvements to the property on the understanding that it would be jointly and equally owned; (d) they agreed to register it in the husband's name so that, first, he could benefit from tax relief, as she was not working at the time, and secondly, they could take advantage of the Government's Home Purchase Allowance by putting any subsequent property into the wife's name; (e) the payment of her salary into the joint account assisted him to meet the mortgage payments; and (f) she would

not have agreed to the purchase of the property or even to marry the husband had she not thought that she would receive a beneficial interest in it.

The husband submitted in reply that (a) he had from the start made it clear to his wife that the property was to be owned by him alone; (b) the document he had signed was merely an aid to resolving their problems, not a formal declaration of their property rights; (c) he had accepted the loan from the wife's father so as not to offend him and this had no bearing on the ownership of the property as he was repaying it in full; (d) he had registered the property in his sole name, on his father's advice, to avoid future disputes regarding title since this was to be his first major investment; and (e) the wife had only made 12 payments into the joint account and had made no direct contributions towards the purchase price, whereas he had paid the deposit with the help of a loan from his own father and savings from the account in his name and had made all the mortgage payments.

Held, awarding the wife a one-fifth share in the property:

(1) The wife had a beneficial interest in the matrimonial home. There was evidence of an express agreement between them, prior to its acquisition, that the property would be their joint family home, and there was therefore a common intention that the husband would hold the property on trust for the wife to give effect to her interest. The wife, in reliance on that agreement, had acted to her detriment by agreeing to share in the purchase of the property and to marry the husband. Furthermore, in this context, the actions of her father, in doing work on the property and making a loan towards the purchase price, could not be separated from her own and were equivalent to detrimental reliance on her part (paras. 19–20; paras. 24–26).

(2) Her share of the property would be assessed at 20%. Since she had made no direct contribution towards the purchase price, the court had to make a rough calculation of the proportion that was intended to be held on trust for her. She had made effective contributions towards the purchase and maintenance of the property because her father had provided a loan and helped to improve it at her request and she had contributed towards the family finances by paying her salary into the joint account. Taking these factors into account, it was reasonable to award her a one-fifth share in the property (paras. 29–30).

Cases cited:

(1) *Eves* v. *Eves*, [1975] 1 W.L.R. 1338; [1975] 3 All E.R. 768; (1975), 119 Sol. Jo. 394, followed.
(2) *Gissing* v. *Gissing*, [1971] A.C. 886; [1970] 2 All E.R. 780, followed.
(3) *Grant* v. *Edwards*, [1986] Ch. 638; [1986] 2 All E.R. 426, followed.
(4) *Lloyds Bank PLC* v. *Rossett*, [1991] 1 A.C. 107; [1990] 1 All E.R. 1111, applied.
(5) *Pettitt* v. *Pettitt*, [1970] A.C. 777; [1969] 2 All E.R. 385, referred to.

Legislation construed:
Married Women Ordinance (1984 Edition), s.10(1):

> "In any question between husband and wife as to the title to . . . property, either party . . . may apply . . . to the Chief Justice . . . and the Chief Justice . . . may make such order with respect to the property in dispute . . . as he thinks fit . . ."

E. Ellul for the applicant;
Ms. J. Evans for the respondent.

1 **SCHOFIELD, C.J.:** This is an application by Elizabeth Menez made against her husband, pursuant to s.10 of the Married Women Ordinance, that she be declared entitled to a 50% interest in the family home, 4 Rostep House, Rosia Steps, Gibraltar. The property is registered in the husband's sole name and he resists the application.

2 The parties are young. The husband was 26 and the wife 24 when their solicitors agreed certain facts for the purposes of the application. The parties' marriage lasted a very short time. They married in a civil ceremony on July 4th, 2003 and confirmed their marriage vows in a religious ceremony on July 4th, 2004. They separated for good on May 6th, 2005, when the husband asked the wife to leave on discovering that she had been unfaithful to him with a mutual friend on three occasions. My own assessment of the parties is that neither of them was truly ready for marriage, although the wife went further in demonstrating that unreadiness.

3 The parties had lived together for almost four years when they were students together in London and before they returned to Gibraltar to marry. The husband is an accountant and works with PricewaterhouseCoopers in Gibraltar. In September 1999, he had finished his degree course and went to London to complete his training. Throughout the next four years, he earned from a little over £1,000 per month to, in his last year, a little over £2,000 per month. The wife went to London to complete her education. In the first year, she did not qualify for a student grant and took a student loan. After that, she qualified for a grant and received assistance from her parents, partly from the proceeds of an insurance policy. The parties are not at one over the extent of that assistance but I do not consider anything rests on it.

4 When she first arrived in London, the wife stayed in student accommodation. In December 1999, she moved into a flat which the husband shared with two other students and paid her share of the rent. In July 2000, the parties rented new accommodation jointly. The husband, of course, was better off financially than the wife and contributed more to their upkeep. The arrangement was that the husband paid two-thirds of the rent and food and the wife the remaining one-third and they split the

cost of their utility bills. In December 2000, the parties became engaged to be married.

5 The husband is financially prudent. He received an inheritance of £5,000 in 2001 and during his training periods in London saved £200 per month in the first year, £400 per month in the second and £500 per month in the third year. The husband's evidence is that these savings were his own. The wife says that these savings were meant to be for the purchase of a family home, and that whilst she did not put money into the bank and did not know exactly how much was saved, she forewent many of the ordinary pleasures of student life to live with the husband and enable him to save for their future.

6 Some time in 2002, the parties decided they would return to Gibraltar in the following year. In early 2003, a decision was taken to look for a flat to purchase. The husband had received a verbal offer of employment. He would have the court believe that it was his unilateral decision to buy a property, whilst the wife says it was a joint decision. Be that as it may, the parties asked their parents to look out for a prospective flat and, the husband says, both their fathers pointed out that the property was available for purchase at a price of £137,000. The husband's father ("Mr. Menez") was a bank manager and succeeded in negotiating a mortgage of £110,000 on behalf of his son. The balance of the purchase price was raised by way of a loan from Mr. Menez of £10,000, a loan from either the wife's mother or her father ("Mr. Danino") of £5,000, and the balance from the savings accounts which were in the husband's sole name. I should add that in January 2004, the husband took out a staff loan of £3,000 from his employer with which he repaid £1,000 to Mr. Menez and £2,000 to Mr. Danino. He has tendered the balance of the loan from Mr. Danino of £3,000 but told the court that the cheque had not been cleared from his account.

7 The property was purchased on June 28th, 2003 and was put into the sole name of the husband. The parties are in disagreement as to why this was so. The wife says that it was always the parties' intention that the property should be their joint family home but that before the purchase, they discussed the position with Mr. Danino. He advised that, since the husband alone was working at the time, the mortgage should be in his sole name so he could benefit from tax relief and also that if they purchased a second property later, they could benefit from a second home refund from the Government's Home Purchase Allowance by putting the second home in the wife's name. This evidence of the wife is supported by Mr. Danino, who said that there was never any suggestion that the property was to belong exclusively to the husband or that the wife should not have an equal interest in it. If he had had the slightest notion that the husband had "private and secret ideas" about the property being other

than a normal family home, he would have advised the wife against marrying the husband. He also said that he would certainly not have lent the £5,000 towards the purchase price of the property if he had the slightest idea that the property was not to be owned equally. I should also say that Mr. Danino arranged for workmen to do some work on the property, which was paid for by the husband. However, he did some electrical work on the property himself and paid for the fittings which, he says, he does not think he would have done if he thought the property was the husband's alone.

8 In support of her contention that the property was meant to be jointly owned, the wife produced a note signed by the parties dated March 25th, 2005. There had been previous difficulties between the parties and they had sought outside counselling. The wife's complaints were about her perception that she was outside the husband's family circle and that he bore more loyalty to his parents than to her. After a very short separation, the parties met with a view to ironing out their problems and during the course of that meeting, the husband scribbled down the parties' perceived problems with each other. Under the heading "House," the husband originally wrote: "When a person makes one of us feel like the house is not theirs, it needs to be clearly communicated at the time that the house belongs to both of us and that we both make decisions together." The wife then corrected the husband's draft to read: "When your father makes me feel like the house is not partly mine, it needs to be clearly communicated at the time that the house belongs to both of us and that we both make decisions together."

9 The wife said the husband accepted the correction as representing the true position and signed the document. The husband's evidence is that the first part of the document was about the wife's insecurities as regards his family. The part of the document under the heading "House" was an afterthought insisted upon by the wife. It came at the end of their discussions when the wife said she was unhappy about Mr Menez's attitude regarding the house. The husband says he was under considerable pressure to please his wife, who was threatening to leave him, and the document was meant to record and resolve their problems and was not meant to be an indication of their property rights. He suggests that this represents a cynical attempt on the part of the wife to provide evidence of her interest in the property.

10 The husband's evidence is that the property was meant to be his investment alone and that he made that perfectly clear to the wife before he purchased it. He points to their respective financial contributions to the purchase and to the parties' living expenses. The husband says that he substantially supported the wife, financially and emotionally, when she was a student in England and that she could not afford to save from her

grant and the small amounts she received irregularly from her parents. He says that he was responsible for finding the deposit for the property and that he borrowed the £5,000 from Mr. Danino because his own father was retiring at that time. The husband also points to the structure of the family finances for the time they were married. When they returned to Gibraltar, he was the only one working. He opened a bank account jointly with the wife into which the whole of his salary was paid. However, the husband maintained a separate account in his own name into which he paid the monthly mortgage of £610. The wife was unemployed until February 2004, during which month she worked one week. In March 2004, the wife commenced full-time employment and during that month, payments were made by the parties of £846.69 off the wife's outstanding student loan of just short of £1,500. From then on, the wife's salary of £717.58 per month was paid into their joint account. Further payments were made towards the wife's student loan which was cleared by the parties in November 2004.

11 I should add that from December 1st, 2004, the parties made savings from their joint account which were divided equally when they separated. The husband closed the parties' joint account immediately on separation on May 6th, 2005 and the husband gave the wife half the money in the account. He also returned her April salary in full. The husband has tendered to the wife two cheques, of £107.33 and £4,870 respectively, which he considers should settle the financial matter, but these cheques were returned to him.

12 The husband points out that he has paid the mortgage himself throughout and that the wife made only 12 payments into their joint account. His evidence that the property was to be his alone received support from his father, Mr. Menez. He says that he knew that this was to be his son's first investment in property and that the purchase was his first major asset. As a result of his banking experience and knowledge of the many cases involving all types of family financial disputes, he repeatedly advised and recommended the husband in very strong terms to effect the purchase of the property in his own name and obtain a mortgage in his own name. He offered to provide the husband with the entire shortfall of the mortgage and there was no need for the husband to borrow the £5,000 from Mr. Danino. The husband insisted on taking that loan against his advice because he did not want to offend the wife's parents.

13 The husband's evidence was that although he recalls a very short conversation with Mr. Danino regarding in whose name the property should be, he would not have relied on Mr. Danino's advice because it is he, the husband, who is the accountant and Mr. Danino has not always been very successful in his business ventures. Both the husband and his father testified that the advice purported to have been given by Mr.

Danino was not sound advice and it is fair to say that Mr. Danino now acknowledges this.

14 This application is brought under s.10 of the Married Women Ordinance, which is in similar terms to the s.17 of the English Married Women's Property Act. The leading cases are the House of Lords decisions in *Pettitt* v. *Pettitt* (5) and *Gissing* v. *Gissing* (2). The basic principle may be elicited from the speech of Viscount Dilhorne in *Gissing*, when he said ([1971] A.C. at 900):

> "I agree with my noble and learned friend Lord Diplock that a claim to a beneficial interest in land made by a person in whom the legal estate is not vested and whether made by a stranger, a spouse or a former spouse must depend for its success on establishing that it is held on a trust to give effect to the beneficial interest of the claimant as a cestui que trust.
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> Where there was a common intention at the time of the acquisition of the house that the beneficial interest in it should be shared, it would be a breach of faith by the spouse in whose name the legal estate was vested to fail to give effect to that intention and the other spouse will be held entitled to a share in the beneficial interest.
>
> The difficulty where the dispute is between former spouses arises with regard to proof of the existence of any such common intention."

It follows from this passage that it is irrelevant to this application that the property was actually purchased before the parties were married.

15 Evidence of common intention is not enough to found a decision in favour of the applicant. She needs also to show that she acted to her detriment. Lord Diplock put it this way in *Gissing* (*ibid.*, at 905):

> "A resulting, implied or constructive trust—and it unnecessary for present purposes to distinguish between these three classes of trust—is created by a transaction between the trustee and the cestui que trust in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land."

16 The difficulties which the courts have in determining whether a common intention between the parties existed on the one hand and whether the applicant acted upon that intention to his detriment on the

other are discussed throughout the authorities. An example is this passage from the judgment of Nourse, L.J. in the English Court of Appeal case of *Grant* v. *Edwards* (3) ([1986] Ch. at 646–647):

> "In order to decide whether the plaintiff has a beneficial interest in 96, Hewitt Road we must climb again the familiar ground which slopes down from the twin peaks of *Pettitt v. Pettitt* [1970] A.C. 777 and *Gissing v. Gissing* [1971] A.C. 886. In a case such as the present, where there has been no written declaration or agreement, nor any direct provision by the plaintiff of part of the purchase price so as to give rise to a resulting trust in her favour, she must establish a common intention between her and the defendant, acted upon by her, that she should have a beneficial interest in the property. If she can do that, equity will not allow the defendant to deny that interest and will construct a trust to give effect to it.
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> In most of these cases the fundamental, and invariably the most difficult, question is to decide whether there was the necessary common intention, being something which can only be inferred from the conduct of the parties, almost always from the expenditure incurred by them respectively. In this regard the court has to look for expenditure which is referable to the acquisition of the house: see per Fox L.J. in *Burns v. Burns* [1984] Ch. 317, 328H–329C. If it is found to have been incurred, such expenditure will perform the twofold function of establishing the common intention and showing that the claimant has acted upon it.
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> There is another and rarer class of case, of which the present may be one, where, although there has been no writing, the parties have orally declared themselves in such a way as to make their common intention plain. Here the court does not have to look for conduct from which the intention can be inferred, but only for conduct which amounts to an acting upon it by the claimant. And although that conduct can undoubtedly be the incurring of expenditure which is referable to the acquisition of the house, it need not necessarily be so."

And speaking of the difficulty in proving detriment, he went on to say in *Grant* v. *Edwards* (*ibid.*, at 648):

> "It seems therefore, on the authorities as they stand, that a distinction is to be made between conduct from which the common intention can be inferred on the one hand and conduct which amounts to an acting upon it on the other. There remains this difficult question: what is the quality of conduct required for the latter purpose? The difficulty is caused, I think because although the common intention has been made plain, everything else remains a matter of inference. Let me illustrate it in this way. It would be

possible to take the view that the mere moving into the house by the woman amounted to an acting upon the common intention. But that was evidently not the view of the majority in *Eves v. Eves* [1975] 1 W.L.R. 1338. And the reason for that may be that, in the absence of evidence, the law is not so cynical as to infer that a woman will only go to live with a man to whom she is not married if she understands that she is to have an interest in their home. So what sort of conduct is required? In my judgment it must be conduct on which the woman could not reasonably have been expected to embark unless she was to have an interest in the house."

17 Browne-Wilkinson, V.–C. (as he then was) went some way to assisting judges who have to tackle the difficult task of ascertaining whether there is conduct amounting to detriment in family circumstances by saying that there is an inference to be drawn in favour of the applicant in the absence of evidence to the contrary. In *Grant* v. *Edwards*, he had this to say (*ibid.*, at 657):

"In many cases of the present sort, it is impossible to say whether or not the claimant would have done the acts relied on as a detriment even if she thought she had no interest in the house. Setting up house together, having a baby, making payments to general housekeeping expenses (not strictly necessary to enable the mortgage to be paid) may all be referable to the mutual love and affection of the parties and not specifically referable to the claimant's belief that she has an interest in the house. As at present advised, once it has been shown that there was a common intention that the claimant should have an interest in the house, any act done by her to her detriment relating to the joint lives of the parties is, in my judgment, sufficient detriment to qualify. The acts do not have to be inherently referable to the house: see *Jones (A.E.) v. Jones (F.W.)* [1977] 1 W.L.R. 438 and *Pascoe v. Turner* [1979] 1 W.L.R. 431. The holding out to the claimant that she had a beneficial interest in the house is an act of such a nature as to be part of the inducement to her to do the acts relied on. Accordingly, in the absence of evidence to the contrary, the right inference is that the claimant acted in reliance on such holding out and the burden lies on the legal owner to show that she did not do so: see *Greasley v. Cooke* [1980] 1 W.L.R. 1306."

18 Ms. Evans, for the husband in this case, has emphasized the lack or paucity of financial contributions by the wife towards the deposit and towards the mortgage repayments for the property. For such payments to be regarded by the court as conduct which demonstrates a common intention on the part of the parties, contributions must, in normal circumstances, be direct and not, as in this case, to the general family finances. For this proposition, Ms. Evans referred me to the House of Lords

decision in *Lloyds Bank PLC* v. *Rossett* (4). Lord Bridge of Harwich had this to say ([1991] 1 A.C. at 132–133):

> "The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been. Once a finding to this effect is made it will only be necessary for the partner asserting a claim to a beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.
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> In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage instalments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do."

19 This is a particularly helpful passage in this case because it reminds us that the first question we must ask ourselves is whether there is evidence of any express agreement, arrangement or understanding between the parties before we look for evidence from which we may draw inferences. And in this case, of course, there is. The husband says he specifically told the wife that the property was to be his alone. The wife, on the other hand, says that there was no question of the husband buying the property for himself and that in their discussions it was accepted that this was to be their joint home. The wife's evidence is supported by her father, Mr. Danino, that he discussed the purchase with the parties and it was his advice, albeit flawed, that the property be purchased in the husband's sole name and that there was no question that it was for the husband alone. On the other hand, the husband's explanation is borne out

by his father, Mr. Menez, who told the husband that he should put the property and mortgage into his own name as it was his investment.

20 I found the wife to be the more credible witness. She gave her evidence in a straightforward manner and her answers in cross-examination were tendered unhesitatingly, but not so as to give the impression she had rehearsed her evidence. The husband was less impressive and did not strike me as so straightforward. But I would be reluctant to make a decision of this nature on my impression of the parties alone. I found Mr. Danino to be an honest witness and I am satisfied he gave the parties the advice he said he did, however flawed, to register the property in the sole name of the husband. It is significant that the husband accepts that he was the recipient of such advice, but says he would not have accepted advice on tax matters from Mr. Danino. Whilst it may be that the husband would not accept advice from Mr. Danino, such advice was given and it must be remembered that it was tendered in the context of a discussion about in whose name the property should be purchased. This lends credibility to the wife's evidence that it was always accepted that the property should be regarded as that of the parties together, even though, for practical reasons, it was put in the name of the husband. The husband must have been holding out to Mr. Danino, as well as to his wife, that the property was to be a joint family home. Otherwise, in whatever language he would choose to frame it, the husband should have said to Mr. Danino: "But the property is intended to belong to me alone."

21 This finding does not mean that I disbelieve Mr. Menez. I accept that he tendered the advice he did to the husband and the husband would probably simply appear to accept the advice for the reason it was tendered, rather than face his father with the true position. We have to bear in mind that these were two young people still, to a certain extent, under the protection of their parents. It would be much easier for the husband to agree with everyone—his father, Mr. Danino and his wife—and in so doing have the property registered in his name alone. But in so doing, he led his wife into a belief that she would have a beneficial interest in the property.

22 I find some support for my conclusions in the note recorded by the husband and altered by the wife when they were trying to resolve their problems on March 25th, 2005. I accept that this was not meant to be a document setting out legal rights. I do not accept the husband's suggestion that it was written as a cynical act of the wife to stake her claim to the property. Rather, it seems to be a statement of the practical situation and it cannot be without significance that the husband recorded: ". . . the house belongs to both of us . . ." It is also not without significance that it is also there recorded that Mr. Menez made the wife feel that the property was not partly hers. If Mr. Menez had tendered the advice he

did to the husband and the husband had not disabused him of the proper situation, it would not be surprising for Mr. Menez to treat the property as his son's alone.

23 Having found that there was an understanding between the parties that the wife should have some beneficial interest in the property, I now turn to the difficult question of whether she acted to her detriment on that understanding. I accept the wife's evidence that to an extent she diluted the enjoyment of her student years to enable the parties to provide for their future together. On the other hand, I think the same applies to the husband, although it seems unfair that their efforts should not be shared. However, all their student years were before the property was purchased and much of it before such a purchase was contemplated.

24 I accept Mr. Danino's evidence that he would not have loaned the £5,000 towards the deposit for the property and would probably not have done the work he did on it if he had thought the husband was to have sole ownership of it. Does this amount to a detriment on the part of the wife? In one sense it does. As I have said, the parties were still closely linked to their parents and we must view Mr. Danino's actions in the context of the strong family units which exist in Gibraltar. The wife must have requested a loan towards the deposit and must have asked her father for assistance towards making the property a more comfortable home. It is difficult in this context to separate the actions of Mr. Danino from those of his daughter.

25 But the strongest evidence in this regard is that of the wife when she said she would not have agreed to buy the property if she were to have no beneficial interest in it and, furthermore, that she might not have married the husband if she had known he was buying it for himself. Mr. Danino has said that if such were the case, he would have advised his daughter not to marry.

26 In all the circumstances, I find there is sufficient evidence that the wife acted on the understanding between the parties.

27 That leads me to the equally difficult question of the proportion of the equity in the property to which the wife is entitled. In *Eves* v. *Eves* (1), the parties moved into a house together, purchased partly by a deposit provided by the defendant and partly on mortgage in the defendant's own name. The defendant told the plaintiff, untruthfully as it turned out, that as she was under 21 years of age, he would put the house in his name, but had she been over 21 he would have put it in joint names. When they moved into the house, it was in a somewhat dilapidated condition and the plaintiff did substantial work on it, some of it very heavy physical work. It was held that, although she had made no financial contribution to the purchase of the house, the plaintiff had a quarter interest in the house. Brightman, J. had this to say ([1975] 1 W.L.R. at 1345):

> "The question then arises, as to the quantum of the beneficial interest which the court can properly recognise. I find no ready answer. There is a case for saying that in the absence of any contrary indication it can only be a joint interest in equity, leading to a half interest for each party as soon as the joint tenancy is severed. Why, it may be asked, should the interest be any different if the interest exists at all?"

He went on (*ibid.*, at 1346):

> "Applying the law in a difficult field as best I can, I reach the conclusion, without great confidence, that the court should imply that the plaintiff was intended to acquire a quarter interest in the house. On this basis, the house is held by the defendant in trust as to three quarters for himself and as to one quarter for the plaintiff."

28 In *Grant* v. *Edwards* (3), the court held that the plaintiff had a half share in the property, but in that case the parties were together for 11 years and the plaintiff had made contributions to the household expenses in excess of what would normally be expected, and, without her contribution, the defendant would not have been able to keep up the mortgage payments.

29 I cannot say that the wife's contribution in this case comes close to the plaintiff's in *Grant* v. *Edwards* or is as great as that of the plaintiff in *Eves*. In *Gissing* (2), Lord Reid said ([1971] A.C. at 897) that where a party does not make direct payments towards the property, it is not easy to evaluate the shares and that a rough and ready evaluation may be necessary. In some cases, a half share is reasonable, whereas in others, a fair estimate might be a tenth or a quarter or even more than half.

30 Ms. Evans has sought to persuade me that at best, the wife's contribution is 1.5%. True it is that the purchase of the property was largely the result of the husband's prudence. However, I do not think that Ms. Evans' estimate does justice to the wife's real contribution to the purchase and maintenance of the family home. Balancing one thing with another and doing the best I can, I assess the wife's share at 20%.

31 There have been two valuations of the property. The one carried out on behalf of the husband is by Brian Francis & Associates, and values the property at £185,000. The one carried out on behalf of the wife, by BMI Group, puts the value in the region of £240,000 to £255,000. I prefer the valuation of Brian Francis & Associates for two reasons. First, they had access to the interior of the property and to exact measurements and specifications. Secondly, they were the valuers who had valued the property for mortgage purposes.

32 In the circumstances, I assess the wife's beneficial interest in the property at 20% on the valuation of £185,000. The court has power, under

s.44 of the Matrimonial Causes Ordinance, to order a sale of the property, but I think it likely that the husband will be able to raise the wife's share and so I make no order in that regard. I leave the parties to draw up an appropriate order on my findings.

33 There was a second prayer in the application in respect of the family motor car. I was not specifically addressed on this and assume that the parties have reached agreement thereon. If my assumption is wrong, then I suggest they attempt to do so having regard to my findings above and having regard to the payments already made by the husband. In the event that they are unable to reach agreement, I am sure that I can resolve the matter on receiving brief written submissions from the respective solicitors.

34 The husband will pay the costs of this application, to be taxed if not agreed.

Order accordingly.
