

IN THE ROYAL COURT OF JERSEY
(SAMEDI DIVISION)

10th December, 1991. 186A.

BETWEEN

C

PLAINTIFF

AND

G

DEFENDANT

Before: F. C. Hamon, Esq., Commissioner,
Jurat J. Orchard
Jurat G. H. Hamon

Advocate A. P. Roscouet for the Plaintiff
Advocate M. J. O'Connell for the Defendant

JUDGMENT.

THE COMMISSIONER: On the 28th June, 1991 an Order of Justice was signed which contained immediate and interim injunctions. The effect of these injunctions was to oust a husband from the matrimonial home which he owned and where he lived with his wife and the two minor children of the marriage, E aged 5 and J aged 3¹/₂. The injunctions, wide-ranging as they were, effectively cut off all communication between the husband and his wife and children. It is only now in November of this year that an application is made to challenge the injunctions so imposed. It must, however, be said that much has happened in the life of both parties (but particularly the husband) since the injunctions were imposed.

The delay would, on the face of it, be surprising were it not for those subsequent events because an ouster proceeding is yet another form of action which is at the extreme range of the power of the Court and its effects can be devastating. As was said by Ormrod L.J. in *Ansah v. Ansah* (1977) 2 All ER 638 at page 642 -

"Orders made ex-parte are anomalies in our system of justice which generally demands service or notice of the proposed proceedings on the opposing party (see Craig v. Kauseen). Nonetheless the power of the Court to intervene immediately and without notice in proper cases is essential to the administration of justice. But this power must be used with

great caution and only in circumstances in which it is really necessary to act immediately. Such circumstances do undoubtedly occur because the parties are often still in close contact with one another and particularly when a marriage is breaking up, in a state of high emotional tension; but even in such cases the Court should only act ex-parte in an emergency when the interests of justice or the protection of the applicant or a child clearly demands immediate intervention by the Court. Such cases should be extremely rare....."

Counsel gave us much assistance on the law on this point but we only need to look at *Lacey v. Lacey* (1980) FLR1 at page 2 to see that having established the criteria each case will then have to be decided on its particular merits. In *Lacey v. Lacey* Orr LJ. one of the three Court of Appeal Judges that reviewed the facts on an appeal by the wife against the refusal to make an exclusion -

"On hearing of the application on December 6th, the wife's evidence was that the husband had hit her a number of times, but she said that, while there might be arguments if she went back, she did not think he would hit her again. She gave as her reason for not wanting to go back to the matrimonial home that the husband would talk her into sleeping with him again. On that material the Judge refused to make an Order evicting the husband, but he made the Order to which I earlier referred against molestation and in addition that the husband was not to enter the matrimonial bedroom while the wife was staying in the house.

The Judge gave as his reason for his conclusion that the violence was not such as to warrant such an order as was sought and that the husband was prepared not to enter the matrimonial bedroom which had a lock on its door and that the two outbursts of the husband, as he described them, were unpremeditated and finally that in his view it was in the interests of the children that the wife should return to the house with them."

What then are the criteria? Very helpful examples were given to us by counsel but we have no doubt that our duty to both parties is to consider whether the very serious ouster order is, in the circumstances, the only order than can be made or whether the Court (which has an almost limitless power at its disposal to protect the wife) could achieve justice by some lesser measure.

This was expressed in far better terms by the Court of Appeal in *Walker v. Walker* (1978) 1WLR 533 at page 536 where Geoffrey Lane L.J. said :

"We have been referred to *Bassett v. Bassett* (1975) Fam 76 and to various cases which are cited in that decision of this Court. Speaking for myself, it seems to me that that authority, in circumstances such as this, is of little value. What seems to me to be the question which the Court has to decide is this: what is, in all the circumstances of the case, fair, just and reasonable and, if it is fair, just and reasonable that the husband should be excluded from the matrimonial home, then that is what must happen. Before one can come to a conclusion, all the circumstances have to be regarded, first of all, the behaviour of the husband; the behaviour of the wife; the effect upon the children if the husband stays there; the effect upon the children if he does not; the husband's own personal circumstances; the likelihood of injury to the wife or to the husband, their health, either physical or mental. All these things must be taken into account".

Before we turn to an examination of the evidence there are attacks made by the husband on the Order obtained on technical grounds. We must consider these.

The grounds of complaint are threefold. They are:-

1. That the wife, in some way, misled the learned Bailiff when he signed the Order of Justice.
2. That her Affidavit was not full and frank and -
3. That for some time prior to the Order, she had been planning the ouster so that the Order obtained became nothing more than a tactical ploy prior to the filing of the petition for divorce.

Mr. O'Connell called in aid for his first and second contentions the case of *Walters and Twenty Eight Others v. Bingham* (1985-86) JLR 439 where the Court said at page 466 :

"Despite our findings in the instant case, we consider it desirable that every application for such injunctions (other than in matrimonial causes, which are dealt with separately) should be supported by affidavit not merely confirming the truth of the contents of the Order of Justice but containing a full and frank disclosure of all material matters, particulars of the claim and the grounds thereof, and fairly stating the points made against it by the defendant; and

that in every such case the Order of Justice should contain an undertaking in damages."

Mr. O'Connell described the Affidavit as "entirely unsatisfactory". The Affidavit is merely a statement that the contents of paragraph 1 - 13 inclusive of the attached Order of Justice are true. As we shall see the filing of the Order of Justice came after events had reached a serious culmination and the injunction was obtained at very short notice. Miss Roscouet told us that she recalled that the learned Bailiff signed it just before he went into the Friday afternoon sitting of the Samedi Court. It cannot be in the interest of justice where expediency is paramount, to insist that an Affidavit repeating all the detailed allegations made in the Order of Justice be sworn. - More serious, however, is the allegation that the learned Bailiff, who could only rely on the information contained in the Order of Justice as a consideration whether or not to grant this most draconian order, was in any way misled.

The argument here is clear. The purpose of an Affidavit is to allow the party swearing it to make a full and frank disclosure. The Order of Justice by its adversarial nature must be one-sided. There is no possibility to contain within its particulars the arguments that might have been adduced in opposition to it. As Mr. O'Connell says, how can a Judge, viewing as he will have done, this ouster order with the utmost circumspection be expected to know if there are matters which he should properly consider if the party asking for the relief fails to supply him with information on these matters. We must, however, consider what the matters of such urgent weight were which, it is alleged, were withheld from the deliberation of the learned Bailiff.

Mr. O'Connell gave us two. One was that there was available a basement flat, unoccupied at the time, and forming part of the property from which the husband was ousted. The second was that the husband felt that his actions were justified because of his belief that the wife's mother (as we shall examine) held some sinister sway over his wife and children.

On the question of the flat, we do find that this was a serious omission. But we do not find that it was a fatal omission because the wife, had she mentioned it, would have contended, as she contends now, that only total exclusion of the husband from the whole of the property would have resolved matters. That, coupled with the fact that it took the husband four and a half months to bring the matter to Court allows us, after some anxious deliberation, to hold that the reprehensible non-disclosure (however innocent) is not fatal to the existence of the injunction.

If we had felt the injunction to be fatally flawed, we would, pending our decision, have under our inherent jurisdiction, imposed new and identical injunctions.

We do not feel that the failure to mention the feelings (and they were very strong feelings) of the husband against his mother-in-law is in any way material to the question of non-disclosure.

What then of the allegation that the ouster was premeditated?

The events around the end of June were for both parties of some moment. Lawyers (with varying degrees of success) were consulted by each party. Draft letters were shown by the wife to the husband. She told him, on his evidence, that he was going to lose his home, and then on the 21st June there came a letter from Miss Roscouet enclosing an engrossed letter of an earlier draft which has these words in its final paragraph:-

"In these circumstances unless you vacate the property within the next seven days I shall be obliged to institute legal proceedings against you without any further delay."

Furthermore, the husband told us that his wife said to him "I don't care whether you live or die, but you will be thrown out on the 28th." She imparted this message in various forms several times. The wife did not deny that she might have said that she did not care

whether the husband lived or died but she emphatically denied that she had said that "he would be thrown out on the 28th". What she did admit to saying was that he would have to go as she could not live with him any longer.

To the husband it is beyond belief that exactly seven days to the day the ouster proceedings were instituted. Not so, says the wife. The events of the 28th June were not of her making and were not in any way connected to the implied threat of the letter of the 21st June. We have most carefully considered this point. We do not believe that the final paragraph of the 21st June is to be read in a sinister light. If we had not held that we would have to regard the wife's behavioural pattern as a totally cynical attempt to deprive her husband of the matrimonial home. We do not so hold and we are convinced that her distress is not simulated but genuine.

We are, therefore, allowing the injunction to stand before deciding in what way, if at all, it should either be modified or removed altogether.

There is one final preliminary point. An open letter was read to us in Court by Mr. O'Connell. We set out its terms hereunder. The terms were rejected by the wife.

"GO261/001/MOC/BT/449

26th November, 1991

URGENT - BY FACSIMILE

TO NO. 78118

Advocate A. P. Roscouet,
Messrs. Le Gallais & Luce,
6 Hill Street,
ST. HELIER

Dear Advocate Roscouet,

G

I am instructed to write to you in this open letter to put forward certain proposals which may be acceptable in relation to the

injunctions which are currently enforced against our client.

There is a bedsit situate in the basement of the matrimonial home. We understand that currently this is occupied by lodgers who are paying a rental in the sum of £100.00 per week to your client. She is apparently using this sum by way of maintenance. Our client would be prepared to move into the bedsit at the first opportunity and he would be liable to pay maintenance to your client and the children, once he is reinstated at his place of employment. Our client has always contended that he has never been a menace or a physical threat to your client or the children and if the proposals contained in this letter are not accepted by your client, these are matters which the Court will have to decide after having heard the evidence.

In return for being permitted to reside in the bedsit as aforesaid, our client would be prepared to accept a variation of the injunctions so that he was bound to refrain from molesting, harassing or assaulting your client. There is the alternative possibility that he could provide to the Court an open undertaking which would have the same weight and effect as an injunction, but without the same stigma attached thereto. My research indicates that a non-molestation injunction is satisfactory in the event that it can be shown that the husband is not a physical threat to the wife and children. We will be instructed to argue before the Court that it was unnecessary in the circumstances to obtain an ouster injunction, and your client's correct procedure would have been to seek the protection of the Court in the form of a non-molestation order.

We are instructed to request that a regular and precise access arrangement should be arranged with regard to the children. If the children were to have free run of the house including the basement bedsit, then they could come and go from our client's accommodation as they wished. In addition our client would like to have access to the house only for the purposes of bathing the children, and for the purpose of putting them to bed. Other than that he would undertake not to enter the part occupied by your client. Moreover he would like to have access to the garage attached to the property, and also reasonable access to the property in order to maintain it and upkeep it so that the value of the property is not diminished in any way.

Our client is prepared to give an open undertaking to the Court that he will not remove the children from the jurisdiction, save with your client's written consent, or failing that a variation of the undertaking granted by the Court.

As far as furniture and belongings is concerned we understand that the bedsit is fully furnished, although our client may revert to your client on the question of a spare stereo which is in the house. Apparently our client recently asked your client if he could have this spare stereo so that he could listen to music in

the evenings, but she refused to provide it to him, notwithstanding the fact that there is a perfectly adequate stereo system already in the house which would serve her purposes.

Please will you take instructions from your client on the contents of this letter as soon as possible. If your client is unwilling to agree to this variation then I fear that we must go before the Court and present our application to lift the injunctions, but we will of course be making the Court aware of this correspondence to show that our client is prepared to accommodate your client's needs. The simple reason that the marriage may be going through a very bad patch, and your client may be feeling the strain of the breakdown of the relationship is not in our view a reason to ouster a man from his home. We will be producing a report from Dr. Faiz which says that our client is not a threat either to his wife or to his children, and the authorities which we have researched, and to which we have already alerted you, indicate that an Ouster injunction should only be used in the most extreme circumstances, and not merely because there is a difficult atmosphere in the matrimonial home. A natural consequence of the breakdown of the relationship must inevitably be that tempers become strained and people do not behave in an ideal way, but the implementation of the Ouster injunction was, with the greatest possible respect, unnecessarily brutal on the part of your client, and her position could equally easily have been protected if she had obtained more sensibly a non-molestation injunction as we are now suggesting. The purpose of the protection of the Court, as we understand it, is not to alleviate discomfort which the wife is suffering, but is there only as a last resort to protect her and the children from physical abuse at the hands of a violent husband. As things stand, our client has been existing under an enormous amount of stress and strain for a number of months, and since his return to the Island he has had to beggar himself for accommodation on a temporary basis with friends. If he is to start work again it is important for him to get a proper roof over his head so that he can bring in a wage which will then maintain your client and the children. Surely she must see the wisdom of this. Once my client is in the bedsit then there is absolutely no reason why the divorce proceedings cannot continue at the appropriate and proper pace.

I look forward to hearing from you.

Yours sincerely,

Advocate M. St. J. O'Connell

We shall be referring to that letter in the course of this judgment.

The parties were married in August, 1986. There are two children. Both parties are clearly intelligent. The wife has ten 'O' levels and 2 AO level examination passes. She has passed French GCSE and Part 1 of the company administration exams. She is a member of the Amnesty letter writing campaign and has taught spoken English to Swedish students. She fosters two children in India by letter writing. The husband until he was suspended was Head of Physics, Chemistry and Maths at a School.

We learnt from Dr. G. F. Faiz, the Consultant Psychiatrist that the husband who is now 41 had suffered from depression in December 1982 when he was hospitalised for three weeks in the Psychiatric Ward at the General Hospital where he was treated with anti-depressant drugs and with later out-patient treatment until September 1983. Dr. Faiz was of the opinion that it was the break up of his second marriage (he has been married three times) that caused his earlier depression. Dr. Faiz had seen the husband on three occasions in the Psychiatric Out Patients Clinic. Because of the events that occurred around the time of the ouster proceedings Dr. Faiz formed a view that the husband could be a manic depressive that is a person who has a bipolar affective disorder which leads to a bout of mania or elation followed by a bout of depression. He did not feel that the husband was a danger to anyone and he said that he felt that his diagnosis was as certain as could be, based as it was on twenty seven years of professional experience. He told us that in the seasonal variation between the manic phase and the depression phase, the manic could by his behaviour be alarming, his mind worked very fast and he became very impatient. This could make him very difficult to live with. Of course if the illness is cyclical then in the later state of depression he could become suicidal.

The illness, once diagnosed, was treatable by medication but many people, understandably, would fight to the bitter end to avoid being labelled mentally ill.

When Mr. James Peter Hollywood who is a consultant Psychologist saw the husband on June 25th (shortly before the ouster proceedings) it is clear that he was seeing a man who was suffering in his mind. He concluded that the husband was a manic depressive. He spoke in a monologue of one and a half hours, he was excessively talkative, highly articulate but repetitive. Although he appeared full of ideas and highly witty - at one point he sang a song - he was showing clear physical signs of exhaustion. He told Mr. Hollywood that he was under stress - using an extraordinary expression: "I'm under a lot of stress, man". He showed signs of paranoia (which is of course only an illness if the events complained of are untrue). The theme of his thoughts dwelt on conspiracy. People in high places were determined to deprive him of his home. These persons were freemasons and the Mafia and his mother-in-law who practised with Tarot cards and whom he believed had led his children into devil worship. Mr. Hollywood spoke with Dr. Brown who had treated the husband. They discussed the provisions of the Mental Health Law and whether the husband should be detained under the law for his own safety. It was decided that the husband's distrust of interference was so profound that the solution was better if left to time as, in the course of the cyclical illness, it would ameliorate with time. We also heard from Mr. Patrick Bernard Lucas who is a psychotherapist. He described this qualification as facilitating psychological intervention for people with psychological problems. He had seen the husband on the 24th May when he was, in Mr. Lucas words, highly disturbed and requiring medical assistance. The husband was essentially concerned about his relationship with his wife and difficulties that he faced at work. As Mr. Lucas declined to take the husband on as a patient his evidence does not particularly help us except to show that another professional man with psychiatric training had diagnosed that all was not well with the husband's mental state. Although the husband was extremely anxious, he had an understanding of his problems.

Suffice it to say, that later, when stress compounded the manic state, Mr. Lucas, like Mr. Hollywood and Dr. Faiz were to be inundated with telephone calls.

One other professional who saw the husband on about three occasions after he returned to Jersey from France was Mr. Thomas Vincent Jones, a psychiatric social worker. He did not feel that the husband was paranoid but felt that he could have been unbalanced. What he did feel, in a phrase of some colour, was that the husband was "appropriately distressed". That is, having been made homeless and been suspended from his place of work he was showing clear signs of stress.

All these professionals took the view that the husband posed no physical danger to the wife or the children.

But what of the events that led to the ouster proceedings and the consequences thereafter? We can summarise them in this way.

The wife told us that the husband's manic phase had first shown itself at Easter time 1989. The wife had two children to look after and **E** the elder suffered badly from eczema. Consequently her sleep was disturbed. The wife told us that the husband had at this time taken to going out all night, often returning home in the early morning whereupon, although she was exhausted, he would ask to make love to her. She was also at this time breast feeding **J**. He had a friend at the time called **A** and would take her out with him. When the wife went to remonstrate with **A** at the girl's place of work, he told the wife that she would have to apologise for offending **A**. At one time when they were on holiday in Chamonix in July 1989, the husband, having been told by the wife that she had seen a dress that she liked, purchased three dresses and told her that she could have two and the one she didn't like he would give to **A**.

We had many such examples of the plaintiff's bizarre behaviour. On the return from Chamonix the wife told us that the husband had parked the van with his wife and two young children in it on a main road in Rennes and left them there alone while he went to a discothec. It was, according to the wife, a terrifying experience. Frenchmen were banging on the van saying that the van had to be moved or it would be towed away.

We give these examples to show that we accept the wife's version of events and in particular to note that certainly after the birth of the first child this was not a particularly happy marriage.

We are not, however, deciding facts on a divorce petition. We have to decide whether or not the behaviour of the husband and its effect on the wife and children was sufficiently serious to justify his ouster from the property.

It is clear from what we were told that the husband had a state of depression in or about November 1989. He was two months off work and spent considerable time in bed where the wife would bring him his meals.

The husband has a complaint against the wife. He says that his job is particularly stressful and his wife was always tired and in bed by 9 o'clock in the evening. (She of course told us that she was breastfeeding her son as her daughter's lack of breastfeeding had, in her opinion, led to her daughter's eczema). He told us that he had in fact been out all night. He enjoyed attending all night "raves" where he could dance and talk with people. He only left the house when his wife and children were settled. Once he had returned in the early

hours and presented her with wild flowers that he had picked. As he said to us "I was an outward going happy man who went dancing having tucked my wife and children up in bed." The wife denied this. She told us that she was often ironing when he went out. He did not hold with breastfeeding J who was nearly three. On one occasion the wife told us he had snatched J from her breast which she had found both extremely painful and distressing.

The husband slept separate and apart from the wife. They had quite different interests. She, incidentally, flew light aircraft and rode horses, both of which (apart from a recent short horse-riding holiday in Northumbria) she has given up. It is clear that we were seeing a marriage which was extremely unhappy. Sexual relationship had ceased, the husband (who was no doubt working extremely hard at his profession) relaxed by dancing late into the night and playing loud music. They apparently had very little in common except that, in their own way, they loved the children. That love in itself was a source of friction as the husband was totally opposed to J being breast fed and, in fact, according to the wife, had told him so. This was a little boy of three.

We are of the opinion, listening to the experts opinion, that the husband was, in some form or other, a manic depressive. We need to examine in much closer detail the events that occurred after Easter 1991.

It was about this time that the problems, such as they were, arose that led to the ouster proceedings. The husband went on a skiing holiday with a male colleague. Easter that year was at the end of March and this was during the Easter holiday.

A colleague who also teaches at the School, Mr. M, had been on holiday with the husband. He told us that he knew the husband as a friend and a teacher who was very good at his

job, relating well with pupils. He was a "little bit down" before the holiday, but when he returned he was happier, more confident and inclined to socialise and go out. They had disagreed over Mr. M's personal problems and had lost contact but he knew that particularly after an argument with the Headmaster the husband was under stress. He had telephoned (there seemed to be few witnesses in this case who had not been so telephoned) the witness from Paris. At that time he was "quite unusual" and had spoken about witchcraft.

Now the husband said that since May of this year he has been positive and not manic and certainly never menacing.

Another colleague from the School, Mr. H, who had known the husband for 7 to 8 years and had known the wife from shortly before the marriage, described the husband as being fairly low before the Easter holiday but very happy and enthusiastic when he returned.

He recalled that something similar had happened two Easters previously. The witness had thought before and thought now that the husband was a manic depressive.

He described him as having become a relentless conversationalist, difficult to work with, disorganised and with his enthusiasms misdirected. He said that he and his similarly affected colleagues avoided getting into conversation with the husband. By the end of June (when matters came to a head) he said that anyone who engaged in conversation with the husband had to push him away in order to put an end to the conversation. He talked about confidence and difficulties. He had an obsession with witchcraft. He talked about packing his bags but never talked about leaving home. The witness too was telephoned from France. When the husband had been ousted he threatened the witness because he knew that the witness was holding keys given to him by the husband's father.

The witness said that in view of his state of mind he would not have wanted the husband to be in charge of the witness' children. But he never believed that he would harm the children and certainly he had never been violent at school to the children in his care.

At about this time there was a difference of opinion with the Headmaster of ~~the~~ School over the husband's sense of humour. The husband had some two years ago played music to his class when they came in; he turned it off when he started teaching. He also had played music very loudly in his lunch hour in his laboratory. As a result music was banned at the school between 8 a.m. and 4 p.m. We got the impression that matters were somewhat strained between the Headmaster and the husband. The events following the skiing holiday were not conducive to healing any rift, real or imagined.

When the husband returned to school after the Easter holiday he was suntanned and had shaved off his moustache. His view of life was "cheer up, be nice to Mr. S , look on the bright side". He told the boys that he was his brother F from Manchester and that (the husband) had, under stress, hit a man and run away. The boys related this story (this is the only version we have) to their parents. There was an interview with the Headmaster. It lasted 50 minutes. The following day there was a further meeting. The Headmaster had spoken to the pupils. He patted the husband's shoulder and wagged his finger. The husband asked the Headmaster to sit back in his chair. This angered the Headmaster greatly. He insisted that the husband see his doctor. The husband told us that he did so but there was nothing amiss. He returned to school until the end of May. He was later suspended.

Concurrent with this happening, the husband was actively looking for other premises. He had lost his driving licence but found a house (one had already slipped away to another purchaser) at Trinity. It had a sloping garden, (the wife described it as very steep. She feared the children would tumble down it). The husband felt that a move to a different and larger house would solve the matrimonial problems. The wife knew that it would not. The husband spoke of birdsong and the small amount of traffic. She knew that without the ability to drive a car (he rode a bicycle and took lifts) he would be even more isolated but essentially the move was not beginning to get to the fundamental problem which was the incompatibility of the parties.

For three months from the end of June. Mr. A had lived in the flat with his wife and had seen and heard at first hand the break-up of the marriage. He recalled taking his wife's brother up to meet the husband and wife and the husband saying "sorry that the room's a mess, my wife is just a slut". The paranoia of the husband (his mother-in-law practising Black Magic, the Governor and Police plotting against him) upset both the witness and his wife. The relationship was unusual. The wife was caring for the children with no help from the husband. Mr. and Mrs. A left the flat. Of one thing the witness was certain and it was that the husband although under great stress would not, in the witness' opinion, have harmed the children.

It was clearly a strange relationship. It is not surprising when the husband agreed that on one occasion on a Saturday afternoon the wife had returned home to find him with two men with long hair - strangers that he called "hippies" - dancing with them to loud music and wearing his wife's pink ski-pants. He had at one stage run after one of the hippies down the road shouting "hey man, I didn't mean what I said" (the use of the word "man" in that context had, it will be recalled, disturbed Mr. Holliday). He had taken various strangers

whom he'd found sleeping rough home to sleep - but no alcoholics. He enjoyed going to "raves" (a form of all night party much frequented by the young). He liked fraternising and dancing. It helped him to relax. (This is a 44 year old schoolmaster with a young family).

The husband became obsessional that his mother-in-law was a satanist, teaching his children to play with Tarot cards.

We must say at once that we totally refute this allegation. After hearing the husband's complaints the Court found that Mrs. C was a quiet widow, now working as a guide taking visits over a local brewery. She had been 13 years a District Nurse and was trained as a midwife. She was for 15 years a Samaritan, was the Chief Visitor for the Charity Cancer Relief and her husband had been the Chief Internal Auditor to the States. The Tarot cards (about which we heard so much) had been given to her as a joke, by her late husband in a Christmas stocking. She had used them once with her daughter and two friends in a light hearted manner. She had not seen them for months. We formed the impression that Mrs. C was caring and loving of both her daughter and her grandchildren. She spoke frankly of how she had originally found the husband to be clever and witty. She had never advised her daughter not to marry him. She had obviously endured much at the husband's hands receiving unpleasant telephone calls from him in the middle of the night - for example, he had accused her of murdering her own husband. She said as a trained Samaritan it was better to let him speak rather than put the phone down. She felt that although her daughter wore a track suit in the house and did not wear make-up and had been depressed, she was not slovenly. She had seen her daughter regularly and advised her. She denied, and we accept her evidence, that she had tried to turn her daughter against the husband. She had seen her daughter change as the strain of the marriage bore down on her. She was often crying and seemed at the end of her tether. Since the ouster proceedings she believed that both children were more relaxed and E's eczema had improved.

She told us that when the husband came back from his Easter holiday he was bizarre and unpredictable in his behaviour. He had, before he left, been depressed and apprehensive. On Liberation Day he had dressed up as a Spanish lady. This in itself was not what concerned her; it was the fact that it had taken him an hour to put his make-up on, he had shaved his hair off his chest and arms and under the long skirt had put on a pair of tights.

Matters rapidly came to a head. On the 20th June the wife tried to telephone her mother. There is some conflict of evidence as to how she was prevented but prevented she was. There was an argument. The husband said she started to slam the glass door until it shattered, she then ran out into the yard, jumping up and down in her rage until she was comforted by neighbours.

The wife said that she tried to get out of the door. The husband barred her way, pushing the door shut when she opened it. She was pulling the door open with her left hand. She was hysterical and shouting for help. She was fearful for her safety.

We prefer the wife's version. If the husband was, as he told us, standing away from the door it seems to us difficult to understand why the wife would have behaved as he claims she did when her only object was to leave the house. Our findings are, in our view, confirmed by the witness of a neighbour, Mr. H , who runs a second-hand car sales business near to the matrimonial home. He was showing a vehicle to a customer when he heard the wife screaming hysterically. He ran to the scene and saw the wife sitting on the steps outside the house crying. The glass door was smashed. He came over and talked to the husband. Three neighbours took the wife away to comfort her. For twenty minutes he led the husband in prayer. The

witness who is a member of the Jersey Community Church said that he had found the husband to be straight, upright and mild. He did not believe that he was a threat to the wife or the children. The husband and the witness had prayed together before. He felt that the husband wanted to save the marriage and although they had chatted together since Easter 1991 there had been no mention of witchcraft although the husband had said that he did not wish his wife to play with Tarot cards.

On the 26th June another incident occurred. To put matters into perspective, the question of divorce had already been adumbrated. The husband felt that his wife "thought he was playing games". He had asked two friends from Sheffield to help him move out of the house and he kept "moving things out and bringing them back". He was at this time being advised by his parents not to leave the house. He was clearly disturbed and excited. He felt that he did not want a divorce. His wife could take tablets or advice for the "sake of his children who loved their mother and their father",

The husband told us that he did not want the children to leave the house as he felt that the wife would take the children to her mothers. He did not want the children to go to his mother-in-law's house. He told us that his wife is a member of the "Glass Church" at Millbrook. She is looking forward to the after life. He wondered if there was "any situation in which children can be sacrificed". He told us that E had drawn a picture of a little child with horns and a crucifix. This worried him greatly. He produced two drawings drawn by E. They seem to us to be totally innocuous. Even the sun is smiling in the two pictures which to our minds show a small child's view of a Mummy and Daddy and two children, all smiling. These are not, of course, the drawing of the so-called devil. He showed us a scrap of paper. On it E has written "EOTC". We cannot, for the life of us, see anything significant in that scrap of paper in its lettering.

The husband told us that he was concerned after the wife's breaking of the door and he wished to accompany the children to ballet for their own safety. We find that explanation spurious. The wife told us that she had to telephone Mr. H for advice.

On that same day the wife told us that the husband picked up a hammer (there was a large hammer and a toy hammer on the table). She showed us how the husband menacingly beat with the hammer on the table. She said he told her "to fuck off out of the house". that he'd throw her out of the window. She told us that he held a kitchen knife to his throat, put her hand on his and said "go on and kill me".

The husband denied that these incidents occurred at all. Having seen the wife in the witness box we have no doubt that these events occurred exactly as they were described to us.

There was criticism from Mr. O'Connell that the incident with the knife was not mentioned in the Order of Justice. We can see nothing in that criticism. The Order of Justice was prepared in haste. The fact that an incident was omitted does not, in our view, mean that it did not occur.

At about this time, the wife had grown, as she told us, increasingly frightened by the husband's unreasoning behaviour, would try to barricade her bedroom door to have at least some warning if the husband, who slept downstairs, should try to enter her bedroom in the night. Mr. O'Connell very properly, pursued her on this point in cross-examination. The children, after all, were sleeping in adjoining rooms. We understand that criticism. We believe that the wife feared for her own safety and not that of the children. Matters came to a head on the 28th June. The husband, who admits that he was under stress, reminded us that this was the day when he was expecting something untoward to happen.

It is clear that his stress problems were increasing. He had already (we think some time during that week) thrown E's plastic snake out of the window in her presence. It was connected to "devil worship". He had called the children to him saying "you children, sit down and listen to this" and read from their children's Bible in a frantic manner. All of this we accept as a true recounting of events even though denied by the husband.

It was early in the morning of the 28th. It was the day that the husband told us he expected to be ousted. He insisted on accompanying his wife and children to Nursery School.

There was a piece of white plastic tubing on the floor. The husband admits to picking it up and no more. The wife says that he beat the back of the settee frantically with it, threatened to gouge her eyes out, chased her round the room. The wife fled the house and ran to Boulevard Stores where she telephoned the the Police.

Are we really to believe that she did this simply because the husband picked up a piece of tubing and nothing more?

Two Police Officers gave evidence. We cannot underestimate the value of their evidence. It confirmed our view in every respect. The story that P.C. Keith Perchard and Sergeant Terence MacDonald gave was firm and certain. They spoke without notes. They were in our view totally unbiased. Both spoke from long experience. Their attitude was, in every respect, commendable.

When they saw the wife at the shop at breakfast time that morning she was in considerable distress. This was for both officers an unusual case. The parties involved were both highly intelligent, there was no alcohol involved and it was happening in the morning. Let us for a moment consider the allegation made by the husband that the wife had engineered the situation in order to obtain his eviction.

P.C. Perchard described a woman who was not actually crying but whose voice was tremulous. She was flushed and showed all the signs of a woman emotionally upset, clearly frightened and not able to deal with the situation. Sergeant MacDonald told us that the wife was very upset when they arrived at the shop. She was being comforted by a member of staff. He was convinced that she was not faking. She was very distressed.

It must be recalled that P.C. Perchard was called as a witness by the wife. Sergeant MacDonald by the husband. The husband was wary of letting the Police Officers into the house. He was not violent or aggressive. It was clear to P.C. Perchard that there was a serious breakdown of relationships. The husband displayed erratic behaviour. He would speak coherently and then his conversation would become exaggerated. He spoke of problems at work, of his mother-in-law showing Tarot cards to the children. Clearly the discussion was far ranging. His moods were fluctuating rapidly. P.C. Perchard told us that he felt that the husband had many problems which others might well have been able to reconcile. He was frustrated not to have been promoted at work, he had problems with his Headmaster. Both Sergeant MacDonald and P.C. Perchard managed to get the children off to Nursery School. They spent 2½ - 3 hours talking to the husband. It was to Sergeant MacDonald who has 23 years of Police experience the most unusual domestic situation that he had attended. At one time he would be calm, then agitated. At one stage he went upstairs and Sergeant MacDonald followed him, fearful for the husband's safety. The husband was worried that the police were going to drag him away. When he was with them, Sergeant MacDonald felt that J was hyperactive and aggressive. He was concerned about the children. Both Police Officers feared that harm could befall the children.

When he went upstairs the husband was illogically moving things about and picking up items of clothing. He clearly felt threatened.

When eventually the Police Officers felt it safe to leave the husband, Sergeant MacDonald made arrangements for the wife to collect the children early from play school. He had telephoned the husband's doctor, contacted the Children's Office, the Women's Refuge and Mr. Hollywood. At one time the husband mentioned a fire-arm. This disturbed Sergeant MacDonald greatly. The wife eventually spent the night at her mothers with the children. The Sergeant told us that after what he had observed, if the parties had slept under the same roof that night, he would not have slept himself. He arranged police cover for the month-in-law's house. As he told us, she was "high on the husband's pecking order of genuine hatred." He called her a witch with powers of evil over the children.

Later, Sergeant MacDonald, like many others, was to be phoned from Paris by the husband and visited at his home.

It shows a remarkable sense of caring that the two Police Officers when they had made all these arrangements returned to the husband when they knew the wife and children were safe and spent a considerable time explaining matters to him.

On June 28th the Viscount called. Something extraordinary had happened. Not only had the husband written his last will and testament on the wall leaving his house to his father, but the wall above the fireplace was covered with graffiti. We were shown photographs.

We read some of these writings to Mr. Hollywood.

"I have it all up
For the love of God
How stupid can I
Man Utd get

It all started with Mark Hughes 2nd Goal (honest) v.
Barcelona- OLE

Did God give us a Brain for Fun, Ha Ha.

Money for nothing Road to Hell.

Jesus skips."

The husband told us that he wrote this graffiti on the wall to keep himself amused. He would like to keep it on the wall. Mr. Hollywood told us that if he were to study the writing he could possibly give us an indication of the extraordinary fast thought processes that were racing through the husband's mind at the time.

The events immediately following the injunction are, by any standards extraordinary. For a time he stayed in various addresses. On Friday 12th July the Headmaster at ~~the~~ School was going to France on a school trip. The husband's behaviour was becoming increasingly bizarre. One Sunday the wife came home with the children to find a crucifix glued to the door, the figure of Christ had been removed. It was on the mantelpiece covered with flowers and garlic. A book which the husband said he had borrowed - "a horrid book" he called it on the Manson Murders - was in the oven. The husband told us another story concerning this book. We do not consider it relevant.

The Headmaster found the husband on the boat which sailed from Gorey to Cateret. He refused to speak to him. The husband spent the journey reading the New Testament. Much of his luggage was left at the Fort d'Auvergne Hotel. He went to Banneville and went to a bank. He telephoned lawyers. We appreciate that the delays that he suffered from the legal system must have greatly accelerated his problems. He hitch-hiked to St. Malo, gave £30 to a Guernseyman who had lost his return ticket, took a train to Rennes and thence to Paris.

On the 14th July he went to a dance in Paris and "met the legionnaires who protected Mitterand". Between the 1st and the 18th he had met a man "very powerful in his connections who saluted Hitler and Pinochet". This man had Jersey connections. He was chased by the Mafia who had suddenly appeared in a bar. He described them to us.

They wore dark glasses and had their hands inside their pockets as though holding guns. He suddenly realised he had been poisoned "very powerfully". He climbed up a drainpipe and slept on a hospital roof. He had lived on the streets with buskers and tramps in the Latin Quarter. He recovered. He met a lady advocate who allowed him to use her flat while she went to visit her boyfriend in Israel. From there he used the telephone incurring some £4,000 in telephone bills. He worked very hard from France to organise his affairs. A note of his phone calls to Miss Roscouet's secretary, Miss Julie Vibert, are as extraordinary as the matters we have just described.

We must remind ourselves that in his letter of the 25th November, (after seeing the husband on the 11th October, 16th October and 22nd November) and having glossed over the stay in Paris, Dr. Faiz said "all one can say is that all was not well whatever it was but it has settled down without any medication and I am quite happy to say that he is not a danger to himself or others and he will be safe to return to work in a couple of weeks time once the stresses of the case is behind him".

We shall comment on that statement in due course. Before so doing, we must for a moment look at the note of a telephone call on the 9th August taken by Miss Roscouet's secretary.

"Mr. G called - made following comments - he just rambled on and on and I shall list comments in order he made them as follows:-

- wife stolen property and children
- wife vindictive and narrow minded.
- wife and mother-in-law evil - plotted divorce for years.
- He phoned welfare and told them he would provide for children but not for wife whilst he was running up unnecessary bills.
- He gave her £100 just as all this started - she spent £95 on herself and £5 on children - sweets.
- Mother-in-law is cow, selfish, vindictive, nasty, powerful in high places and superstitious
- He is prepared to and wants to give money for children but wants it all to be accounted for to make sure wife isn't wasting it on herself.

- Mother-in-law is fascist, racist, using Mrs. G to get money and "a number one bloody witch".
- Mother-in-law "playing voo-doo-woo-doo with the children".
- He is waging war against all fascists in Jersey
- Lawyers in Hill Street are thieves
- "Legal system bloody stinks"
- we may not get any maintenance at all because he could be killed any minute by the Italians who are after him.
- Wife "is a slut, slut, slut and a child murderer".
- Unless wife lets him speak to her nicely and speak to children at bed time for two minutes or so she will get no money.
- When he was "on the run" and "on the streets" in Jersey he was told to "fuck off and die" by secret police.
- He "will have Fred Clarke's balls ripped off"
- "Slut, slut, slut, that's what she is the cow".
- "Polluted kids minds with fascist filth the skeaming(sic) cow".

There are six other such phone calls full of extraordinary statements such as (on the 16th August).

"Going to see owner of Europe to help him - doesn't trust him but he has power".

"He has magazine articles ready for publishing to knock Jersey down".

"He has friends in high places all over the world (then listed about ten countries) including the Irish heavies who would bomb Jersey if he said so.

- Concentration camps will be back in nine years time.

- "If anyone tries to stop me I will KILL (shouted) 'em".

And so on. The husband could not remember saying some of the words that he is alleged to have spoken but to us it is inconceivable that Miss Vibert reporting telephone calls to her employer (and no doubt appreciating that what was said could have serious consequences) would have fabricated any of the evidence. There is no logical reason for this and, we accept them (despite the husband's strong denials of some of these events). Strangely, some of the more fanciful he still regards as true. He was chased through Paris by members of the Underworld, he did meet this very powerful fascist (and he told us that the fascists are "moving up" in France), there was an attempt on his life.

As we have said the husband told us that he has spent some £4,000 on telephone calls from France. The number of people telephoned, from what we have heard in the witness box, must have been considerable. One of those that he phoned was his sister who he told us was totally unsympathetic and "did not give a damn".

We also saw in the witness box the husband's elderly mother and father. Their arrival in Jersey had occurred just after the ouster proceedings. The husband had met them at the Airport in a taxi. We were initially impressed by both parents. We accept in any event that they had never seen their son strike anyone and that he was not physically violent. They were understandably protective of their son and wary of the wife's mother.

It was surprising that the husband's father was recalled (with our permission) the day after he had given evidence. We will say no more than that we do not believe that much of what he then told us was true. This was, in our view, a sorry episode that did no credit to him at all.

When he returned to Jersey he was able to see the children sometimes with the wife's consent, sometimes not. On one occasion he sent her £100 of red roses. He has swum with the children and the wife at Fort Regent. Once when it was raining he got into the car and insisted on being given a lift. He remained in the car for three or four minutes. The wife told us that E _ jumped out of the car in fright. Eventually the husband was prevailed upon to leave.

The wife agreed with the Court that the children and the father need to see one another. The wife complained of problems when the husband returned late with the children. In this regard, we have a certain sympathy with the husband who does not have a driving licence and has to rely upon public transport.

We have noted that there is a consensus of opinion that the husband is not (or has not yet been) physically violent. What of his mental cruelty? We have noted (and we accept it) that he sometimes followed the wife around the house screaming into her face questions about her Christian beliefs and her satanic learnings. Did this affect the wife? When the husband admitted that one night when a "pop group" was playing in concert on television he kept his wife, the lodger and the children awake from 1 a.m. to 5 a.m. - his feelings expressed to us were that because he was enjoying himself, he wanted others in the house to enjoy themselves too; when he promised his mother-in-law £1,000 to enable her to purchase a replacement artificial glass eye and then failed to pay and the wife paid the money (it has been retained) he accused the wife and mother-in-law of "conspiring to syphon off his savings". It was the husband who said, with some feeling, "I'd like to come back, give her flowers every day and never hurt her again". (our underlining).

Dr. Michael McBride has treated the wife since 1984 although she had been a patient of his practice for many years earlier. When he saw her in 24th April, 1990, she was nervous, tearful and anxious. He would have recommended anti-depressants but did not, as she was still breastfeeding.

On the 22nd June his partner Dr. Bellamy made this entry -
"Husband is behaving strangely. Thinks he is God. Not at work.
Music at night. Teenage parties. Banned from Club. End of tether."

On the 19th September when Dr. McBride saw her she was tearful and distraught over her marital problems.

Dr. McBride was surprised when he saw the wife on the 22nd November at how well she was, having recovered from her anxiety state. She was working part-time and studying for exams.

He was quite adamant that if the husband returned to the flat (let alone the main house) she would be afraid for her health and he had not the slightest doubt that she would leave home with the children if that event occurred.

He was not concerned about J breastfeeding until three years old and felt that the wife's vegetarianism was not a health problem.

Even Dr. Faiz qualified his initial written prognosis from the witness box. He now felt that it would be safer for all sides if the husband stayed apart and better if the movement back was gradual. He did say that if the husband were to agree to continue to visit him the stage could be reached where the husband gained insight into his problem. It is a treatable condition but like so many of these illnesses it requires the agreement of the patient to consent to treatment as a first step to that treatment. Dr. Faiz very strongly advised that the husband needed help.

Even if we had not heard Dr. Faiz we would not have been able to accede to the detailed terms set out in the open letter of the 26th November, and which Miss Roscouet on behalf of her client rejected.

We do not believe that the husband would, in any event remain in the flat. The suggestion was that he would have access to the main house to "bathe the children and put them to bed" and have access to the property "to maintain and upkeep it". The children would, in the terms of the letter come and go as they wished. This is, in our view, a recipe for disaster. The husband gave us no doubt when this was put to him that he would never regard the flat as his only domain; the wife's re-action was of fear. She broke down. "It would be intolerable, absolutely intolerable", she said. We agree. Mr. O'Connell said that the husband could live in a house, as things stood, thirty yards away from the matrimonial house and what then was the difference. We consider that the difference is very marked. We

are not, from his behaviour in Court, satisfied that the husband is in a normal state of mind; we think he is still under enormous pressure. Whether he is still in the manic phase we do not know. We are not psychiatrists. We do ~~not~~ know that, in our view, he has been seriously mentally ill and whether his actions were intended or not, the consequences on his wife's health and, to a certain extent on the children's was obvious.

The injunctions, however, are too wide.

We substitute the interim injunction (a) contained in the said Order of Justice with an interim injunction in the following terms:-

Restraining the defendant from entering or re-entering the matrimonial home, assaulting, molesting, telephoning, contacting or otherwise interfering with the plaintiff and the said children save that -

- (i) The defendant may telephone the matrimonial home for the sole purpose of making reasonable arrangements to have access to the children from time to time and -
- (ii) The defendant may attend at the matrimonial home from time to time at the express invitation of the plaintiff for the purpose of exercising reasonable access to the said children.

These injunctions may, of course, be varied. We hope that the husband (who clearly loves his children) will, for their sakes, exercise restraint at all times until the Petition for Divorce now before this Court has been adjudicated upon.

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