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[Fribance v. Fribance]

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Commentary

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MATRIMONIAL HOME—UNEQUAL CONTRIBUTION—DIVORCE—DETERMINATION OF INTEREST OF H. AND W.—In the recent English case of *Fribance v. Fribance*[1] the facts were that H. and W. married in 1933. They became tenants of a house in 1940, at which time they had two children. H. then joined the R.A.F. The only money sent to his family was the compulsory allotment. Later, an additional family allowance was added to his pay. H. wrote to W. stating that in order to build up a family savings account, he would keep the new allowance and send home only the compulsory payment. W. agreed; she was to go to work, feed clothe, and house the family from her own income. When, in 1946, H. returned, he had saved £260. He began turning the bulk of this over to W., who continued working. In 1950 H. purchased the leasehold in his own name. W. only contributed £20. In 1952 W. obtained a divorce. She made application under sec. 17 of The Married Women's Property Act, 1882,[2]. The Registrar held that W.'s interest in the leasehold was limited to the £20 that she had contributed personally. It was held on appeal, however, that each was entitled to a one-half interest. The Court of Appeal stated that the conduct of the parties showed that their spendings and savings were for common family benefits.

It was argued that W. would have to prove a legal contract to succeed, and that if no contract was established, the court must fall back upon the "savings from housekeeping" case of *Blackwell v. Blackwell.*[3] In discussion of this point Denning L.J. said:

> I do not think that line of argument is valid today. A wife is not to be put to the proof of a contract or gift as if she were a stranger. Romer L.J. made that clear in *Rimmer v. Rimmer* when he said that "cases between husband and wife ought not to be governed by the same strict considerations, both at law and in equity, as are commonly applied to the ascertainment of the respective rights of strangers". I fully agree with that observation and I think it is the correct way of approaching these cases at the present day.[4]

Denning L.J. applied *Rimmer v. Rimmer*[5] as follows:

> I put, therefore, the question of contract, gift or trust on one side, and apply the law as laid down in *Rimmer v. Rimmer, supra,* and *Cobb v. Cobb,* (1955) 1 W.L.R. 731; (1955) 2 All E.R. 696, which I take to be this: If it is clear that the property . . . was intended to belong to the one or other absolutely . . . or that they intended to hold it on definite shares, . . . then effect must be given to their intention . . .
>
> In many cases, however, the intention of the parties is not clear for the simple reason that they never formed an intention: so the court has to attribute an intention to them. This is particularly the case with the family assets, by which I mean the things intended to be a continuing provision

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* Mr. Thompson, a graduate of the Faculty of Law, University of Toronto, is in the third year at Osgoode Hall Law School.

[1] (1957) 1 W.L.R. 384.

[2] See The Married Women's Property Act, R.S.O. 1950, c. 223, s. 12 (2).

[3] (1943) 2 All E.R. 579.

[4] See footnote 1 *ante* at p. 387.

[5] (1953) 1 Q.B. 63.

> for them during their joint lives, such as the matrimonial home and the furniture in it. When these are acquired by their joint efforts during the marriage, the parties do not give a thought to future separation. . . . So long as they are living together, it does not matter which of them does the saving and which does the paying, or which of them goes out to work or which looks after the home, so long as the things they buy are used for their joint benefit.[6]

In *Blackwell*, it was held that W.'s savings from a housekeeping allowance did not give her an interest in the bank balance thereby amassed. Goddard L.J., there, said that "there is no legal right in a wife to retain savings made out of housekeeping money. Even if there has been an arrangement between the husband and wife with regard to those savings, I am far from saying that this sort of domestic arrangement can necessarily result in a legal contract."[7]

The point of the *Fribance* case is that where a husband and wife both contribute, say, to the purchase of the matrimonial home, the court will not determine their respective shares on a strict accounting, but will apply an equitable principle of equal division.

GEORGE TAYLOR *