29.7.97

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. D 15 of 1994

BETWEEN: Edward Earl Johns **PETITIONER**

AND: France Levethe Johns **RESPONDENT**

For the Petitioner - Mr. A. Steve McField
For the Respondent - Mr. Norman Hill Q.C. & Mr. Graham Hampson

Before Harre CJ

JUDGMENT

Since this matter was last before me all sums due under the two court orders which I am about to describe have been paid and an inhibition on the former matrimonial home pending that event has been removed. Payment followed a suspended order for committal which I made against the petitioner on 29th November 1996. It remains necessary for me to give a ruling on outstanding summonses. To that end I must first go, as briefly as I am able into the long and unhappy history of the matrimonial p[roceedings of which these form part.

The grounds of divorce were proved on 1st December 1994 when the respondent wife's cross petition was proved, with the normal order for ancillary matters to be dealt with in Chambers.

An interim order was made on 19th September 1994 for the payment of interim maintenance of CI$1,200 per month to the wife.

Each party has alleged material non disclosure of assets by the other. An affidavit by the wife exhibiting documentation in support of her allegation was sworn on 30th January 1995. A settlement by consent ("the first consent order") was arrived at the next day. At that time the husband was represented by the second attorney instructed by him and leading counsel. The terms of the first consent order included a provision for payment of a capital sum of CI$175,000 or US$210,000 whereupon the wife would transfer her joint share of the matrimonial home to the husband. The husband requested time to pay this, with the interim payments continuing in the mean time.

It is the wife's case that the husband has been deliberately evading payment on this and a subsequent consent order dated 5th December 1995 ("the second consent order").

On 19th October 1995 the wife issued a Notice of Motion for enforcement of the debt. The husband was finally served on 9th November. A few days before the matter was due to be heard on 29th November the husband caused a new writ to be issued in which he alleged that the first consent order had been extorted and obtained by improper and illegal pressure. A stay of enforcement of the first consent order was sought. On 29th November an undertaking was given and embodied in an Order that the writ action would be discontinued and the application for a stay was withdrawn.

On the following day, 30th November 1995 the motion to commit the husband was adjourned to 4th December in order that terms of a new arrangement might be arrived at if possible.

The second consent order was approved on 5th December. The judge's minute is quite clear. It reads as follows -

> "Draft consent order handed to Court - approved by Court. Matter adjourned to the 15th December 1995 for review of steps taken by the respondent to comply with further order by consent perfected today. Motion for committal adjourned to 9 a.m. 13.12.95 for review. Respondent bound over to return."

There was a further hearing as there contemplated on Friday 15th December. The husband nevertheless issued another summons on Monday 18th December seeking a variation of the first consent order, and alleging in support of this that the wife had not made a full and frank disclosure of her assets in her affidavit in support of her application for interim maintenance. This application to vary came before Smellie J on 4th January 1996 when he indicated that the time had come for that summons dated 18th December 1995 to go before another judge in view of the rulings and orders which he had already made. It was thus that the matter came before me. What I shall now deal with first is this application to vary. I am satisfied that I have jurisdiction to do so. In Range v. Range, (1988-9 CILR 437) in the Cayman Islands Court of Appeal, Zacca P, having considered the authorities from England p. 441 and Hong Kong said this -

> "In the Cayman Islands, however, s.21 of the Matrimonial Causes Law provides for the making of ancillary orders and

s.23 provides that:

> "Either spouse or the personal representatives of either spouse may make application for variation of any order made under section 21, and the Court, after hearing the parties, may make such variation."

No clean break principle can therefore be said to be established by the legislature and the Grand Court has jurisdiction to vary all ancillary orders. In our view, however, that jurisdiction ought to be sparingly exercised where the order itself appears to contemplate finality and is made by consent of the parties"

On 16th August 1996 the husband's new attorney - his fifth by that time - Mr. A. Steve McField appeared for the first time. His previous attorney had been given leave to come off the record for the husband, for reasons which he explained to me and which caused me considerable concern.

There are matters pertaining to this case which continue to do so but which are not for today. Mr. McField asked for an adjournment which was opposed and was refused. The hearing proceeded and was adjourned to 21st August to enable Mr. McField to file an affidavit as to the extent of his involvement in the case. He did so on the 20th August.

By this time I had before me an application for a stay of all further payments by the husband pending the determination of his application to vary; and a cross summons that the petitioner's summons dated 21st June 1996 which sought that the interim payments which he had made be set

against any order made against him for interest and capital be struck out or alternatively that the court exercise its inherent jurisdiction to dismiss the husbands' summons to vary the consent order.

I have reviewed the extensive affidavit evidence in this matter and in particular the events of December 1995 and the circumstances surrounding the withdrawal of Mr. Furniss and his leader, Mr. Howard Hamilton Q.C. on 6th August 1996. There was a subsequent exchange of correspondence between Mr. Hamilton and me dated respectively 28th September and 8th October 1996. There was an apparent misunderstanding in that what I was inviting was the explanation of Mr. Hamilton's position which he had offered, rather than the further legal submissions which he presented. I am in any event persuaded that the principles expressed by Zacca P in Range v. Range, to which I have referred, represent the law.

I made it very clear at the hearing on 16th August that I would not entertain a stay of payments due under the second consent order. Nevertheless no payment was made until after a suspended order for committal was made. I am entirely persuaded that, as alleged by the

respondent there has been a pattern of evasion of payment of the petitioner's obligations under Court Orders and that this is certainly not a case where the sparing exercise of the jurisdiction to vary should be invoked. The outstanding summonses by the husband are an abuse of the process of the court and are dismissed. There remains the question of costs. I am disposed to have regard to the whole pattern of this case since the first consent order in considering submissions on these.

29th July 1997

G.E. Harre
Chief Justice

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