

Privy Council Appeal No. 30 of 1999

**Sharon Otway (Personal representative of the Estate of
Thomas Otway deceased) and Sharon Otway**

Appellant

v.

Jean Gibbs

Respondent

FROM

THE COURT OF APPEAL OF GRENADA

REASONS FOR REPORT OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE

11th July 2000, Delivered the 25th October 2000

Present at the hearing:-

Lord Bingham of Cornhill

Lord Steyn

Lord Clyde

Lord Hobhouse of Woodborough

Lord Millett

[Delivered by Lord Millett]

On 27th February 1998 the Court of Appeal of Grenada and the West Indies Associated States granted the respondent Miss Jean Gibbs a declaration that she was entitled to one half of the sums held on deposit at the National Commercial Bank Limited and at Jonas Browne and Hubbards (“Hubbards”) in the name of the late Thomas Otway (“Dr. Otway”) deceased. The appellant, Sharon Otway, who is Dr. Otway’s only child and the personal representative of his estate, appealed to the Board. On 11th July 2000 their Lordships stated that they would humbly advise Her Majesty that the appeal be allowed, the judgment of the Court of Appeal set aside, and the case remitted to the trial judge to make such orders and directions as the circumstances might require. Their Lordships indicated that they would give their reasons later. This they now do.

The facts can be briefly stated as follows. Dr. Otway and Miss Gibbs lived together as man and wife for more than 16 years. Their relationship began in 1978. Dr. Otway was then married but separated with one child (Sharon). Miss Gibbs was married with a young child Natasha, known as "Natty", who was born in or about 1977. Miss Gibbs divorced her husband in 1981. By this time Dr. Otway had also divorced his wife. He treated Natty like a daughter.

Dr. Otway and Miss Gibbs both worked. They maintained a joint current account at National Commercial Bank into which they paid their earnings and out of which they paid household expenses. They bought a house at Belmont with their joint moneys and the assistance of a mortgage. Miss Gibbs paid the mortgage instalments out of her income. The house was held in their joint names and they lived there together.

In addition they each had property of their own. Dr. Otway owned two properties which he acquired before the relationship began. One was at Grande Anse, the other at Carriacou. The property at Grande Anse consisted of flats which were rented out. On his retirement from government service he received a lump sum of EC\$30,000. Miss Gibbs, who looked after his financial affairs, arranged for this to be paid into a deposit account in his sole name at the National Commercial Bank. When a policy on Dr. Otway's life matured she also paid the proceeds into this account. When the property at Carriacou was sold Miss Gibbs arranged for the proceeds to be paid into an account with Hubbards which she opened in Dr. Otway's sole name.

Dr. Otway and Miss Gibbs separated briefly in April 1993. They closed their joint bank account and each opened a separate account in its place. The separation lasted for only two weeks. Thereafter they resumed living together on the same basis as before, except that they kept their separate accounts into which they paid their own earnings.

Dr. Otway died intestate on 14th November 1995. Miss Otway obtained letters of administration to his estate. At his death he had two deposits with Hubbards totalling EC\$164,191.14 and interest and a deposit with National Commercial Bank in the sum of EC\$171,435.63. In

addition he had money in a deposit account with Barclays Bank which represented rent from the property at Grande Anse.

Miss Gibbs brought proceedings in the High Court of Grenada claiming a one half share in Dr. Otway's estate. Before the start of the trial the parties agreed that the house at Belmont and a jeep should be transferred to Miss Gibbs, and that she should relinquish any claim to the property at Grande Anse and the money at Barclays Bank. That left the moneys at Hubbards and National Commercial Bank as the subject- matter of dispute.

The parties never married. Dr. Otway did not leave a will. Grenada has no statute which allows the Court to make financial provision for the dependants of a deceased person. Miss Gibbs could not, therefore, base her claim on the 16 years of devotion which she had given to Dr. Otway, but was compelled to rely on such strict rights of property as she could establish in equity. The trial judge (Alleyne J.) accepted her as a witness of truth. He found that in September 1995, a mere three months before he died, as they were driving from Bathway, Dr. Otway told her:-

“that he would put the Grande Anse house in Sharon's name and give her a few thousand dollars; the house at Belmont would be for Natty, and ”we would live on the money.”

Miss Gibbs relied on this as evidencing a clear and present intention that she should have a one half interest in the money in the two deposit accounts. In a lucid and careful judgment to which their Lordships would pay tribute, the judge rejected her claim which, he said, was not a reasonable interpretation of the words Dr. Otway had used. He found that Dr. Otway's words did not evince a clear intention to vest a beneficial interest in the money in Miss Gibbs. At the most, he said, they meant that so long as they were together, and one might presume that he expected them to be together for the rest of their joint lives, they would together enjoy the benefits of the money. He accordingly dismissed the action.

The Court of Appeal reversed the trial judge. In an extempore judgment in which the other members of the Court concurred, Singh J.A. referred to a slightly different

version of the relevant conversation given by Miss Gibbs in cross-examination, in which the critical words were “we would live off the money we have”. He interpreted this as meaning that Miss Gibbs was entitled to a half share of whatever moneys Dr. Otway had up to the time of his death. In reaching this conclusion Singh J.A. said that he took into account all the circumstances of the case in relation to the parties’ dealings with each other, their respective contributions to the assets acquired during their relationship, and in particular Miss Gibbs’ evidence that she and Dr. Otway “shared everything, debts, information, assets, everything”.

The judge’s version of the relevant conversation was taken from Miss Gibbs’ evidence in chief. The full version recorded in the Notes of Evidence is as follows:-

“He said that we must really make arrangements to settle the house in Grande Anse on Sharon; that the house in Belmont is Natty’s. ... He said he would put the Grande Anse house in Sharon’s name and give her a few thousand dollars. The house at Belmont would be for Natty, and we would live on the money, as we would not be able to work as we had worked for the rest of our lives.”

In cross-examination she said that:-

“Our discussions always anticipated that I would have the Belmont property. He expressed the intention that it should go to Natasha, and Grande Anse should go to Sharon, and we would live off the money we had.”

She confirmed that Dr. Otway did not specifically say that a particular deposit should come to her. They spoke in general, and what he said was that “we both could live off the money”.

Their Lordships are satisfied that the trial judge was right to conclude that Dr. Otway’s words were not intended to have an immediate dispositive effect. Whichever version of the conversation is taken (and their Lordships regard the differences as without significance), it is clear that Dr. Otway was speaking in the future tense. “We really must make arrangements ... I will put the Grande Anse house in Sharon’s name and give her a few thousand dollars. ... The

house at Belmont will be for Natty”; or Belmont “will go to Natty, and Grande Anse will go to Sharon”. These are not words of present gift.

But it does not rest on syntax alone. Dr. Otway was expressing his intention to settle Grande Anse on Sharon and give her “a few thousand dollars”. It was something that they “must make arrangements” to do in the future. It was not something that he was carrying into effect there and then. The same even more obviously applies to the gift of “a few thousand dollars”. He also talked about the house at Belmont, which belonged to both of them and where they lived. Miss Gibbs said, as one would expect, that their discussions always envisaged that she should have the Belmont property; yet he apparently said that it “will be for Natty”. They were clearly not contemplating making her an immediate gift of the house, and it is most unlikely that they had any thought of giving her the house while either of them was still alive. They were discussing the future, and while Dr. Otway was evidently expressing his intention to make an *inter vivos* gift of Grande Anse to Sharon, he was probably thinking in terms of a testamentary gift when it came to Belmont. His evident intention was that Miss Gibbs (assuming that she survived him) should have Belmont for the rest of her life and that it should then be left to Natty.

That is the context in which Dr. Otway’s words “we can live off the money [we have]” fall to be considered. In the context in which they were spoken, their meaning is tolerably plain. Dr. Otway had just told Miss Gibbs that he intended making an *inter vivos* gift of Grande Anse to Sharon. This was an income producing property, and it would be natural for him to reassure Miss Gibbs that they would still have enough to live on without the income from the flats even when they were no longer able to work. Their Lordships consider it impossible to read more into the words than this. They are satisfied that no significance should be attached to expressions such as “our money” or “the money we have”. These do not refer to ownership and do not evince an intention to change existing rights of property. As Lord Bridge of Harwich explained in *Lloyds Bank plac v. Rosset* [1991] 1 A.C. 107 at p. 127:-

“Spouses living in amity will not normally think it necessary to formulate or define their respective interests in property in any precise way. The expectation of the parties to every happy marriage is that they will share the practical benefits of occupying the matrimonial home whoever owns it. But this is something quite distinct from sharing the beneficial interest in the property asset which the matrimonial home represents.”

As with marriage, so with stable relationships outside marriage. Cohabiting couples, like married couples, speak of “our home” and “our money” meaning “the home where we live” and “the money we live on”, without distinguishing between what belongs to one or the other or both.

With respect their Lordships are unable to accept the Court of Appeal’s view that Dr. Otway’s words should be interpreted as words of present gift in the context of “all the circumstances of the case in relation to [the parties’] dealings with each other, and their respective contributions to the assets acquired during their relationship, ...”. In fact the circumstances point the other way. Dr. Otway and Miss Gibbs were scrupulous in distinguishing between their separate property and their joint property. Belmont, which was acquired during their relationship and to the cost of which both contributed, was put in their joint names and was clearly jointly owned. But properties which Dr. Otway had acquired before the relationship began were kept in his name, and when they were realised the proceeds were paid into an account in his sole name. Such proceeds were “their money” in the sense that they were available for both to live on; but they belonged in equity as well as at law to Dr. Otway alone.

Singh J.A. said that the applicable law was “more or less settled”. He did not elaborate further, but their Lordships are inclined to think that he had in mind the many authorities on the ownership of property acquired during marriage or co-habitation. Such cases, however, are not in point, for the assets remaining in dispute all represent assets which belonged to Dr. Otway before his relationship with Miss Gibbs began. Unless he gave them to Miss Gibbs

during his lifetime they remained his property when he died.

It was for these reasons that, shortly after the hearing, their Lordships announced that they would allow the appeal. Their Lordships were told that, after she had succeeded in the Court of Appeal, Miss Gibbs was allowed to draw on the disputed accounts. It is not clear to their Lordships how this occurred without the appellant's consent, seeing that the accounts were in Dr. Otway's name, and that while Miss Gibbs had for the moment established her claim to the beneficial interest in the money, nothing in the judgment of the Court of Appeal divested the appellant of the legal right as Dr. Otway's personal representative to operate the accounts. Accordingly, instead of simply advising that the appeal ought to be allowed and the action dismissed, their Lordships thought it right to advise that the case should be remitted to the trial judge to direct whatever accounts and enquiries might be necessary and to make such orders as he might consider appropriate. Miss Gibbs must bear the costs of the proceedings before the Board and below.

