CASE AND COMMENT

HUSBAND AND WIFE — HUSBAND'S MOTHER SHARING HOME — QUARRELS BETWEEN WIFE AND MOTHER — WIFE'S RIGHT TO MAINTENANCE. — Mother-in-law stories are usually exaggerated and during the present housing shortage have almost gone out of fashion. Many a husband unable to find other accommodation for his family has moved in with his or his wife's parents, not too content perhaps, but still relieved to have a roof over his head and a place where he can enjoy a modicum of contentment with his paper and the radio (albeit the first may require reshuffling before reading, and the second trills a soprano aria when he would prefer the hockey game). But unless the various "in-laws" can get along, even this bliss will be short lived, and the change of atmosphere may prove expensive.

What then is the position of a husband in such circumstances, whose wife, claiming she and her mother-in-law cannot agree, demands a home of her own and in default of its appearance moves out and asks for maintenance from her husband?

The recent Manitoba case of *H* v. *H.* (unreported[1]) may be of interest. The parties were married in October 1943. The wife had agreed prior to the wedding ceremony that the husband's parents would share the matrimonial home, a dwelling house owned by the husband and in which his parents were in fact living at the time. The parents of both parties to the marriage had known each other for many years and there was no reason to expect that this arrangement would be an unhappy one. Mother and daughter-in-law kept house together, sharing the household duties and expenses, and their relations were amicable until some time towards the end of 1944. The wife complained that her mother-in-law then accused her of stealing certain canned goods and taking them to the home of her own parents and that of her sister.

The wife further complained that as time went on she was accused of stealing a wider variety of articles; nor did the birth of a child in October 1945 serve to improve relations between the two women. Finally in December 1945 the wife left, taking the baby with her, and returned to her parents, giving as her reason these repeated accusations and also the fact that her husband not only had failed to offer her comfort and support, but that when she appealed to him he made fresh accusations relating to her custody of the "house money" which he gave her.

[1] Argued and decided Feb. 3rd, 1947.

During the spring of 1946 the wife approached her husband on a number of occasions asking him to provide a home for them away from his parents, but he refused and, from the time the wife left, the husband contributed nothing for the support of herself or their child.

The wife applied in the County Court under The Wives' and Children's Maintenance and Protection Act for maintenance for herself and the child, charging her husband with (constructive) desertion and non-support. At the trial she expressed her willingness to rejoin her husband provided his parents did not share the home. For the husband, the possibility of establishing separate accommodations for the two families in the house was urged and evidence was given by the mother-in-law to show that she and her husband had for some time been looking for other accommodation, but that this was not obtainable.

Holding that the wife was, in the circumstances, justified in leaving, the County Court Judge made an order and the husband appealed. In the Court of Appeal counsel for the husband pointed out that the wife had agreed from the start to share the home with her mother-in-law, but the court considered the wife was not thereby estopped from seeking relief and, finding nothing in the evidence to disentitle the wife to support, dismissed the appeal.

H. v. *H.* was practically on all fours with *Millichamp* v. *Millichamp*,[2] where the couple had agreed to live with the husband's mother. In that case the wife left owing to the conduct of her mother-in-law but the husband declined to follow her and alleged that he had no other home to provide. The justices made an order against him and the husband's appeal was dismissed by Lord Merrivale P. and Langton J.

Generally, if a husband offers his wife a suitable home in the place where he wants to live and there is no question of his doing so to spite her, the wife is under the necessity of sharing the home with him and, if she refuses, is guilty of desertion.[3]

Each case must however stand on its own facts; clearly the wife is not obliged to live wherever and in whatever circumstances the husband dictates. On the particular point discussed in this note a nice statement appears in C.J. (Sec) Vol. 42, at p. 205:

> The wife may be decreed separate maintenance. . . . where she is justified in leaving the home provided by her husband. . . on account

[2] (1931), 146 L.T. 96.

[3] *Mansey* v. *Mansey*, [1940] 2 A.E.R. 424; [1940] P. 139; *Girdner* v. *Girdner*, 230 S.W. 382, at p. 386.

> of its being a home in which she is subject to abuse or ill treatment and unwarranted interference from the husband's relatives or other members of the household.[4]

Canadian courts have taken the same attitude. In *Goodfriend* v. *Goodfriend* [5] a farmer became paralysed and his wife moved to town with the intention of operating a boarding house, expecting her husband to join her. Instead, he moved to his parents' home, where his wife refused to live since she and her sister-in-law could not agree. In granting maintenance Middleton J. held that the wife had done nothing to disentitle herself to relief but that the husband's conduct in taking up residence in a place where his wife could not be expected to live amounted to desertion.

In *Weir* v. *Weir*,[6] where a woman married a widower whose children disapproved of the marriage and were abusive to their foster mother, maintenance was decreed when the wife refused to live with the husband's family and the husband declined to live elsewhere.

Vancoughnet C. considered at page 568:

> If the Defendant cannot protect her in his own house, she is justified in keeping out of it and compelling the defendant to make her a proper allowance to support her elsewhere. She is willing to go to him. It is his duty to receive her and to maintain her in his house free from assault, and from the insults of others, even though these be his own children.

In *Bird* v. *Bird* [7] the Ontario court carried the proposition a little further, holding that the husband is justified in leaving his wife when the latter persists in living with an adult daughter of the marriage whose conduct was offensive to the husband, her father.

From the foregoing it seems clear that the presence of domineering or otherwise abusive "in-laws" in her home justifies the wife in moving out and requiring her husband to provide another home where she will be free from these annoyances.

The wife, however, must not be unreasonable and if she herself has been guilty of lack of restraint and has made no effort to live amicably with her mother-in-law she is not entitled to assistance.[8] The mere fact that the husband proposes a home in his parents' home is not of itself a ground for maintenance.[9]

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[4] *Brewer* v. *Brewer*, 113 N.W. 161; *Holloway* v. *Holloway*, 27 S.E. (2nd) 457; *Blew* v. *Blew*, 282 N. W. 361.

[5] [1912], 1 D.L.R. 368 and (1912), 21 O.W.R. 637.

[6] (1864), 10 Gr. Ch. 565.

[7] 52 O.L.R. 1.

[8] *Hunter* v. *Hunter* 10 N.B.R. 593.

[9] *Mansey* v. *Mansey* (*supra*).

Sir Boyd Merriman P. in *Grubb* v. *Grubb* [10] pointed out that *Millichamp* v. *Millichamp* laid down no broad proposition that a man is not entitled to prefer his mother to his wife and the *Millichamp* case was distinguished in *Jackson* v. *Jackson.*[11] There the parties took up residence with the wife's mother and the husband, being unhappy in this arrangement, rented a house next door to his own mother. After a short period of residence in her new home, the wife left complaining that her mother-in-law had sought to dominate her. Her application for maintenance was approved by the justices who believed they were following the *Millichamp* case. On appeal Lord Merrivale P. did not interfere with the justices' finding of fact but considered at page 407:

> It could not be said that taking the house next the mother's was an abuse of the husband's marital duties, despite the irritation it was likely to cause. I am not able to say that the taking of the house next his mother, if he did put his wife under the mother's domination, was necessarily a wrong.

It may be interesting to speculate as to the application of this case to "shared accommodation" situations. Would this be considered analogous to "living next door" to the mother-in-law? In the instant Manitoba case (*H.* v. *H*) and in *Holloway* v. *Holloway* [12] the courts were not impressed by the husband's proposal to set up a separate establishment for himself and his wife in his parents' home, but of course the position may be different in the case of a house converted into a duplex or otherwise altered to cater for more than one family.

Assuming that the husband has been influenced in his decision (to decline to leave his parents' home) by his mother, has his wife a right of action against her mother-in-law for alienation of affections? Since *Applebaum* v. *Gilchrist* [13] was decided it can hardly be doubted that either spouse may sue for loss of consortium, but the relationship of parent and child (which continues regardless of the age of the child) must be considered. The only Canadian decision in point appears to be *Osborne* v. *Clark* [14] where the husband unsuccessfully sued his wife's parents when the wife declined to leave them and join him in their own home. Middleton J. pointed out at page 601 that while the relationship of parent and child was subordinate to that of

[10] (1934), 150 L.T. 420.
[11] (1932), 146 L.T. 406.
[12] Footnote 4 *ante.*
[13] [1946] O.L.R. 695.
[14] (1919), 45 O.L.R. 594; the later case of *McBay* v. *Merritt,* [1936] 4 D.L.R. 319, is not very helpful.

husband and wife "parents have still the right to guide, counsel and protect, but the husband is the true guardian of his wife; and under all normal circumstances parents have no right to interfere between the husband and his wife; but when what is done is done honestly and reasonably for the daughter's welfare... no action will lie. I do not mean by this that the wife's parents may entice her away from her husband, even if they think that this is in the wife's interest." At page 604 he considered that the suggested cause of action would not lie, at any rate unless it was shown that the wife was detained against her will.

The situation has been the subject of much litigation in the United States,[15] where the position appears to be that in the absence of malice the parents are not liable for offering counsel or advice to a son if this is given in good faith for the welfare of the son and without any desire to separate him from his wife or to deprive the latter of his affection or society; and apparently this immunity does not depend upon a request for advice from the son, nor upon the soundness of the parents' judgment as to the necessities of the situation.

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REPORTING OF DECISIONS BY ADMINISTRATVIE AND QUASI-JUDICIAL TRIBUNALS.—Lawyers, industrial relations men and union officers are finding it increasingly difficult to advise their clients or employers intelligently on the legal and quasi-legal aspects of collective bargaining, as a result of a lack of published decisions by the various Labour Relations Boards. To the best of the writer's knowledge, only the decisions of the Ontario Labour Relations Board and the National Wartime Labour Relations Board are published and made available for study.[1] Yet in the year ending March 31st, 1946, the provincial and national Boards (under P.C. 1003) dealt with a total of 1534 applications for certification including 39 appeals to the National Board.[2] These figures do not include other applications, such as applications for leave to prosecute, for intervention of conciliation services or for

[15] *Cf. Applebaum* v. *Gilchrist* (*supra*), where at page 705 Robertson C.J.O. said:

"It is of assistance in the consideration of a question where social relations are of fundamental importance to see what the law is in the United States."

[1] Labour Gazette, De Boo Dominion of Canada Labour Service and CCH Labour Law Reporter.

[2] Dominion of Canada, Report of the Department of Labour for the fiscal year ending March 31, 1946, p. 56.

establishing arbitration procedure. In the previous year, for instance, a total of 2638 cases of all types came before the same Boards.[3] In addition it should be remembered that in Saskatchewan, Alberta and Quebec there are Labour Relations Boards functioning under provincial collective bargaining legislation and a substantial number of decisions also issue from these tribunals, particularly in Quebec.

Undoubtedly many, if not most of the cases dealt with are disposed of by means of oral judgments or purely administrative orders, but if the experience in Ontario is any criterion a considerable proportion of these cases were contested on factual or legal grounds and, therefore, involved adjudication of some very important and significant rights of employers, employees and unions.[4]

Publication of the reasons for decision in labour relations cases is perhaps of greater urgency than in any other field of administrative law. The reporting of such decisions for perusal and study by interested parties is, of course, the best guarantee that the decisions will be made judicially and fairly, and consistently from case to case. But in labour relations there is the additional fact that the introduction of special laws and procedures coincides with a period of accelerated evolution in labour-management relations, quite apart from their purely legal aspects. This evolution can be controlled and guided to a large extent along orderly channels, by logical and intelligent administration of labour laws. Such administration should receive at least the same publicity as the administration of general law.

Presumably, the commercial agencies engaged in reporting the available decisions would be glad to extend theirs services but are unable to do so until the provincial authorities in question release such decisions in reportable form. This may require some pressure from interested parties, owing to an apparently mistaken concept of the role of such tribunals in certain provinces. In at least one province, for instance, the hearings of the Labour Relations Board are closed to all but the parties immediately concerned.

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[3] Dominion of Canada, Report of the Department of Labour for the fiscal year ending March 31, 1945, p. 50.

[4] In Ontario, for instance, 60 of the Ontario Labour Relations Board's decisions were reported from its inception in March 1944 to the end of March 1946. Since that date 30 odd more have been reported.

CRIMINAL LAW — INSANITY AND THE ADMISSIBILITY OF CONFESSIONS.—An interesting point, on which there is little authority, arose in the High Court of Australia in *Sinclair v. The King*.[1] In 1935 a taxi driver was shot by a passenger whom he had picked up. For some months it could not be discovered who had committed the crime or why it was done. Sinclair, a youth of seventeen years of age, confessed to a friend that he had shot the taxi driver. The police interviewed the prisoner and he wrote a "florid and affected narrative, its style suggesting that the writer was less concerned with the predicament in which he stood or the human life that had been destroyed than with employing the cliches and fustian of the crime and horror story. There is much in the document itself to indicate that it is the product of a mind whose world is unreal and whose responses to a situation are histrionic and dramatic and not those of sensible behaviour." This document was a complete confession of the crime. The prisoner then went with the police over the route of the taxicab and orally confessed in great detail each step of the crime. The prisoner was charged with murder, but was certified as insane and was confined as a lunatic for about ten years. In 1946, however, as a result of agitation by persons interested in the prisoner, a further inquiry into the prisoner's mental condition was held and it was found by a jury that he was fit to plead: he was accordingly placed on trial. The trial judge admitted the confessional statements, after evidence had been given on the *voir dire* by a distinguished psychiatrist that the accused suffered from schizophrenia and had a tendency to confuse fact and fantasy. The confessions were corroborated by other evidence: the story was remarkably accurate and fitted in with all the other detailed facts which could be proved. But apart from the confessions there was not sufficient evidence to secure a conviction. The prisoner was convicted, the jury deciding that he was not insane at the time of the murder. On appeal to the High Court it was argued that, although the prisoner was found to be sane at the time of the murder, his insanity was such that the confessions should not have been admitted. A victory on this point would have freed the prisoner both from detention in an asylum or imprisonment (there was no risk of a death sentence owing to the age of the prisoner at the time of the crime).

The argument was that to be *voluntary*, a confession must be the expression of a responsible and intelligent mind: otherwise

[1] [1947] Argus L.R. 37.

there was a risk that the jury might rely upon it although it did not represent the true mind of the person who made it. Confessions induced by promises or by torture (it was argued) are rejected not because they are untrue, but because the circumstances showed that they might be untrue, and the same logic should apply to a confession made by a person suffering from schizophrenia.

There was naturally little authority upon this point, as in most cases where there is clear evidence of insanity, the jury takes a merciful view of the defence. Hence it is rare that a prisoner found to be sane pleads insanity to render a confession inadmissible.

The High Court unanimously held that the confessions were admissible and that the question of their cogency was for the jury. "Self-dramatisation and exaggeration do not amount to testimonial incapacity" (*per* Latham C.J.). Dixon J. thought that, in the absence of authority, there were three possible analogies — the competence of a witness to testify, the making in court of a formal plea of guilty and the rules governing voluntary confessions — but he felt that they were not sufficiently close to afford any real guidance. "To whichever of these analogies we go for assistance, we must recognise that at bottom the choice is between the course of placing before the jury material which bears upon the case, leaving them to judge of its reliability and probative value, and the course of withholding it from them on the ground there is too much danger in their taking into consideration matter which by reason of its source or provenance is *prima facie* dubious and untrustworthy." Since *R.* v. *Hill* (1851), 2 Den. 254, an insane person is not rejected as a witness unless his form of derangement is such as to affect his testimony on the particular facts to which he is to depose. But no very rigid test exists and much must be left to the observation of the trial judge. Turning to authorities in the United States, Dixon J. found that the general rule is that an insane person is not necessarily incompetent to make a confession. In Alberta, a confession has been rejected on the ground of hypnotism (*R.* v. *Booker*, [1928] 4 D.L.R. 795) and Best, while he would admit the confession of an intoxicated person, would reject one made by talking in sleep (Evidence, 12th ed., p. 460).

The tendency recently is against the exclusion of relevant evidence.

Dixon J. thought that the mental condition of the prisoner did no more than make it possible that the cause of the confes-

sion lay in his schizophrenia. It would be inconvenient and undesirable to exclude a confession in these circumstances, though of course it would need checking at every point. The prisoner's insanity was not such that the trial judge should have rejected the confession out of hand.

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INSANITY AS A DEFENCE

Another class, branching out into almost infinite subdivisions, under which, indeed, the former, and every case of insanity may be classed, is, where the delusions are not of that frightful character — but infinitely various, and often extremely *circumscribed;* yet where imagination (*within the bounds of the malady*) still holds the most uncontrollable dominion over reality and fact: *and these are the cases which frequently mock the wisdom of the wisest in judicial trials;* because such persons often reason with a subtlety which puts in the shade the ordinary conceptions of mankind; their conclusions are just, and frequently profound; but the *premises from which they reason* WHEN WITHIN THE RANGE OF THE MALADY, are uniformly false: — not false from any defect of knowledge or judgment; but, because a delusive image, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.

He alone can be so emancipated, whose disease (call it what you will) consists, not merely in seeing with a prejudiced eye, or with odd and absurd particularities, differing, in many respects, from the contemplations of sober sense, upon the actual existence of things; but, *he only* whose whole reasoning and corresponding conduct, though governed by the ordinary dictates of reason, proceed upon something which has no foundation or existence.

Gentlemen, it has pleased God so to visit the unhappy man before you; — to shake his reason in its citadel; — to cause him to build up as realities, the most impossible phantoms of the mind, and to be impelled by them as motives *irresistible:* the whole fabric being nothing but the unhappy vision of his disease — existing nowhere else — having no foundation whatsoever in the very nature of things. (From the speech of Thomas Erskine in defence of Hadfield)