9th January, 1987.

5.

COURT OF APPEAL

Before: J M Chadwick Esq., Q.C. (President)
D C Calcutt Esq., Q.C., and
R D Harman Esq., Q.C.

Between T Appellant
And H Respondent

Appeal by the Appellant from the Judgment of the Royal Court (Matrimonial Causes Division) of the 21st January, 1986

Advocate G R Boxall for the Appellant
Advocate J A Clyde-Smith for the Respondent

PRESIDENT: This is an appeal by T against a judgment of the Matrimonial Division of the Royal Court given on the 21st January, 1986.

The parties were formerly married and, although that marriage has been dissolved by a decree of divorce, I shall, for convenience, describe them respectively as 'the husband' and 'the wife'.

The marriage was solemnised on the 26th May, 1966. There are three children of the marriage, namely, A , born in March, 1967, C , born in July, 1972, and H , born in February, 1975. A is now over nineteen years of age and is no longer in full-time education. The other two children are respectively fourteen and eleven years old and are still at school. All three children live with their mother in St Peter.

On the petition of the wife, a decree nisi of divorce was pronounced by the Royal Court on the 28th October, 1981. On the 22nd February, 1982, it was ordered, by consent, that the three children remain in the joint legal custody of the husband and the wife but under the care and control of the wife alone. Access was given to the husband. That same order went on to make financial provision, although not be consent, for the wife and the children. The relevant terms were these:

Paragraph 2 - that the respondent do pay or cause to be paid to the petitioner, as from the date of this order, (a) the sum of £110 per month towards the support of the petitioner during their joint lives or until further order; and (b) the sum of £52 per month

towards the maintenance of each of the said children until each of them has reached the age of sixteen years or ceases to be in full-time education, whichever is the later, or until further order; (c) that the respondent do pay school fees and medical expenses, other than dental expenses, incurred in respect of the said children; (d) that the respondent do pay or cause to be paid to the petitioner a lump sum of £9,000 made up as to £3,000 for each of the petitioner's three shares in the company known as 'Prince of Wales Tavern Limited' and payable as to £5,000 within one month of the date of this order, and the balance by two equal instalments of £2,000 on 31st December, 1982, and 31st December, 1983; (e) that the property in St Peter, remain in the joint ownership of the petitioner and the respondent until the happening of any of the following events:

(1) the youngest child attaining the age of sixteen years or ceasing full-time education, whichever is the later;

(2) the petitioner ceasing to occupy the property as her usual place of residence; and

(3) the remarriage of the petitioner;

thereafter, the said property shall be sold and the nett proceeds divided between the petitioner and the respondent in the proportion of 2:3 respectively.

Paragraph 6 - that the respondent do pay the interest and principal due on the mortgages charged against the said property, together with the rates, insurances and essential repairs thereto.

It was also ordered by paragraph 7 that the ownership of a Mini Metro car should vest in the wife and, by paragraph 9, that the husband should pay the wife's costs.

The decree of divorce was made absolute on the 2nd March, 1982. On the 4th December, 1984, the wife applied to the Court of a variation of the order dated 22nd February, 1982. In particular, she asked that the maintenance to be paid under paragraphs 2 and 3 of the order which I have just read should be increased. That application was heard by the Greffier Substitute on the 4th June, 1985. By that date, A was, of course, over the age of sixteen and, as she had ceased full-time education, the husband was no longer liable to make periodic payments towards her maintenance. The Greffier Substitute increased the maintenance payable to the wife up to £169 per month and doubled the amount payable in respect of each of C and H to £104 per month. He varied paragraph 3 of the 1982 order by requiring the husband to pay dental expenses as well as school fees and other medical expenses incurred in

respect of those two children and he varied paragraph 6 of that order by requiring the husband to pay, not only the rates, insurances and other essential repairs in respect of the house , but also - I quote - "The reasonable redecoration thereof, both internal and external".

The wife's application to vary the 1982 order had been supported by an affidavit sworn on the 25th October, 1984. In paragraph 2 of that affidavit, she explained that she had found the level of maintenance ordered in 1982 quite insufficient to give her children the standard of living they enjoyed prior to the divorce and that, in order to give them what she described as a reasonable life style, she had spent £8,000 out of the capital sum of £9,000 which had been paid to her, pursuant to paragraph 4 of the earlier order. In paragraph 3 of that affidavit, she sets out the amounts which she estimated she would need to spend monthly in order to provide a suitable home environment for the children. After adjustment in respect of the amount stated for dental care which had been misstated, the total estimated monthly outgoings are £991; that is to say, some £11,890 per annum.

In paragraph 4 of her affidavit, the wife states that she has found it impossible to sustain full-time employment but that she accepts that she can and should work part-time. She puts her anticipated part-time earnings at £216 per month gross.

Paragraph 5 of the affidavit is in these terms, and I read:

"My present income is maintenance from the respondent - £214 per month; family allowance - £28 per month; A is now working and I expect to receive from her a contribution of £10 per week. In order to meet the proposed expenditure set out under clause 3 above, and taking into account earnings on my part of £216 per month, I need the respondent's maintenance to be increased to approximately £733 per month clear of tax."

It is not entirely clear how the figure of £733 per month clear of tax has been reached but, taking her outgoings at £11,890 per annum and giving credit for her own prospective earnings less tax, the family allowance and A's contribution, it can be seen that she would require approximately £8,960 per annum after tax in order to bridge the gap.

The application to vary the 1982 order was opposed by the husband. In an affidavit sworn on the 7th January, 1985, he challenged the contents of paragraphs 2 and 3 of the wife's affidavit of 25th October, 1984. He deposed, at paragraph 3, in these terms:

"I am startled by the contents of paragraphs 2 and 3 of her affidavit; I do not accept that the petitioner needs to expend the money set out therein, even if - which is not accepted - she, in fact, does so. If she does so, then I believe she is budgeting in an irresponsible manner and living beyond her means. Any financial difficulty in which she finds herself is self-inflicted."
And, again, at the end of paragraph 6, the husband says:
"I cannot accept that, with all the fundamental outgoings of the house taken care of by me, there is something so unusual in her situation that she requires £1,151.58 per month, £13,818 per annum, on which to live, over and above these fundamental expenses."
The figures mentioned in that last passage are taken from the wife's affidavit before correction of the mis-statement relating to dental expenses.
The husband's affidavit of 7th January, 1985, was markedly deficient as to his own means. He was required to swear a supplemental affidavit of means before the matter was heard by the Greffier Substitute. In paragraph 4 of that supplemental affidavit, he set out what he described as 'recurrent annual expenses' which he had to bear. In a later paragraph of that affidavit, he estimates that his own living expenses amount to no more than £3,000 annually. We think that a more realistic estimate, based on the figures disclosed in paragraph 4 of the affidavit, would have been about £3,600 per annum. That supplemental affidavit also disclosed that, as had been the case at the time of the 1982 order, the husband's income consisted of the director's remuneration and salary which he received from the company known as 'The Prince of Wales Tavern Limited', supplemented by drawings by way of loan against the distributable profits of that company. The extent of the income available to the husband from this source is a matter to which we shall return later in this judgment.
In the course of his judgment on the 4th June, 1985, the Greffier Substitute held that the wife's claim to be spending some £1,100 per month needed careful scrutiny and that, I quote:
"It is obvious that there is considerable scope for economies in that direction."
As has been pointed out to us, the wife had not, in fact, claimed to be spending £1,100 per month, the figures in paragraph 3 of her affidavit of 25th October, 1984, were estimates of the amounts which she thought she would need to spend in order to provide a suitable home environment for the children. Further, the true

total monthly figure, after adjustment, was £991 and not the figure in excess of £1,100 originally shown in the affidavit.
We're satisfied that, although the wife's figures had been challenged by the husband, the opportunity to examine her estimated figures in detail was not taken at the hearing before the Greffier Substitute; she was not cross-examined on her affidavit and she was not required to support her estimates by documentary evidence of past experience. Although the estimates may be overstated in some respects - for example, in relation to expenditure on utilities and petrol - this can be no more than surmise and it is not clear to us which items were thought by the Greffier Substitute to be capable of reduction or on what basis he formed that view. In the event, as we have indicated, he made an order which required the husband to make periodic payments amounting, in all, to £377 per month before deduction of tax. Clearly, this fell a long way short of the amount which the wife was seeking. The basis for the Greffier Substitute's decision, as it appears from his judgment, was that a higher award would have the effect of crippling the husband financially and so would be unreasonable.
The wife appealed to the Royal Court against the judgment of 4th June, 1985; on that appeal, further evidence was before the Court in the form of draft accounts in respect of the company for the years ended 31st March, 1984, and 1985. The Royal Court allowed the appeal and increased the periodic payments, both in relation to the wife and to the two younger children. In a short judgment given on the 21st January, 1986, the learned Commissioner said this, and I read:
"From the accounts of The Prince of Wales Tavern Limited that have been produced, we conclude that the respondent (that is the husband) can rely on an average income of at least £30,000 per annum. We have taken into consideration the payments he makes in connection with the jointly-owned matrimonial home in which, of course, he has, himself, a joint interest. We have also taken into consideration the fact that he will no longer pay school fees but only medical and dental expenses for the two younger children. We have also considered the fact that the wife's earning capacity is low. We, therefore, order that the respondent pay the petitioner a sum of £625 per month for her own maintenance and £140 per month for each of the two younger children until they each reach the age of sixteen or cease full-time education, whichever is the later, or until further order. These increased payments are to be made as

from the 25th February, 1985, the date fixed by the Greffier in his order, and are to be increased on February 1st every year, beginning in 1987, in proportion to any increase in the Jersey cost of living index figure published in the preceding December. We feel that this level of maintenance will provide for the proper needs of the wife and children without placing an unfair burden on the husband." I should indicate that the reason why the learned Commissioner stated that the husband would no longer pay school fees was that the two younger children had ceased to be at a fee-paying school. It can be seen that the total amount payable under the order of the Royal Court was £10,860 per annum before the deduction of tax. On the basis that the husband would be required and entitled to deduct tax at the rate of 20% when making the payments, the amount to be received by the wife, nett of tax, would be some £8,680 per annum. This is close to the amount sought by the wife in her affidavit of 25th October, 1984.

It is from this order that the husband now appeals to this Court. In the course of hearing the appeal, certain new material, not before the Greffier or the Royal Court, has been put before us. This material comprises first, final accounts in respect of the company for the years ended 31st March, 1985 and 1986; second, a statement by counsel on behalf of the husband that additional remuneration of £3,120, not shown in the accounts of the company as director's remuneration but included under 'wages and insular insurance', had been received by the husband in each of the years since the divorce; and third, a statement by counsel on behalf of the wife that she had taken full-time employment since the date of the order of the Royal Court from which she derived an income of £4,000 per annum. Counsel for the wife made it clear, however, that this full-time employment was by way of temporary expedient pending the appeal and that, in the interests of the children, the wife would prefer to revert to a part-time employment if the order of the Royal Court were upheld.

We have thought it right to admit and to take account of this new material.. It's clear that the Court has power to do so, pursuant to Rule 12 of the Court of Appeal Civil (Jersey) Rules, 1964, and, in our judgment, it is proper to exercise that power, subject to such safeguards as may be required in any particular case, to ensure that each party has had adequate opportunity to deal with new material, in cases of this nature. In so doing, we follow the approach adopted by this Court in Cameron and Archdale, appeal number 10 of 1983. It

seems to us undesirable to embark on the exercise which we are required to carry out in the course of hearing an appeal against an order for financial provision under the Matrimonial Causes (Jersey) Law, 1949, without taking into account material which bears upon the true financial position of each party at the time that the appeal is heard; to do otherwise is to invite further litigation between the parties in the form of a further application under Article 32 of the law to vary an order which has been made on facts which are incomplete or which have been superceded.

In exercising its powers under Article 32 of the Matrimonial Causes Law, the Court must have regard to all the circumstances of the case, including any increase or decrease in the means of either of the parties to the marriage. The purpose of the variation must be, as it seems to us, to make such provision, whether by way of periodic payments or by way of lump sum or otherwise, as the Court may think reasonable, having regard to the circumstances existing at the time when the variation order is made. Those circumstances must, of course, include the fact that an existing order has been enforced and the Court must take account of any transfers in property which have been effected by that existing order. The correct approach was stated by this Court in Cameron and Archdale namely, that, in considering an application for variation, the Court is not confined to looking at changes in the means of the parties since the original order was made but is required to look at at the actual means of the parties as they stand at the time the case is before it and to approach the matter as if it were fixing the payments 'de novo'.

Accordingly, we begin by assessing the income resources available to the husband. The husband is, as it appears from the evidence and the submissions made on his behalf, a director and a sole shareholder of the company known as 'The Prince of Wales Tavern Limited'. That company carries on the business of a public house in St Helier under a full-time manager. The husband devotes most of his time to his major interest, that of long distance single-handed sailing. The company generates substantial profits; the husband draws remuneration from the company as a director and employee and also draws, by way of loan, substantially the whole of the undistributed nett profits of the company in each year. The figures, as they appear from the accounts of the past three years, are as follows:

For the year ending 31st March, 1984, the husband's remuneration - £10,328; nett profit after tax - £23,759; the husband's drawings on loan account - £23,800.

For the year ending 31st March, 1985, the husband's remuneration - £11,300; nett profit after tax - £13,710; the husband's drawings on loan account - £12,822.
For the year ending 31st March, 1986, the husband's remuneration - £11,115; nett profit after tax - £14,977; the husband's drawings on loan account - £14,250.
In these circumstances, it seems to us reasonable and, indeed, only realistic, to proceed on the basis that, at present, the husband has access to an assured income of not less than £25,000 per annum from this source and that figure, rather more than one half, will not be liable to bear tax in his hands. In some years, the income available to the husband has been well in excess of £25,000 and we can readily understand how the Royal Court, on the material that was before it, took the view which they did. On the basis of the new material which is now available, however, we conclude that it would not be right to attribute to the husband an assured income of as much as £30,000 per annum, we think that some provision needs to be made for fluctuations in the company's business and for contingencies. The husband has to find, out of his income, not only the periodic payments to be made under paragraph 2 of the order, but also the payments which he's required to make under paragraphs 3 and 6. The most substantial of those are the payments in respect of interest and principal due under the mortgage affecting the house . These payments amount to £5,760 per annum gross. Taking the figures for rents, insurance, repairs and mortgage protection insurance from paragraph 4 of the husband's supplemental affidavit of means, and attributing some £350 of the item for medical expenses shown in that paragraph to the needs of the children, we conclude that the husband's total outgoings under paragraphs 3 and 6 of the existing order are likely to be about £7,000 per annum; accordingly, ignoring, for the moment, the extent to which the husband may be liable to pay tax on part of his income, the income available to him, after providing for a home in which his former wife and children can reside, is likely to be about £18,000 per annum.
The wife has an independent source of income available to her from her own earnings, although, as we have said, these earnings are currently £4,000 per annum, we take the view that the wife should not be required to work full-time while the children are still of school age, if this can be avoided, and that she ought to be treated as capable of generating only the part-time earnings of £2,500 per annum for which credit was given in the affidavit of 25th October,

1984. On this basis, the combined income available to the parties, after providing for the house, is approximately £20,500 per annum. If the guidelines set out in the English case of Wocktall v Wocktall, 1973, Family Division, 72, at pages 94 and 95, were to be applied, the Court would make an order sufficient to provide a total income for the wife of approximately £7,000 per annum; that is to say, after taking account of her own actual or potential earnings, it would order payments by the husband for the maintenance of the wife of about £4,500 per annum. We have analysed the estimated expenses contained in paragraph 3 of the wife's affidavit of 25th October, 1984. It seems to us that two of the principal items, namely, food estimated at £4,800 per annum, and the holiday estimated at £1,000 per annum, can fairly be apportioned between the wife and the two children on the basis of one third to two thirds. If this is done, then the estimated expenditure directly related to the two children is approximately £6,000 per annum, leaving the balance, also approximately £6,000 per annum, attributable to the wife's own maintenance and support.

Taking these matters into account, we have concluded that the order made by the Royal Court for the maintenance of the wife - that is to say, £625 per month or £7,500 per annum gross - is too high. In our judgment, the proper sum to be paid by the husband for her maintenance is £400 per month, that is to say, £4,800 per annum gross. It seems to us that, after taking account of her own earnings and such tax allowances or repayments as she would be able to claim, payments at this level will represent reasonable provision by the husband for her maintenance and support at least for so long as the present arrangements for the residence of the family at the house continue. If there were to be a change of circumstances, for example, when the children have both attained the age of sixteen or have ceased to be in full-time education, and if the house were to be sold, the position would need to be reviewed.

It follows, from what we have already said, that we must regard the present order for payment of £140 per month in respect of each of the two dependant children as inadequate. Payments under this order amount to £3,360 per annum. We have indicated that the wife's estimated expenditure, directly related to the children, is something in the order of £6,000 per annum. Accordingly, we take the view that the periodic payments to be made in respect of each child should be increased to £250 per month; that is to say, to £3,000 per annum gross for each child.

The effect of these variations will be that the husband will be required to pay, under paragraph 2 of the order, a total of £10,800 per annum gross. This is, of course, close to the sum of £10,860 payable under the order made by the Royal Court.

We are satisfied that, in the particular circumstances of this case, an order for payments of this amount does not impose an unreasonable burden on the husband. The income available to the husband, after meeting his commitments under paragraphs 3 and 6 of the order, is, as we have said, likely to be about £18,000 per annum before tax. The tax which he will be liable to bear is likely to be small, having regard to the allowances and deductions to which he will be entitled in respect of payments to be made under this order and the mortgage and to the fact that a substantial portion of his income has already borne tax in the hands of the company. The husband's expenditure on his own living expenses is, as we have already indicated, less than £4,000 per annum. It seems to us that the husband is well able to provide for his family to the extent which we propose to order.

We are conscious, of course, that the proportion of his income which will be left to the husband after meeting his requirements under the order which we propose to make is less than might be appropriate in the more usual case where the husband is maintaining a separate establishment and is engaged in full-time employment. A husband who maintains a separate establishment is likely to have greater needs in relation to that establishment and his style of living than this husband who manages on the comparatively small sum of £4,000 a year or thereabouts, by reason of what he describes as his water-borne existence, but a husband who lives a more conventional life might well be expected to be contributing more to the joint income by way of earnings from his own employment. This husband chooses not to take employment but to occupy himself in the pursuit of his main interest; that produces a saving in his expenses but it also produces a corresponding reduction in the amount available for the common pool.

In all the circumstances, we take the view that this husband will be left with sufficient income to meet the needs of the style of life which he has chosen to adopt.

We were urged by Mr Boxall, on behalf of the husband, to have regard to the totality of the order dated 22nd February, 1982. He submitted, and submitted rightly, that it would not be correct to look at the payments to be made under paragraph 2 of that order in iso-

lation. We have taken account of the other provisions of that order, in particular, of course, ... the fact that the husband is providing, by virtue of paragraphs 5 and 6 of the order, a home for his former wife and children; we have also taken account of the £9,000 that was paid to the wife under paragraph 4 of that order but that £9,000 was paid as the purchase price for shares which she owned beneficially in the company and, in any event, it has been used up in meeting the deficit accruing between 1982 and 1985.

We are conscious that the effect of the order of 22nd February, 1982, is to vest in the wife, insofar as she was not already entitled to it, a beneficial interest in the property . At the time of that order, the position was that the house had recently been purchased for £70,000, of which £40,000 had been raised upon a bank mortgage and the remaining £30,000 had been lent by the husband's mother. In his affidavit, the husband states that that was a joint loan. If that was so, then, in reality, there would have been very little, if any, equity in the property at the time of the transfer.

The wife's position before us, as expressed by her counsel, is that she does not know whether or not the loan was made jointly.

On the material before us, it would be quite impossible to decide that question. We take the view that, whether or not the £30,000 due to the husband's mother is properly to be regarded as a joint debt or ought properly to be regarded as the debt only of the husband, and whether or not that debt should be regarded as secured in any way on the property, are matters which do not affect the decision which we have to reach today. The position is that, whatever may be the value of her interest in the house , the wife would be unable to realise it so as to provide for the maintenance and support of herself and her children without a sale of the house ; a sale of the house would immediately produce the position in which there was no longer a family home for the wife and the children and other resources would have to be used for that purpose. Accordingly, in reaching the conclusions which I have expressed, we have not found it necessary to make any assumptions as to the status of the £30,000 loan made by the husband's mother on the occasion of the purchase of the house ; that is a matter which may have to be considered hereafter.

ADVOCATE CLYDE-SMITH: Sir, may I just ask the Court for clarification that this order is backdated to February, 1985, which is the date of the original application?

PRESIDENT: Mr Clyde-Smith, you may certainly ask that; it's a matter

on which we would welcome some guidance. The Greffier Substitute made his order with effect from the 25th February, 1985, and the Royal Court adopted the same date in its order. It is not clear to us why that particular date was chosen; can you help us on that?
ADVOCATE CLYDE-SMITH: Because that was the date, Sir, as I remember, of the first hearing before the Greffier. When the form 2 notice was issued, a hearing took place in February - my learned friend will correct me if I am wrong - at which the Greffier found that the first affidavit sworn by the husband was insufficient and then an adjournment then took place for a new affidavit to be sworn and, I think, the basis for that adjournment was that any order would be backdated because the wife had been prejudiced because of the delay; I think that was the reason.
PRESIDENT: Yes, well, that makes perfectly good sense although it hadn't appeared in the papers before us. So you say that we should follow the course which the Royal Court adopted and direct that this order take effect from the same date on the basis that that is the appropriate date?
ADVOCATE CLYDE-SMITH: Yes, well, the Greffier adopted that, so did the Royal Court and one of the difficulties is that some of the arrears have already been paid pursuant to the Royal Court Order.
PRESIDENT: Yes, I appreciate that.
ADVOCATE CLYDE-SMITH: And the other matter which I raise for clarification is this question of cost of living review - am I right in saying that that part of the Royal Court order remains intact?
ADVOCATE BOXALL: Sir, I'd like to be heard on that matter.
PRESIDENT: Yes. Is there anything else, Mr Clyde-Smith?
ADVOCATE CLYDE-SMITH: The final matter, as I see it , is the question of costs; I need not burden the Court, it knows quite enough about the parties' needs but, obviously, I seek my client's costs in respect of this appeal. I am in a weaker position in respect of the first appeal.
PRESIDENT: Yes, your client ... the maintenance to your client, of course, has been reduced on this appeal.
ADVOCATE CLYDE-SMITH: Yes, the overall position, as I see it, is very much the same but I look back ... the way I look at it is to the position when she first made her application to the Greffier, that the Greffier increased the maintenance to a level which the Royal Court found was insufficient and the Royal Court's finding has been substantially upheld by this Court although it's been varied in the way it's been paid, but it seems to me that, substantially, my client's position remains as set out in the Royal

Court ... by the Royal Court.
PRESIDENT: Well, Mr Boxall, first of all, an appropriate date from which our order should apply.
ADVOCATE BOXALL: Sir, I accept that the relevant date, for the purposes of the Greffier's order, should be the 25th February, 1985, but, Sir, I do not accept that the Royal Court ... the learnèd Commissioner's order should be backdated to that date as well, for this reason, that the Greffier's order was made at a time when he had, before him, the accounts up to March, '83; the learnèd Commissioner's order was made in the light of accounts which post-dated the referred-back date, if you see what I mean, he had before him ... had asked for the 1984/1985 accounts so that he was making his order with up-to-date information but information which applied to a period subsequent to the back date; I hope I've made the point clear. In other words, he made an order that the appropriate sum, payable at the time of his order on the 26th January, 1986, was an increased sum but he made it on the basis of information that was current and applicable in March, '86, accounts which were produced, indeed, after March, 1986, so in those circumstances, Sir, it would be, in my submission, wrong to say that at the level of maintenance payments which he thought was right because that was the income available to the husband in March, '86, should be backdated and made payable to a date prior to March '86 ... sorry, March '85, I beg your pardon, prior to March '85, namely, February '85 and, in my submission, it would be, therefore, right ... it would be fair for the learnèd Greffier's level of payments to be applied as between the 22nd February, 1985, to the 26th January, 1986, and that the learnèd Commissioners of the Royal Court's order in respect of maintenance to apply as from January 1986.
PRESIDENT: But if this company, of which your client is a director, had been anything like prompt in the preparation of its accounts to the year ending 31st March, 1984, those 1984 accounts would have been before the learnèd Greffier when he dealt with the matter in June 1985, would they not?
ADVOCATE BOXALL: They would, indeed, Sir, but (inter)
PRESIDENT: And if they had been, if the 1984 accounts had been in front of the Greffier, they would have shown a position under which your client's income appeared to be touching £35,000 a year.
ADVOCATE BOXALL: That is so, of course, Sir, but the 1983 accounts showed a very similar position, they showed a situation where the company ... the income available to my client was, using those sort

of figures in excess of the 30 (sic).
PRESIDENT: We take the view that the order which we now make should run from the 25th February, 1985.
ADVOCATE BOXALL: In relation to costs, I ask (inter)
PRESIDENT: The cost of living point, would you like to deal with that?
ADVOCATE BOXALL: Oh yes, yes, I have asked that there be no order in relation to cost of living for the reasons I gave.
PRESIDENT: We think that the most sensible course is for the cost of living indexation introduced in the Royal Court's order should remain.
ADVOCATE CLYDE-SMITH: May I just say that the Royal Court's order was the first increase would be on the 1st February, 1987, this year, so I presume that remains the same.
PRESIDENT: Yes. Now, costs, Mr Boxall.
ADVOCATE BOXALL: Sir, I ask for the costs of my learned friend's client's appeal against the Bailiff's order sitting as a single judge in relation to enlargement of time; that appeal was ... I don't know if dismissed is the right word but you, Sir, and the Court found that you didn't take the jurisdiction to consider the matter and, therefore, the appeal was not heard. There was, of course, nevertheless, Sir, the usual preparatory work done in respect of it and, inasmuch as the incidence of costs falls upon the one or the other of the parties, I ask that my client have his costs in relation to that matter, whether it followed the event. In relation to the costs of the ... may I call it the substantive appeal, it is clear, in my submission, that much of the work and argument put before you related to the matter of the wife's maintenance; it would be convenient to regard the two items as occupying approximately equal time, that is to say, the applications for the maintenance for the wife and the appeals in relation to that of the children. The wife has lost the appeal ... or has not succeeded in the same way in the appeal in relation to her own maintenance; she has clearly succeeded in relation to the children. It seems, Sir, that the matter is balanced and I ask that there be no order. This is not a case where, now, the only resources available are those of the husband; the wife has, so the Court heard from my learned friend, a fund which has been set aside consisting mainly of the sum of ... if I understand it correctly ... £4,000 which the husband produced following the learned Commissioner's order in

relation to the backdated maintenance.

PRESIDENT: We'll retire for a few minutes to consider that.

COURT RETIRES BRIEFLY

PRESIDENT: In all the circumstances of this case, we do not think it appropriate to make any order for costs, either on the interlocutory appeal or on the substantive appeal; we do not disturb the orders for costs made below so there will be no order for the costs on either appeal in this Court.