**WILLIAMS AND GLYN’S BANK LTD**

**v.**

**BROWN**

HOUSE OF LORDS

19 JUNE 1980

**LEX (1980) – 2 ALL E.R. 408**

OTHER CITATIONS

3PLR/1980/35 (HL)

[1981] AC 487

[1980] 2 All ER 408

**BEFORE THEIR LORDSHIP:**

LORD WILBERFORCE,

VISCOUNT DILHORNE,

LORD SALMON,

LORD SCARMAN AND

LORD ROSKILL

**REPRESENTATION**

Solicitors: STEPHENSON HARWOOD (by themselves in the Boland appeal and as agents for COBBETTS, MANCHESTER, in the Brown appeal) (for the bank);

KANTER, JULES AND Co (for Mr and Mrs Boland);

HUGHMANS (for Mrs Brown).

MARY ROSE PLUMMER  Barrister.

**ISSUES FROM THE CAUSE(S) OF ACTION**

BANKING AND FINANCE LAW:- Banking practices – Recovery of loan secured by way of legal mortgage on a property – Where property jointly owned by a couple but legal mortgage executed without knowledge of one spouse – Effect

CHILDREN AND WOMEN LAW:- Matrimonial property - Husband and wife’s joint purchase of matrimonial home – Conveyance in husband’s sole name – Husband mortgaging home without wife’s knowledge – Possession sought by mortgagee – Whether mortgagee have priority over wife’s equitable interest – Whether wife in ‘actual occupation’ and therefore an ‘overriding interest’

DEBTOR AND CREDITOR - MORTGAGE:- Loan transaction - Recovery on legal mortgage by way of possession of property – matrimonial home jointly purchased by husband and wife – Where mortgage was obtained without the knowledge of one spouse - Effect

ESTATE PLANNING:- Trust - Property Act 1925 - Undivided shares in land which can only take effect in equity, behind a trust for sale on which the legal owner is to hold the land - Dispositions of the land, including mortgages – When not made under the trust – Whether the ‘purchaser’ takes free from the trust whether or not he has notice of them, and that the trusts are enforceable against the proceeds of sale

FAMILY LAW:- Husband and wife – Matrimonial property – Doctrine of unity – Whether wife’s occupation of a jointly owned matrimonial property is no more than occupation in shadow of her husband -Whether a spouse, living in a house, has an actual occupation capable of conferring protection, as an overriding interest, on rights of that spouse

REAL ESTATE AND PROPERTY LAW - LAND:- Land registration – Overriding interest – Rights of person in actual occupation of land

**PRACTICE AND PROCEDURE ISSUES**

WORDS AND PHRASES:- ‘in actual occupation’ – Meaning

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

A husband and wife were equitable tenants in common of the matrimonial home by virtue of both having contributed to the purchase price, although only the husband’s name appeared as the registered proprietor on the register in the land registry. The husband, without the wife’s knowledge, mortgaged the home under a legal mortgage to a bank. Before taking the mortgage the bank did not inquire of the husband or the wife whether the wife had any interest in the property. The husband defaulted on the mortgage and the bank brought proceedings for, and were granted, possession.

DECISION APPEALED AGAINST

On appeal the order for possession was discharged by the Court of Appeal ([1979] 2 All ER 697) on the grounds, inter alia, that the wife was ‘in actual occupation of the land’, within s 70(1)(g)a of the Land Registration Act 1925, and accordingly had an ‘overriding interest’, within s 70(1), which entitled her to remain in possession as against the bank and subject to which the bank had taken the mortgage.

ISSUE(S) FOR DETERMINATION

Whether the wife’s beneficial interest in the house (i) was a minor interest under s 3(xv)(a)b of the Land Registration Act 1925 and (ii) was not capable of being overridden by the trustees for sale since she was not ‘a person in actual occupation’ of the house within the meaning of s 70(1)(g) of the Act.

DECISION OF HOUSE OF LORDS

Held – The appeal would be dismissed for the following reasons—

(1) The words ‘in actual occupation’ in s 70(1)(g) of the 1925 Act were ordinary words of plain English and should be interpreted as such. Accordingly what was required was physical presence on the land; the word ‘actual’ was not intended to introduce any additional qualifications but merely emphasised that what was required was physical presence and not some entitlement in law. Since the wife was physically present in the matrimonial home, with all rights that occupiers had, including the right to exclude all others except those having similar rights, and the home was a matrimonial home intended to be occupied and in fact occupied by both spouses, both of whom had an interest in it, the wife was in actual occupation. The fact that the vendor (or mortgagor) was also in occupation did not exclude the possibility of occupation by others; nor was the occupation of the wife of the vendor inconsistent with the title of her vendor husband since she had independent rights of her own. Accordingly the wife’s interest was capable of conferring protection as an overriding interest Caunce v Caunce [1969] 1 All ER 722, Bird v Syme Thomson [1978] 3 All ER 1027 and Cedar Holdings Ltd v Green [1979] 3 All ER 117 disapproved.

(2) Even though the wife’s interest, in so far as it existed under a trust for sale, was an equitable interest capable of being overreached and therefore a ‘minor interest’ within s 3(xv) of the 1925 Act, it was also capable of being an overriding interest if it was protected by ‘actual occupation’, particularly if it was a house bought jointly by spouses to be lived in as a matrimonial home, because then it would be unreal to describe the spouses’ interests as merely an interest in the proceeds of sale, or rents and profits until sale, and there was every reason why, in that event, such an interest should acquire the status of an overriding interest. The wife’s interest, subsisting as it did ‘in reference to the land’, within the opening words of s 70(1), was by the fact of occupation made into an overriding interest and so protected by s 70(1)(g) (see p 414 j to p 415 a and d, p 416 e f, p 418 b to e, post).

Per Curiam.

(1) The fact that the overriding interest of a wife in actual occupation of a matrimonial home might also be capable of being protected by the registration of a caution is irrelevant

(2) Section 74c of the 1925 Act is intended to make clear that the doctrine of notice has no application to registered conveyancing

(3) In view of the widespread development of shared interests of ownership the departure from an easy-going practice of dispensing with inquiries as to occupation beyond that of the vendor and substitution of a practice of more careful inquiry extending to spouses and other members of the family, or even of persons outside it, cannot be considered unacceptable (see p 415 j to p 416 a e f and j and p 418 e, post).

Decision of the Court of Appeal [1979] 2 All ER 697 affirmed.

**MAIN JUDGMENT**

Their Lordships took time for consideration

 19 June 1980. The following opinions were delivered.

**LORD WILBERFORCE** [DELIVERING THE LEAD JUDGMENT OF THE COURT]

My Lords, these appeals, apart from one special point affecting only Mr Boland, raise for decision the same question: whether a husband or a wife (in each actual case a wife) who has a beneficial interest in the matrimonial home, by virtue of having contributed to its purchase price, but whose spouse is the legal and registered owner, has an ‘overriding interest’ binding on a mortgagee who claims possession of the matrimonial home under a mortgage granted by that spouse alone. Although this statement of the issue uses the words ‘spouse’, ‘husband and wife’, ‘matrimonial home’, the appeals do not, in my understanding, involve any question of matrimonial law, or of the rights of married women or of women as such. Exactly the same issue could arise if the roles of husband and wife were reversed, or if the persons interested in the house were not married to each other. The solution must be derived from a consideration in the light of current social conditions of the Land Registration Act 1925 and other property statutes.

The essential facts behind this legal formulation are as follows. Each wife contributed a substantial sum of her own money toward the purchase of the matrimonial home or to paying off a mortgage on it. This indisputably, made her an equitable tenant in common to the extent of her contribution. Each house being registered land was transferred into the sole name of the husband who became its registered proprietor. Later, each husband mortgaged the house by legal mortgage to the appellant bank, which made no inquiries of either wife. Default being made, the bank started proceedings, in the Boland case in the High Court and in the Brown case in the Dartford County Court, for possession, with a view to sale. In each case the judge made an order for possession but his decision was reversed by the Court of Appeal ([1979] 2 All ER 697, [1979] Ch 312. So the question is whether the legal and registered mortgage takes effect against the matrimonial home, or whether the wife’s beneficial interest has priority over it.

The legal framework within which the appeals are to be decided can be summarised as follows. Under the Land Registration Act 1925, legal estates in land are the only interests in respect of which a proprietor can be registered. Other interests take effect in equity as ‘minor interests’, which are overridden by a registered transfer. But the Act recognises also an intermediate, or hybrid, class of what are called ‘overriding interests’; though these are not registered, legal dispositions take effect subject to them. The list of overriding interests is contained in s 70 and it includes such matters as easements, liabilities having their origin in tenure, land tax and tithe rentcharges, seignorial and manorial rights, leases for terms not exceeding 21 years, and, finally, the relevant paragraph being s 70(1)(g)—

‘The rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where enquiry is made of such person and the rights are not disclosed.’

The first question is whether the wife is a ‘person in actual occupation’, and, if so, whether her right as a tenant in common in equity is a right protected by this provision.

The other main legal element arises out of the Law of Property Act 1925. Since that Act, undivided shares in land can only take effect in equity, behind a trust for sale on which the legal owner is to hold the land. Dispositions of the land, including mortgages, may be made under this trust, and provided that there are at least two trustees, or a trust corporation, ‘overreach’ the trusts. This means that the ‘purchaser’ takes free from them, whether or not he has notice of them, and that the trusts are enforceable against the proceeds of sale: see s 2(2) of the Law of Property Act 1925, and s 2(3) which lists certain exceptions.

The second question is whether the wife’s equitable interest under the trust for sale, if she is in occupation of the land, is capable of being an overriding interest, or whether, as is generally the rule as regards equitable interests, it can only take effect as a ‘minor interest’. In the latter event a registered transferee, including a legal mortgagee, would take free from it.

The system of land registration, as it exists in England, which long antedates the Land Registration Act 1925, is designed to simplify and to cheapen conveyancing. It is intended to replace the often complicated and voluminous title deeds of property by a single land certificate, on the strength of which land can be dealt with. In place of the lengthy and often technical investigation of title to which a purchaser was committed, all he has to do is to consult the register; from any burden not entered on the register, with one exception, he takes free. Above all, the system is designed to free the purchaser from the hazards of notice, real or constructive, which, in the case of unregistered land, involved him in inquiries, often quite elaborate, failing which he might be bound by equities. The Law of Property Act 1925 contains provisions limiting the effect of the doctrine of notice, but it still remains a potential source of danger to purchasers. By contrast, the only provisions in the Land Registration Act 1925 with regard to notice are provisions which enable a purchaser to take the estate free from equitable interests or equities whether he has notice or not (see, for example, s 3(xv) sv ‘minor interests’.) The only kind of notice recognised is by entry on the register.

The exception just mentioned consists of ‘overriding interests’ listed in s 70. As to these, all registered land is stated to be deemed to be subject to such of them as may be subsisting in reference to the land, unless the contrary is expressed on the register. The land is so subject regardless of notice actual or constructive. In my opinion, therefore, the law as to notice as it may affect purchasers of unregistered land, whether contained in decided cases or in a statute (eg the Conveyancing Act 1882, s 3 and the Law of Property Act 1925, s 199) has no application even by analogy to registered land. Whether a particular right is an overriding interest, and whether it affects a purchaser, is to be decided on the terms of s 70, and other relevant provisions of the Land Registration Act 1925, and on nothing else.

In relation to rights connected with occupation, it has been said that the purpose and effect of s 70(1)(g) of the Land Registration Act 1925 was to make applicable to registered land the same rule as previously had been held to apply to unregistered land (see National Provincial Bank Ltd v Ainsworth, [1964] 1 All ER 688 at 697, [1964] Ch 665 at 689 (per Lord Denning MR) and [1965] 2 All ER 472 at 501–502, [1965] AC 1175 at 1259 (in this House)).

I adhere to this, but I do not accept the argument which counsel for the appellant sought to draw from it. His submission was that, in applying s 70(1)(g), we should have regard to and limit the application of the paragraph in the light of the doctrine of notice. But this would run counter to the whole purpose of the Act. The purpose, in each system, is the same, namely, to safeguard the rights of persons in occupation, but the method used differs. In the case of unregistered land, the purchaser’s obligation depends on what he has notice of, notice actual or constructive. In the case of registered land, it is the fact of occupation that matters. If there is actual occupation, and the occupier has rights, the purchaser takes subject to them. If not, he does not. No further element is material.

I now deal with the first question. Were the wives here in ‘actual occupation’? These words are ordinary words of plain English, and should, in my opinion, be interpreted as such. Historically they appear to have emerged in the judgment of Lord Loughborough LC in Taylor v Stibbert (1794) 2 Ves 437 at 440, 30 ER 713 at 714 in a passage which repays quotation:

‘… whoever purchases an estate from the owner, knowing it to be in possession of tenants, is bound to inquire into the estates, those tenants have. It has been determined, that a purchaser being told, particular parts of the estate were in possession of a tenant, without any information as to his interest, and taking if for granted it was only from year to year, was bound by a lease, that tenant had, which was a surprise upon him. That was rightly determined; for it was sufficient to put the purchaser upon inquiry, that he was informed the estate was not in the actual possession of the person with whom he contracted; that he could not transfer the ownership and possession at the same time; that there were interests, as to the extent and terms of which it was his duty to inquire.’ (My emphasis.)

They were taken up in the judgment of the Privy Council in Barnhart v Greenshields (1853) 9 Moo PC 18, 14 ER 204. The purpose for which they were used, in that case, was evidently to distinguish the case of a person who was in some kind of legal possession, as by receipt of the rents and profits, from that of a person actually in occupation as tenant. Given occupation, i.e presence on the land, I do not think that the word ‘actual’ was intended to introduce any additional qualification, certainly not to suggest that possession must be ‘adverse’: it merely emphasises that what is required is physical presence, not some entitlement in law. So, even if it were necessary to look behind these plain words into history, I would find no reason for denying them their plain meaning.

Then, were the wives in actual occupation? I ask: why not? There was physical presence, with all the rights that occupiers have, including the right to exclude all others except those having similar rights. The house was a matrimonial home, intended to be occupied, and in fact occupied, by both spouses, both of whom have an interest in it; it would require some special doctrine of law to avoid the result that each is in occupation. Three arguments were used for a contrary conclusion. First, it was said that if the vendor (I use this word to include a mortgagor) is in occupation, that is enough to prevent the application of the paragraph. This seems to be a proposition of general application, not limited to the case of husbands, and no doubt, if correct, would be very convenient for purchasers and intending mortgagees. But the presence of the vendor, with occupation, does not exclude the possibility of occupation of others. There are observations which suggest the contrary in the unregistered land case of Caunce v Caunce [1969] 1 All ER 722, [1969] 1 WLR 286, but I agree with the disapproval of these and with the assertion of the proposition I have just stated by Russell LJ in Hodgson v Marks [1971] 2 All ER 684 at 690, [1971] Ch 892 at 934–935. Then it was suggested that the wife’s ‘occupation’ was nothing but the shadow of the husband’s, a version I suppose of the doctrine of unity of husband and wife. This expression and the argument flowing from it was used by Templeman J in Bird v Syme Thomson [1978] 3 All ER 1027 at 1030, [1979] 1 WLR 440 at 444, a decision preceding and which he followed in the present case. The argument was also inherent in the judgment in Caunce v Caunce which influenced the decisions of Templeman J. It somewhat faded from the arguments in the present case and appears to me to be heavily obsolete.

The appellants’ main and final position became in the end this: that, to come within the paragraph, the occupation in question must be apparently inconsistent with the title of the vendor. This, it was suggested, would exclude the wife of a husband-vendor because her apparent occupation would be satisfactorily accounted for by his. But, apart from the rewriting of the paragraph which this would involve, the suggestion is unacceptable. Consistency, or inconsistency, involves the absence, or presence, of an independent right to occupy, though I must observe that ‘inconsistency’ in this context is an inappropriate word. But how can either quality be predicated of a wife, simply qua wife? A wife may, and everyone knows this, have rights of her own; particularly, many wives have a share in a matrimonial home. How can it be said that the presence of a wife in the house, as occupier, is consistent or inconsistent with the husband’s rights until one knows what rights she has? And if she has rights, why, just because she is a wife (or in the converse case, just because an occupier is the husband), should these rights be denied protection under the paragraph? If one looks beyond the case of husband and wife, the difficulty of all these arguments stands out if one considers the case of a man living with a mistress, or of a man and a woman (or for that matter two persons of the same sex) living in a house in separate or partially shared rooms. Are these cases of apparently consistent occupation, so that the rights of the other person (other than the vendor) can be disregarded? The only solution which is consistent with the Act (s 70(1)(g)) and with common sense is to read the paragraph for what it says. Occupation, existing as a fact, may protect rights if the person in occupation has rights. On this part of the case I have no difficulty in concluding that a spouse, living in a house, has an actual occupation capable of conferring protection, as an overriding interest, on rights of that spouse.

This brings me to the second question, which is whether such rights as a spouse has under a trust for sale are capable of recognition as overriding interests, a question to my mind of some difficulty. The argument against this is based on the structure of the Land Registration Act 1925 and on specific provisions in it.

As to structure, it is said that the Act recognises three things: (a) legal estates, (b) minor interests, which take effect in equity, and (c)overriding interests. These are mutually exclusive: an equitable interest, which is a minor interest, is incapable of being at the same time an overriding interest. The wife’s interest, existing under, or behind, a trust for sale, is an equitable interest and nothing more. To give it the protection of an overriding interest would, moreover, contradict the principle according to which such an equitable interest can be overreached by an exercise of the trust for sale. As to the provisions of the Act, particular emphasis is placed on s 3(xv) which, in defining ‘Minor interests’, specifically includes in the case of land held on trust for sale ‘all interests and powers which are under the Law of Property Act, 1925, capable of being overridden by the trustees for sale’ and excludes, expressly, overriding interests. Reliance is also placed on s 86, which, dealing analogously, so it is said, with settled land, prescribes that successive or other interests created by or arising under a settlement take effect as minor interests and not otherwise, and on s 101, which, it is argued, recognises the exclusive character of minor interests, which in all cases can be overridden.

My Lords, I find this argument formidable. To reach a conclusion on it involves some further consideration of the nature of trusts for sale, in relation to undivided shares. The trusts on which, in this case, the land is to be held are defined (as ‘statutory trusts’) in s 35 of the Law of Property Act 1925, ie—

‘… upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons … interested in the land.’

In addition to this specific disposition, the general provisions as to trusts for sale in ss 23 to 31, where not inconsistent, appear to apply. The right of occupation of the land pending sale is not explicitly dealt with in these sections and the position as to it is obscure. Before the Act the position was that owners of undivided shares (which could exist at law) had concurrent rights of occupation. In Bull v Bull [1955] 1 All ER 253, [1955] 1 QB 234 it was held by the Court of Appeal, applying Re Warren, Warren v Warren [1932] 1 Ch 42, [1931] All ER Rep 702, that the conversion of these legal estates into equitable interests by the Law of Property Act 1925 should not affect the mutual rights of the owners. Denning LJ, in a judgment which I find most illuminating, there held, in a factual situation similar to that of the instant cases, that ‘when there are two equitable tenants in common, then, until the place is sold, each of them is entitled concurrently with the other to the possession of the land and to the use and enjoyment of it in a proper manner’ ([1955] 1 All ER 253 at 255, [1955] 1 QB 234 at 238). And he referred to s 14 of the Law of Property Act 1925 which provides that the Act ‘shall not prejudicially affect the interests of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation’.

How then are these various rights to be fitted into the scheme of the Land Registration Act 1925? It is clear, at least, that the interests of the co-owners under the ‘statutory trusts’ are minor interests: this fits with the definition in s 3(xv). But I can see no reason why, if these interests, or that of any one of them, are or is protected by ‘actual occupation’ they should remain merely as ‘minor interests’. On the contrary, I see every reason why, in that event, they should acquire the status of overriding interests. And, moreover, I find it easy to accept that they satisfy the opening, and governing, words of s 70, namely, interests subsisting in reference to the land. As Lord Denning MR points out, to describe the interests of spouses in a house jointly bought to be lived in as a matrimonial home as merely an interest in the proceeds of sale, or rents and profits until sale, is just a little unreal; see also Elias v Mitchell [1972] 2 All ER 153, [1972] Ch 652 per Pennycuick V-C, with whose analysis I agree, and contrast Cedar Holdings Ltd v Green [1979] 3 All ER 117, [1979] 3 WLR 31 (which I consider to have been wrongly decided).

There are decisions, in relation to other equitable interests than those of tenants in common, which confirm this line of argument. In Bridges v Mees [1957] 2 All ER 577, [1957] Ch 475 Harman J decided that a purchaser of land under a contract for sale, who had paid the price and so was entitled to the land in equity, could acquire an overriding interest by virtue of actual occupation, and a similar position was held by the Court of Appeal to arise in relation to a resulting trust (see Hodgson v Marks [1971] 2 All ER 684, [1971] Ch 892). These decisions (following the law as it undoubtedly existed before 1925: see Barnhart v Greenshields (1853) 9 Moo PCC 18 at 32, 14 ER 204 at 209, Daniels v Davison (1809) 16 Ves 249, 33 ER 978, Allen v Anthony (1816) 1 Mer 282 at 284, 35 ER 679 per Lord Eldon LC) provide an answer to the argument that there is a firm dividing line, or an unbridgeable gulf, between minor interests and overriding interests, and, on the contrary, confirm that the fact of occupation enables protection of the latter to extend to what without it would be the former. In my opinion, the wives’ equitable interests, subsisting in reference to the land, were by the fact of occupation, made into overriding interests, and so protected by s 70(1)(g). I should add that it makes no difference to this that these same interests might also have been capable of protection by the registration of a caution (see Bridges v Mees [1957] 2 All ER 577 at 582, [1957] Ch 475 at 487 and the Land Registration Act 1925, s 59(6)).

There was finally an argument based on s 74 of the Land Registration Act 1925. Section 74 provides:

‘Subject to the provisions of this Act as to settled land, neither the registrar nor any person dealing with a registered estate or charge shall be affected with notice of a trust express implied or constructive, and references to trusts shall, so far as possible, be excluded from the register.’

The argument was that, if the overriding interest sought to be protected is, under the general law, only binding on a purchaser by virtue of notice, the section has the effect of denying the protection. It is obvious, and indeed conceded, that if this is right, Hodgson v Marks and Bridges v Mees must have been wrongly decided.

I am of opinion that this section has no such effect. Its purpose is to make clear, as I have already explained, that the doctrine of notice has no application to registered conveyancing, and accordingly to establish, as an administrative measure, that entries may not be made in the register which would only be appropriate if that doctrine were applicable. It cannot have the effect of cutting down the general application of s 70(1).

I would only add, in conclusion, on the appeal as it concerns the wives a brief observation on the conveyancing consequences of dismissing the appeal. These were alarming to Templeman J, and I can agree with him to the extent that whereas the object of a land registration system is to reduce the risks to purchasers from anything not on the register, to extend (if it be an extension) the area of risk so as to include possible interests of spouses, and indeed, in theory, of other members of the family or even outside it, may add to the burdens of purchasers, and involve them in inquiries which in some cases may be troublesome.

But conceded, as it must be, that the Act, following established practice, gives protection to occupation, the extension of the risk area follows necessarily from the extension, beyond the paterfamilias, of rights of ownership, itself following from the diffusion of property and earning capacity. What is involved is a departure from an easy going practice of dispensing with inquiries as to occupation beyond that of the vendor and accepting the risks of doing so. To substitute for this a practice of more careful inquiry as to the fact of occupation, and, if necessary, as to the rights of occupiers, cannot, in my view of the matter, be considered as unacceptable except at the price of overlooking the widespread development of shared interests of ownership. In the light of s 70 of the Act, I cannot believe that Parliament intended this, though it may be true that in 1925 it did not foresee the full extent of this development.

Mr Boland’s appeal

The special point taken by Mr Boland arises out of the facts of his case and the nature of the bank’s proceeding against him. This was brought under RSC Ord 88 for summary judgment. Mr Boland contended that there was a dispute as to the amount actually owed by him to the bank, and that until this dispute was resolved by trial, judgment for possession ought not to be granted against him before he had had an opportunity of invoking the discretion of the court under the Administration of Justice Act 1970, s 36. The judgment of Templeman J, who fully considered this point, provides a complete answer to this contention. It is clear that, on the view of the matter most favourable to Mr Boland, he owes a substantial sum, of the order of £40,000, to the bank. He has, on the other hand, put forward no material evidence as to the likelihood, or possibility, of discharging or refinancing this indebtedness, on which to invoke the court’s discretion under the section, and the judge was undoubtedly right in refusing to exercise it in the absence of such material evidence. In any case, there was no basis on which the Court of Appeal could legitimately interfere with the decision of the judge, and indeed no substantial reason was given for doing so. In my opinion this part of the decision of the Court of Appeal cannot be supported.

However, on the main issue on both appeals, as they affect the wives, the decision of the Court of Appeal was, in my opinion, right, and an order for possession cannot be made in either case. I would dismiss the appeals.

VISCOUNT DILHORNE.

My Lords, I had intended to deliver a speech in this important case but since I have had the advantage of reading in draft the speech of my noble and learned friend Lord Wilberforce I have come to the conclusion that no useful purpose would be served by my doing so as I agree with him so completely, both in his reasoning and in his conclusions. I too would dismiss the appeals.

**LORD SALMON.**

My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Wilberforce. For the reasons he gives, I too would dismiss the appeals.

**LORD SCARMAN.**

My Lords, the result of the appeals in the two wives’ cases will depend on the construction to be put on s 70(1)(g) of the Land Registration Act 1925. But the importance of the House’s decision is not to be judged solely by its impact on conveyancing, or banking practice. The Court of Appeal recognised the relevance, and stressed the importance, of the social implications of the case. While the technical task faced by the courts, and now facing the House, is the construction to be put on a paragraph in a subsection of a conveyancing statute, it is our duty, when tackling it, to give the provision, if we properly can, a meaning which will work for, rather than against, rights conferred by Parliament, or recognised by judicial decision, as being necessary for the achievement of social justice. The courts may not, therefore, put aside, as irrelevant, the undoubted fact that if the two wives succeed the protection of the beneficial interest which English law now recognises that a married woman has in the matrimonial home will be strengthened, whereas, if they lose, this interest can be weakened, and even destroyed by an unscrupulous husband. Nor must the courts flinch when assailed by arguments to the effect that the protection of her interest will create difficulties in banking or conveyancing practice. The difficulties are, I believe, exaggerated; but bankers, and solicitors, exist to provide the service which the public needs. They can, as they have successfully done in the past, adjust their practice, if it be socially required. Nevertheless, the judicial responsibility remains, to interpret the statute truly according to its tenor. The social background is, therefore, to be kept in mind but can be decisive only if the particular statutory provision under review is reasonably capable of the meaning conducive to the social purpose to which I have referred. If it is not, the remedy is to be found not by judicial distortion of the language used by Parliament but in amending legislation.

Fortunately, these appeals call for no judicial ingenuity, let alone distortion. The ordinary meaning of the words used by Parliament meets the needs of social justice.

Each appeal is concerned with registered land; and each raises the same point, the true construction of s 70(1)(g) of the Land Registration Act 1925. The relevant terms of the subsection are:

‘All registered land shall, unless under the provisions of this Act the contrary is expressed on the register, be deemed to be subject to such of the following overriding interests as may be for the time being subsisting in reference thereto, and such interests shall not be treated as incumbrances within the meaning of this Act, (that is to say) … (g) The rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where enquiry is made of such person and the rights are not disclosed … ’

It is conceded that each wife has a beneficial interest in the land, which is her matrimonial home. Each is an equitable tenant in common behind a trust for sale, there being only one trustee, her husband, in whom the legal estate (a freehold) is vested. Each, therefore, enjoys by reasons of her interest, a present right of occupation as well as a right to share in the proceeds of sale, if and when the house is sold: see Bull v Bull [1955] 1 All ER 253, [1955] 1 QB 234. It is also conceded that each was at all material times living in her house with her husband; and, for the reasons given by my noble and learned friend Lord Wilberforce, I have no doubt that the wife was, as also was her husband, in actual occupation of the home.

On these facts, a construction of the subsection based on the ordinary meaning of the words of the subsection can lead to only one conclusion: the wife has an overriding interest. For each wife meets the three requirements of the section. She was in ‘actual occupation’, in the ordinary meaning of the words, and she enjoyed ‘rights’, one of which, her right to occupation, was certainly an interest ‘subsisting in reference’ to registered land. Since the bank made no inquiry of the wife in either case before granting the husband a mortgage, its claim as mortgagee to possession is, on this view of the subsection, defeated by the wife’s overriding interest.

But the bank submits that this simple approach to the interpretation of the subsection must be rejected as inconsistent with other key provisions in the Land Registration Act 1925 and with its legislative purpose. It is submitted that the true meaning of the subsection is to be gathered from an examination of the statute against its historical background and in the context of the property law, which includes the provisions of the 1925 legislation dealing with the trust for sale.

An English lawyer ignores history at his peril. But the lessons of our legal history are not always easy to discern. Legal history, even English legal history, is not one of unbroken continuity in the law’s development: it includes sometimes the rejection of existing principles and the introduction of new ones. The land registration legislation is an example. The wearisome and intricate task of examining title, and with it the doctrine of notice, have been replaced by a statutory system of registration (where the Act applies), subject to the overriding interest set out in s 70(1). These interests take effect under the section without registration and whether or not a purchaser has notice of them. I do not, therefore, read the 1925 Act as requiring the courts to give the words ‘actual occupation’ in s 70(1)(g) the special meaning for which the appellants contend, namely an occupation which by its nature necessarily puts a would-be purchaser (or mortgagee) on notice of a claim adverse to the registered owner. On the contrary, I expect to find, as I do find, that the statute has substituted a plain factual situation for the uncertainties of notice, actual or constructive, as the determinant of an overriding interest. Nor, and for the same reason, do I accept the submission that assistance in interpreting these words is to be gained from considering such cases as Caunce v Caunce [1969] 1 All ER 722, [1969] 1 WLR 286, which dealt with unregistered land. The issue in those cases was as to the circumstances in which occupation constitutes constructive notice to a purchaser of the rights of the occupier. Like Russell LJ in Hodgson v Marks [1971] 2 All ER 684 at 690, [1971] Ch 892 at 934–935, I am by no means certain that Caunce v Caunce was correctly decided. However, since the present case is concerned only with registered land, it is unnecessary to express a final opinion on the point.

My noble and learned friend Lord Wilberforce has dealt with the appellants’ arguments based on the Act’s definitions of minor interests and overriding interests. I agree with him in rejecting them, and will, therefore, add only a few words of my own. The critically important right of the wife, so far as these appeals are concerned, is the right of occupation of the land. This right, if unaccompanied by actual occupation, is clearly within the definition of a minor interest: see s 3(xv). It is not, therefore, itself an overriding interest. But, once it is associated with actual occupation, the association is an overriding interest. I agree with the appellants that overriding interests and minor interests are, as categories, exclusive of each other. But there is no logical difficulty in the association of a minor interest with another factor (ie actual occupation) being, qua association, an overriding interest. And this is, in my judgment, the effect of s 70(1)(g).

For these reasons I would dismiss the appeals of the bank in the wives’ case. I agree with my noble and learned friend that Mr Boland’s appeal must, however, be dismissed. But his lack of success makes no difference to the outcome of the litigation. The bank fails in each case to obtain what it seeks, an order for possession of the matrimonial home, because the wife is in actual occupation and has herself a right of occupation.

LORD ROSKILL. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend Lord Wilberforce. I agree with it, and would dismiss these appeals for the reasons therein set out.

Since your Lordships have reached the same result as the Court of Appeal, it is in my judgment desirable to correct one statement in the judgment of Ormrod LJ in that court which learned counsel for the respondents found himself unable to support, lest otherwise that statement by the learned Lord Justice may be thought to have the approval of your Lordships’ House. That statement appears in the report of Ormrod LJ’s judgment in [1979] 2 All ER 697 at 710, [1979] Ch 312 at 337. He was dealing with the wives’ submissions based on s 3(xv)(a) of the Land Registration Act 1925 and on s 2 of the Law Property Act 1925. He said:

‘I think, with respect, that the answer to both points is the [wives’] interests have not been overreached, and are not capable of being overreached, because in each case the land was held by a sole trustee who has no overreaching powers.’

Your Lordships were told by learned counsel that this point had not been discussed in argument before the Court of Appeal, but was raised for the first time in this judgment. Accordingly counsel did not have the opportunity of drawing the attention of Ormrod LJ to s 49(2) of the Land Registration Act 1925 and to the protection that that section accords. No doubt had they done so, he would not have expressed himself as he did.

**Appeals dismissed.**

**Cases referred to in opinions**

Allen v Anthony (1816) 1 Mer 282, 35 ER 679, LC, 20 Digest (Repl) 348, 759.

Barnhart v Greenshields (1853) 9 Moo PCC 18, 2 Eq Rep 1217, 22 LTOS 178, 14 ER 204, PC, 20 Digest (Repl) 319, 569.

Bird v Syme Thompson [1978] 3 All ER 1027, [1979] 1 WLR 440, 36 P AND CR 435.

Bridges v Mees [1957] 2 All ER 577, [1957] Ch 475, [1957] 3 WLR 215, 169 Estates Gazette 817, 38 Digest (Repl) 891, 932.

Bull v Bull [1955] 1 All ER 253, [1955] 1 QB 234, [1955] 2 WLR 78, CA, 38 Digest (Repl) 827, 398.

Caunce v Caunce [1969] 1 All ER 722, [1969] 1 WLR 286, 20 P AND CR 877, Digest (Cont Vol C) 323, 712a.

Cedar Holdings Ltd v Green [1979] 3 All ER 117, [1979] 3 WLR 31, CA.

Daniels v Davison (1809) 2 Ves 249, 33 ER 978, LC, 20 Digest (Repl) 347, 757.

Elias v Mitchell [1972] 2 All ER 153, [1972] Ch 652, [1972] 2 WLR 740, 23 P AND CR 159, Digest (Cont Vol D) 756, 926dd.

Hodgson v Marks [1971] 2 All ER 684, [1971] Ch 892, [1971] 2 WLR 1263, 22 P AND CR 586, CA, Digest (Cont Vol D) 758, 933c.

National Provincial Bank Ltd v Ainsworth [1965] 2 All ER 472, [1965] AC 1175, [1965] 3 WLR 1, HL;

rvsg sub nom National Provincial Bank Ltd v Hastings Car Mart Ltd [1964] 1 All ER 688, [1964] Ch 665, [1964] 2 WLR 751, CA, 27(1) Digest (Reissue) 92, 674.

Taylor v Stibbert (1974) 2 Ves 437, 30 ER 713, 20 Digest (Repl) 319, 568.

Warren, Re, Warren v Warren [1932] 1 Ch 42, [1931] 1 All ER Rep 702, 101 LJ Ch 85, 146 LT 224, 20 Digest (Repl) 359, 852.