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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M.1831/83

1297

BETWEEN P1 PEACE  
Appellant  
AND M PEACE  
Respondent

Hearing: 2 October 1984  
Counsel: Mr Simpson for Appellant  
Mr Bryers for Respondent  
Judgment: 2 October 1984

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JUDGMENT OF PRICHARD, J.

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Mr Peace appeals against the dismissal of his application to the District Court for remission of arrears owing under a maintenance order in respect of the two children of his former marriage. The Respondent cross appeals against an order suspending current maintenance.

Mr Simpson, for Mr Peace, submitted that the decision not to remit the arrears is inconsistent with the finding of the learned District Court Judge that Mr Peace has insufficient means to pay current maintenance. The submission seems well founded in logic because the husband's income as at date of hearing was

arrived at by an assessment of his average income over the period when the arrears accrued - if his income was insufficient at date of hearing then it was insufficient during the period when the arrears occurred.

However, Mr Bryers for the Respondent, contended that Mr Peace's income had been significantly understated in his evidence and that, in fact, there was no justification for suspending current maintenance. Mr Simpson submitted that his client's position was even worse than had appeared at the District Court hearing.

As the argument developed, it became apparent that both counsel were raising matters which had not been fully canvassed at the District Court hearing and, moreover, that they were at cross purposes as to several factual matters - essentially because neither counsel had had an opportunity to consider the points advanced by the other on the appeal. I found it impossible to resolve the conflict on the basis of the evidence adduced in the Court below.

In the circumstances, I think the proper course is to remit the case to the District Court for rehearing. It is to be hoped that before the rehearing, counsel will be able to discuss the accounts between them so that they are able to define and perhaps limit the issues in dispute.

There will be an order that the case be reheard in the District Court. I make no order as to costs.

*Raymond J. P. ...*

Solicitors:

J. & C. Pearch Ltd, Auckland, as agents for W.F. Simpson, Papakura, Solicitor for Appellant;

Messrs Martelli McKegg Wells & Cormack, Auckland, Solicitors for Respondent.