1976, 27

(27)

IN THE PRIVY COUNCIL

No. 39 of 1975

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN:

DOROTHY HALDANE

Appellant

- and -

GEORGE CHRISTOPHER HALDANE

Respondent

RECORD OF PROCEEDINGS

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New Zealand.

Solicitors for Respondent.

39 OF 1975

IN THE PRIVY COUNCIL

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BETWEEN:

DOROTHY HALDANE — Appellant

- and -

GEORGE CHRISTOPHER HALDANE — Respondent

RECORD OF PROCEEDINGS

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IN THE PRIVY COUNCIL   No. 39 of 1975

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN:

DOROTHY HALDANE

Appellant

- and -

GEORGE CHRISTOPHER HALDANE

Respondent

10

RECORD OF PROCEEDINGS

In the Supreme Court of New Zealand

No. 1

Notice of Motion for Order under Section 5 of the Matrimonial Property Act 1963

23rd December 1970

No. 1

NOTICE OF MOTION FOR ORDER UNDER SECTION 5 OF THE MATRIMONIAL PROPERTY ACT 1963

IN THE SUPREME COURT OF NEW ZEALAND
WELLINGTON DISTRICT
NAPIER REGISTRY

M. 53/70

IN THE MATTER of the Matrimonial Property Act 1973

20

and

IN THE MATTER of a question as to disposition of property

BETWEEN DOROTHY HALDANE of Maraetotara formerly of Hastings Married Woman

Applicant

A N D GEORGE CHRISTOPHER HALDANE of Hastings, Farmer

30

Respondent

In the Supreme Court of New Zealand

No. 1

Notice of Motion for Order under Section 5 of the Matrimonial Property Act 1963

23rd December 1970

- continued

TAKE NOTICE that on day the day of at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard Counsel for the abovenamed applicant WILL MOVE this Honourable Court at Napier pursuant to Section 5 of the Matrimonial Property Act 1963 FOR AN ORDER that the respondent pay to the applicant such sum as the Court thinks fair and reasonable AND FOR A FURTHER ORDER that the Respondent pay the cost of and consequent upon this application AND FOR SUCH FURTHER OR OTHER ORDER as this Honourable Court thinks fit UPON THE GROUND that the applicant has made contributions by way of services prudent management and otherwise of the property comprising the former matrimonial home and farm which has been subdivided and substantially sold by the respondent AND UPON THE FURTHER GROUND that the net proceeds of such sale have been held by the respondent for his sole use and enjoyment AND UPON THE FURTHER GROUNDS set out in the affidavit of the applicant sworn and filed in support hereof.

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20

DATED at Hastings this 23rd day of December 1970.

'I.T. Heath'

Solicitor for the Applicant

No. 2

AFFIDAVIT OF DOROTHY HALDANE

30

No. 2

First Affidavit of Applicant (Appellant)

23rd December 1970

I, DOROTHY HALDANE of Hastings Married Woman make oath and say as follows :

1. THAT I am the wife of GEORGE CHRISTOPHER HALDANE the abovenamed respondent and we were married in Hastings on the 2nd day of December 1940 when we were both aged 19 years. We are now both 49 years old.

In the Supreme Court of New Zealand

No. 2

First Affidavit of Applicant (Appellant)

23rd December 1970

- continued

2. THERE were five children of the marriage namely ROSANDRA CHRISTINA HALDANE born on 12th July 1941, WARWICK GREVILLE GEORGE HALDANE born on 20th November 1942, VIRGINIA ANNE HALDANE born on 4th July 1944, CHRISTOPHER JOHN HALDANE born on 16th March 1947 and RICHARD QUENTIN HALDANE born on 6th March 1948.

3. MY husband was an only child and on our marriage we went to live with his parents 10 in the large family home at Southland Road, Hastings. They also owned a farm of some 112 acres some distance from the family home in Southland Road. They were people of substance and worked the farm on a limited basis, certainly much below its capacity. Some cropping was done and race horses owned by my husband's father were kept there, though he also kept training stables elsewhere. My husband at that stage worked with his 20 father on the farm.

4. AFTER about a year my husband was enlisted in the army and was stationed first at Dannevirke, close enough for him to have weekends with us in Hastings where I remained with his parents. He was then transferred to Hamilton. During the period he was there I moved to Hamilton with our first child, to be near him. In December 1942 he went as a member of the army to New Caledonia for 30 five months before returning to New Zealand to join the Air Force. There were further moves to Tauranga and Wellington until the latter part of 1944 when my husband returned to civilian life and we went again to live with his parents, by which time my second and third children had been born. During the time that my husband was in Forces we were supported by his service allotment supplemented by help from his parents.

40 5. AFTER approximately a year my husband's parents built a home for us on the farm at the other end of Southland Road and we took possession with our three children and my husband continued to work and develop the farm which I believe had been gifted to him. He grew crops for "Birdseye" and became the largest grower for that firm. Crops

In the Supreme Court of New Zealand

No. 2

First Affidavit of Applicant (Appellant)

23rd December 1970

- continued

grown included peas, tomatoes, broad beans, maize and grain seed. More recently he has grown asparagus initially in a 20 acre block but over the past three years this has been increased to a 38 acre block. Approximately eight years ago he also established a Golden Queen peach orchard of 38 acres. Over the years that we have occupied the farm property it has been developed into a first class cropping and fruit farm. 10

6. IN the early years of our marriage my time was fully devoted to caring for the children and managing the home and it was not possible for me to give direct assistance on the farm. Most harvesting and some planting was done by contract labour and it was never considered that I would be involved in those activities. Very often when my husband was working on the farm away from the house I would prepare and take 20 morning and afternoon teas and lunches to him where he happened to be working. I also provided morning and afternoon teas for one contract gang which came each year for several years planting tomatoes but it was generally the practice for contract gangs to supply their own refreshments.

7. I have generally had a difficult life with my husband. He has always been selfish and ungenerous towards the children 30 and me, although in some ways the family lived well. I was often embarrassed by lack of money and on occasions had to borrow from the grocer in order to be able to send the children to local entertainment. I used to sell tomatoes and walnuts from our own trees, at the gate to get money for the purchase of household requirements. For most of our married life there was no provision for regular maintenance payments 40 to me but over the last few months before my husband and I began to live apart in June 1969 he paid me $40 per week by way of maintenance from which I purchased food and household requirements, although he

sometimes would arbitrarily reduce this amount as his mood took him. Since June 1969, however, weekly maintenance payments have been reduced to $30.

8. THE children became very much my responsibility because my husband did not seem to take a great deal of interest in them in that he did not spend very much time with them and was not closely involved in their day to day upbringing and activity. He went his own way and was able to devote full attention to the farm because I substantially had responsibility for the children. Our daughters received their primary education as day pupils attending a private school in Hastings called Queenswood and their secondary education at Chilton St. James in Lower Hutt. Our sons went as boarders to Hereworth primary school in Havelock North and then to Wanganui Collegiate. Their education was paid for by my husband's father and in the latter years by my husband.

9. MY mother-in-law died in 1951 and approximately a year after her death my father-in-law's health began to deteriorate. He came to stay at our home and I cared for him for approximately twelve months. He required constant nursing and attention and had to be watched all the time. Eventually, when it became necessary for him to have more specialised care than I was qualified to give I arranged for him to be hospitalised initially in a nursing home and eventually in a private hospital.

10. WHEN our son Warwick was studying for the final units for his law degree at Victoria University I went to work for four months at "Birdseye" factory to be able to send him money for his living expenses.

11. REGRETFULLY there has been a history of domestic upset and dispute which culminated in separation periods in the years 1958, 1962 and 1969. In 1958 I was ordered from the house with the children at the point of a shot-gun and during the period of this

In the Supreme Court of New Zealand

No. 2

First Affidavit of Applicant (Appellant)

23rd December 1970

- continued

separation a house was purchased for me to occupy with the children but at my husband's request I returned to him and the property which had been purchased for $13,000 was sold at a profit. In 1962 there was a period of separation for approximately four months and again at my husband's request I returned to him. I have not resumed cohabitation with my husband since a separation which took place in June 1969 resulting from an association which my husband had then formed with Mrs Williams, and I believe that the worry and concern of this association caused me to become ill. My husband threatened to shoot me and on the final night when I was ordered to leave the matrimonial home, I believe that an attempt was made to poison me and I had to take refuge with a friend who lived nearby. My husband, whose association with Mrs Williams has continued, has made it quite clear that he does not want a reconciliation.

12. I now have no home in which to live and no savings, and I have been living with one or other of my children. Apart from the $30 per week paid by my husband the only other income which I have is from a trust set up by my late mother-in-law who settled some shares in the New Zealand Fishing and Trawling Company Limited with the provision that my husband should take half the annual dividends or income derived from the shares and I the other half with the survivor of us taking the whole income for the balance of his or her life with a resultant trust in favour of the late Mrs Haldane's grandchildren. In the past this money has been paid to my husband who would then account to me for my half but I have not received my proportion of the income for 1970. In the result I have no capital assets and my income is limited to the amounts which I have set out in this my affidavit.

13. WHEN I left the matrimonial home in June 1969 I went because I was in fear of my life. My personal belongings including

clothing, shoes, and other personal effects were left at the matrimonial home and when it was sought to recover these, my husband indicated that they had been disposed of and they have not been recovered. The replacement value of these would be close to $1000.

14. THAT when I left the matrimonial home in June 1969 my husband continued his association with Mrs Williams and proceeded to subdivide the farm, the major portion of which has now been sold. I verily believe that he is living in one of the two flats on a property which he purchased for the sum of $22,000 in July 1970 in Flaxmere Avenue, and I believe the second flat to be occupied by tenants. I verily believe, however, from enquiries made by my solicitors that as at November 1965 the Government valuation for the farm was $128,600 and I further believe from searches made by my solicitors that for the portions of the farm which have been sold my husband has received in excess of $147,000. Though my husband has never disclosed the income from the farm I believe by reason of the size and quality of the farm this to be a substantial sum.

15. MY husband owns an Alfa Romeo car which I am reliably informed would be worth $6,500. He also owns a new Mini Minor and a late model Fiat Fastback saloon, and I believe that the equipment and machinery on the farm including an irrigation system to be worth a considerable sum of money.

16. WHEREAS previously my husband's consuming interest was in the farm and he seldom went out for social occasions and was reluctant to mix with other people he now appears to have changed his attitude. He appears to be living on the fruits of an asset which was developed and increased in value during the years that I stood by my husband looking after the children returning to him after a period of separation

In the Supreme Court of New Zealand

No. 2

First Affidavit of Applicant (Appellant)

23rd December 1970

- continued

precipitated by acts of violence.

SWORN at Hastings)
by the said DOROTHY)
HALDANE this 23rd) 'D. Haldane'
day of December 1970)
before me :)

'E.R. Bate'

A Solicitor of the Supreme Court of New Zealand

No. 3

Affidavit of Dora Agnes Yeoman for Applicant (Appellant)

8th March 1971

No. 3

10

AFFIDAVIT OF DORA AGNES YEOMAN

I, DORA AGNES YEOMAN of Hastings Law Clerk make oath and say as follows :

1. THAT I am a law clerk employed by Hallett O'Dowd & Co., Solicitors to the Applicant.

2. THAT in my capacity as a search clerk I searched the records of the District Land Registry in Napier.

3. THAT as at the 14th day of July 1970 GEORGE CHRISTOPHER HALDANE the respondent was registered as proprietor of all that land containing 111 acres 3 roods and 32 perches situated in the Provincial District of Hawke's Bay being Lot 3 on deposited plan 1219 and being all the land contained in Certificate of Title H.B. Volume 159 Folio 120.

20

4. THAT the said land was subject to Mortgage No. 216044 in favour of Neil Campbell and John Chambers securing the sum of $46,000.00 and to Mortgage No. 241884 in favour of the Bank of New Zealand securing current advances.

30

In the Supreme Court of New Zealand

No. 3

Affidavit of Dora Agnes Yeoman for Applicant (Appellant)

8th March 1971

- continued

5. THAT on the 14th day of July 1970 a plan was deposited in the District Land Registry in Napier under No. 12296 whereby the land contained in Certificate of Title H.B. 159/120 was divided into separate lots, namely Lot 1, Lot 2, Lot 3 and Lot 4, and new certificates of title were issued in respect thereof, being D2/761, D2/762, D2/763 and D2/764 respectively.

10 6. THAT on the 20th day of July 1970 the respondent sold Lot 2 on Deposited Plan 12296 containing 17 acres 1 rood and 4 perches being all the land in Certificate of Title D2/762 for the sum of $37,500.00 to Brian Stewart Dodds of Hastings Jockey.

7. THAT on the 21st day of July 1970 the respondent sold Lot 3 on Deposited Plan 12296 containing 16 acres 3 roods and 32 perches being all the land in Certificate of Title
20 D2/763 for the sum of $26,000.00 to Walter Harry Garland of Hastings Orchardist.

8. THAT on the 7th day of August 1970 the respondent sold Lot 1 on Deposited Plan 12296 containing 31 acres 2 roods and 37 perches being all the land in Certificate of Title D2/761 for the sum of $38,077.50 to Raydeen Farms Limited a duly incorporated company having its registered office in Hastings.

9. THAT on the 13th day of August 1970
30 releases of Memoranda of Mortgage Nos. 216044 and 241884 were duly registered in the Land Registry in Napier.

10. THAT on the 4th day of December 1970 Lot 4 on Deposited Plan 12296 was divided and a plan was deposited in the District Land Registry under No. 12401, which plan comprised Lots 1 and 2 and new titles were issued for these lots, namely D3/372 and D3/373.

40 11. THAT on the 7th day of December 1970 the respondent sold Lot 1 on Deposited Plan 12401 containing 15 acres 2 roods and 7 perches being all the land in Certificate of

In the Supreme Court of New Zealand

No. 3

Affidavit of Dora Agnes Yeoman for Applicant (Appellant)

8th March 1971

- continued

Title D3/372 for the sum of $15,843.37 to Frank Moughan, Kathleen Morva Moughan and James Joseph Moughan.

12. THAT the balance of the land originally contained in Certificate of Title 159/120, being 30 acres 3 roods and 9 perches being Lot 2 on Deposited Plan No. 12401 and all the land in Certificate of Title D3/373, is still vested in the respondent. 10

13. THAT on the 17th day of July 1970 the respondent purchased a property in Flaxmere, Hastings, for the sum of $22,000.00, being 28.8 perches Lot 66 on Deposited Plan 11304 and all the land in Certificate of Title B3/950.

14. THAT on the 22nd day of December 1970 the respondent purchased a property at Waimarama for the sum of $11,500.00, being 32 perches situate in Block I Kidnapper Survey District, Lot 20 on Deposited Plan 11048 part of Waimarama 3A6B6A Block and all the land in Certificate of Title C3/437. 20

SWORN at Hastings this 8th day of March 1971 before me:) 'D.A. Yeoman'

'John Baker'

A Solicitor of the Supreme Court of New Zealand

No. 4

AFFIDAVIT OF GEORGE CHRISTOPHER HALDANE

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

I, GEORGE CHRISTOPHER HALDANE of Hastings, Farmer, make oath and say as follows :

1. THAT I am the Respondent herein.

2. THAT I have read the affidavit of Dorothy Haldane the above-named Applicant sworn and filed herein and I crave leave to refer thereto.

10 3. THAT with reference to paragraph 5 of the said affidavit I say that from 1945 down until 1962 I grazed sheep on my farm property as well as harvested approximately fifty (50) acres of grass seed together with one paddock of peas each year. About ten (10)years ago I decided to sell the farm but was unable to get an adequate market price because the farm was not properly developed. I then decided to switch to intensive 20 farming of the property with the objective of growing peaches, asparagus, maize, beans and tomatoes almost entirely under contraat with Unilever. I planted in all an area of thirty (30) acres of asparagus of which seventeen (17) acres have plants which are six (6) years old, and thirteen (13) acres consist of three-year old plants.

An area of fifteen (15) acres was established nine (9) years ago in peaches 30 and this was first cropped four (4) years ago, but is only now coming into full production.

During the establisment and developmental years the land lay idle and I derived no income therefrom. However, I did crop approximately twenty (20) acres of tomatoes and forty (4) acres of maize each year.

4. THAT with reference to paragraph 6 of the said affidavit I say that on some infrequent occasions - perhaps once or twice 40 a year - the Applicant would bring out morning and afternoon teas at my insistence.

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

The Applicant never did this voluntarily but always was most reluctant to do so. I had the help of a friend each year during the tomato planting and I would beg the Applicant to bring out "smoko" to keep the friend and the other two men happy.

I deny that the Applicant supplied morning and afternoon tea for a contract gang for several years. There were only three (3) people engaged in planting tomatoes, namely, my friend who drove the tractor and two other men actually planting.

5. THAT with reference to paragraph 7 of the said affidavit I say that I had a difficult life with the Applicant. I believe that she only married me for what money she thought I would have. I married the Applicant because she was pregnant. I was then only two (2) years out of boarding school. There was never a great deal of affection between us and as time past this grew even less. I could never explain my financial position to the Applicant or convince her that there was any need for economy. The Applicant seemed to think that I was made of money. The children's schooling, which was substantially paid for by me and so far as the secondary education was concerned entirely paid for by me, was most expensive and for some years absorbed more than my net income. I say that the Applicant was always a grasping person when it came to money matters and she looked upon me as a person of unlimited means. The Applicant expected to live well and she did so, spending freely for her own needs.

In addition, over the years, the Applicant became a heavy Gin drinker and a great deal of money was spent on this. About twelve (12) years ago the size of the Applicant's liquor bills became so great that I was forced to instruct my Stock Firm not to supply her with any more liquor.

About fifteen (15) years ago my bills overall became so large as a result of the

Applicant's spending that I consulted a Trade Protection Society and as a result of this I gave instructions that notices were to be sent to fifteen or twenty business houses where the Applicant had accounts advising them that I would not be responsible for further debts incurred in my name. I was then nearly bankrupt and I was being sued for unpaid accounts.

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

10 I say that the Applicant's allegation that she was forced to borrow money from the Grocer is untrue.

I agree that there was some selling of produce by the Applicant but I have no knowledge of the extent to which this was done. I do know that the proceeds of any sales were not applied to the requirements of the household but were spent for the Applicant's own requirements or for liquor.

20 We had a comfortable home and the Applicant had the family car which she used freely for social purposes. Up until 1960 there was just not enough money to give the Applicant her own allowance. This was primarily due to the burden of school fees which at their highest level cost me Five thousand dollars ($5,000) per year. In any event all accounts were paid for by me and the groceries were purchased from Dalgety & Company Limited.

30 By 1960 I had ceased to deal with Dalgetys and I gave the Applicant her own allowance of Two hundred dollars ($200) per month initially, but after about six months I considered this was too much as the children were at school, and I reduced this to One hundred and sixty dollars ($160) per month. This amount was paid monthly into the Applicant's own Bank Account. She either could not, or would not manage within the allowance and got into
40 overdraft with the Bank after a time. I therefore ceased this practice and resumed paying the accounts myself. At all times I paid all farm accounts myself.

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

From approximately 1965 to 1967 I paid the Applicant an allowance of between Forty dollars ($40) to Eighty dollars ($80) weekly. I gave her this by cheque which she would cash so that she could purchase the groceries, the meat and minor household accounts. Whatever surplus there was was available for her own use. I paid the electricity and telephone accounts. Later the Applicant opened a new Bank Account of her own and paid into this the amount that I paid her. She paid all accounts whether in my name or her own name from this source. The accounts would be confined to the purchase of food and her own personal expenditure.

In 1967 because all the children were now off our hands, I considered that the original allowance was excessive and I reduced it to between Thirty dollars ($30) and Forty dollars ($40) weekly. In the year ending June 1969 my records show that I paid to the Applicant a total of Two thousand two hundred and eighty-eight dollars ($2,288).

As well, from the year 1951 onwards the Applicant received an amount from my Mother's estate, which latterly amounted to Three hundred and thirty dollars ($330) annually and this amount was received in June of each year. The Applicant over the years paid her own outstanding personal accounts from this source.

6. THAT with reference to paragraph 8 of the said affidavit I say that the children from an early age were essentially boarders at school. I was determined to get the children away from the atmosphere of the home where there were constant arguments and quarrels. Most of these were over what I regarded as the Applicant's over indulgence in liquor and others were over the fact that the Applicant had a number of accidents when driving my car after drinking liquor.

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

7. THAT with reference to paragraph 9 of the said affidavit I say that my Father stayed with us for no more than five or six months. When he did require proper nursing care he was taken to a Private Nursing Home.

8. THAT with reference to paragraph 10 of the said affidavit I say that the Applicant did work at Birdseye for a period of about six (6) weeks on one occasion, but for what reason I do not know. She may have given some money to Warwick in his final year at University but I very much doubt it. I was then not supporting Warwick because he had taken seven to eight years to complete his law degree, although he was full-time at University for most of that time. He was not working properly and was enjoying a pretty active social life. For the last two years of his course Warwick was working in a law office in Wellington and was supporting himself with the assistance of his sisters who gave him Two hundred dollars ($200) in each of those two years.

9. THAT with reference to paragraph 11 of the said affidavit I deny ordering the Applicant from the house at the point of a shot gun. I agree that there were two earlier periods of separation and that on both occasions, in the hope that our relationships might improve and for the sake of the children, I requested the Applicant to return.

I admit to an association with Mrs Williams but this grew out of friendship extending over a considerable period of time. Basically this friendship and association is a reflection upon the unhappiness I experienced with the Applicant down through the years.

In any event the Applicant has had associations with other men in the past.

I deny the allegation that I threatened to shoot the Applicant whether in 1969 or at any other time. On what the Applicant describes as "the final night" I say that the applicant was under the influence of liquor.

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

She attacked me with a poker and had to be restrained. She really went quite berserk. I rang her Doctor who advised me to give her about half a dozen librium tablets. I tried to get the Applicant to take these but she refused. I can only assume that this is what she is referring to when she speaks of an attempt to poison her. The Applicant then left the house in her night-dress only to return later to attack me again with the poker. She later left again and we have not lived together since that date. 10

10. THAT with reference to paragraph 12 of the said affidavit I say that initially I retained the Applicant's share of the 1970 income from my Mother's estate because of her unpaid debts for which I have been sued. I later took legal advice and the Applicant's income was forwarded by my Solicitors to the Applicant's Solicitors on the 21st day of December 1970. 20

I have endeavoured to settle the question of the Applicant's maintenance and I have made her offers which she apparently considers unacceptable. In particular on the 2nd day of June 1970 my Solicitors wrote to the Applicant's Solicitors making the following offers:

(a) To increase the maintenance for the applicant from the sum of Thirty Dollars ($30) per week to thirty-five dollars ($35) per week, 30

(b) That I would purchase in the name of the Applicant either a new Mini motor car or a low-mileage motor car to be the Applicant's own vehicle and entirely her own responsibility.

(c) To purchase a flat at a cost of up to Twelve thousand dollars ($12,000) in my name, I paying all outgoings and the same to be carpeted at my expense. The said flat would be occupied by the Applicant rent-free. 40

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

That the foregoing offers were made without prejudice but to the best of my knowledge and belief have never been accepted or rejected by the Applicant. I have renewed such offers in settlement of the Applicant's application to the Magistrate's Court at Hastings for a maintenance order.

13. THAT with reference to paragraph 13 of the said affidavit I say that there is no substance in the statement that the Applicant left the home in fear of her life. I deny the whole of this paragraph in its entirety. Our daughter and son-in-law removed the bulk of her clothing and effects and bedding on the day following the separation in June 1969.

On two other occasions a daughter has removed the balance of the Applicant's belongings and nothing of any importance remained in the house thereafter.

Later, in October 1969 my house was broken into and goods to the value of over Eight hundred dollars ($800) were stolen. These included line blankets, cutlery family silver, ornaments, Persian rugs and lamps. I reported the theft to the Hastings Police who ascertained that the person responsible was my elder daughter. When I learned of this I requested the Police not to prosecute her and no such action was taken. I have not had the goods returned to me and I do not know who has them.

14. THAT with reference to paragraph 14 of the said affidavit I agree that I have subdivided my farm property and have now sold the major portion of it. The farm was subdivided into five lots of which I have sold four but as part of the land did not have a legal road frontage I was required to purchase two strips of land from neighbours at a cost of just over Two thousand six hundred dollars ($2,600).

In round figures the position is as follows:

Sale price 2 blocks, 63 acres at $1200 per acre	$75,600
Sale price 13 adres at $200 per acre	$26,000

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

[brought forward]	$101,600
Sale price 15 acres at $1,000 per acre	$ 15,800
	$117,400

From the foregoing sales I paid the following amounts:

To discharge 1st Mortgage, principal & interest	$ 47,000
Commission on Sales	$ 3,000
Roading and subdivisional costs, say	$ 13,000
Legal Expenses, estimated	$ 3,000
Purchase of land, as above	$ 2,600
Bank overdraft	$ 6,000
	$ 74,600

10

Of the surplus available to me of Forty-two thousand eight hundred dollars ($42,800) I spent the sum of Thirty-four thousand dollars ($34,000) in acquiring the following properties:

20

(a)	Two flats at Flaxmere, Hastings	$ 22,000
(b)	A beach cottage at Waimarama	$ 12,000
		$ 34,000

Leaving a cash balance to me of approximately Nine thousand dollars ($9,000).

15. THAT one of the foregoing flats is rented at a weekly sum of Fifteen dollars ($15) and I occupy the other. That the asparagus land I have retained I estimate will produce a gross income of Ten thousand dollars ($10,000) which could be

30

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

as high as Twelve thousand dollars ($12,000) rising in some four (4) years time to perhaps Fifteen thousand dollars ($15,000) when the beds have reached full production. The cost of production will be at least one-third (1/3) of the gross but perhaps more, depending upon the wages that will have to be paid to pickers.

16. THAT I derived my farm property by gift from my late Father subject to a mortgage in favour of the Public Trustee securing the sum of Twelve thousand six hundred dollars ($12,600). I also gave a mortgage back to my Father securing the sum of Five thousand three hundred dollars ($5,300). At the date of my father's death namely, the 10th day of December 1955 the mortgage to the Public Trustee had increased to the sum of Seventeen thousand five hundred and forty dollars ($17,540) and the amount that I owed to my Father was reduced to the sum of Two thousand five hundred and fifty dollars ($2,550). The debt owing to my Father's estate was discharged from my share in the residuary estate. In addition I received from my Father's estate cash or assets to the value of approximately Twenty-nine thousand dollars ($29,000).

In the year 1956 I obtained a new mortgage from the Public Trustee for the sum of Twenty-four thousand dollars ($24,000) but shortly thereafter I reduced this by Eleven thousand six hundred dollars ($11,600) to Twelve thousand four hundred dollars ($12,400) from moneys received from my Father's estate.

In the year 1959 I paid off the balance owing to the Public Trustee by borrowing on first mortgage from a Life Insurance Company the sum of Sixteen thousand dollars ($16,000), and in 1961 I borrowed a further Two thousand dollars ($2,000) on second mortgage. Both these mortgages were paid off when I re-financed and borrowed the sum of Twenty-four thousand dollars ($24,000) in July 1962. This mortgage was increased to Thirty thousand dollars ($30,000) in May 1963 and to Thirty-six thousand dollars ($36,000) in November 1963 and to Forty thousand dollars ($40,000) in August 1964. This mortgage was replaced in

In the Supreme Court of New Zealand

No. 4

Affidavit of Respondent in Reply (Respondent)

9th July 1971

- continued

October 1967 with a mortgage securing the sum of Forty-six thousand dollars ($46,000).

The various increases in mortgages were due to the fact that the amount being spent on normal living expenses and school fees greatly exceeded my farming income and from time to time I became heavily in debt either to my trading bank or my stock firm or both. I would then increase my mortgage to clear my current indebtedness. As well I sold shares for an amount in excess of Two thousand dollars ($2,000).

The only capital expenditure on the farm property was the sum of Four thousand dollars ($4,000) spent upon irrigating the farm in 1957 or thereabouts. As well I spent the sum of approximately Three thousand dollars ($3,000) for additions to the residence on the said property.

17. THAT annexed hereto and marked with the letter "A" is a Schedule showing my net income after taxation personal drawings and the net deficit for the years ended 30th June 1959 to 30th June 1969 inclusive.

18. THAT I have the following assets and no other :

Land, worth approximately	$60,000
Flaxmere flats	$22,000
Beach house	$12,000
Farm equipment, say,	$ 2,000
Company Shares	$ 3,200
Company Debenture	$ 3,000
Two motor cars, valued at	$ 8,000
Bank Account in London of	$ 2,000
Bank of New Zealand, Hastings	$ 4,000
H.B. & Gisborne Savings Bank	$ 2,300
	$118,500

Sworn at Napier this 9th day of July 1971 before me:) 'G.C. Haldane'

'A.H. Robinson'

A Solicitor of the Supreme Court of New Zealand

No. 5 "A"

SCHEDULE OF INCOME AND PERSONAL DRAWINGS

Year Ended 30th June	Net Income after Taxation	Personal Drawings	Life Insurance	Net Deficit
1959	$1319.17	$6454.49	$	$5135.32
1960	1175.67	6298.41		5122.74
1961	2954.24	7904.41		4950.17
1962	4591.27	7214.78		2623.51
1963	2280.91	9192.53	$335.50	7247.12
1964	92.50	3371.18	740.00	4018.68
1965	1591.84	5996.99	56.64	4461.79
1966	4968.19	6055.48	56.65	1143.94
1967	2128.38	4733.34	56.65	2661.61
1968	3544.72	3206.21	656.65	318.14
1969	2266.34	4674.78	706.40	3114.84
	$26,913.23	$65,102.60	$2608.49	$40,797.86

In the Supreme Court of New Zealand

No. 5

Exhibit "A" to Affidavit of Respondent sworn 9th July 1971.

No.6

In the Supreme Court of New Zealand

No. 6

Second Affidavit of Applicant (Appellant)

26th August 1971

SECOND AFFIDAVIT OF DOROTHY HALDANE.

I, DOROTHY HALDANE of Maraetotara, formerly of Hastings, Married Woman, make oath and say as follows :

1. THAT I refer to the affidavit of George Christopher Haldane of Hastings Farmer filed herein and in particular to paragraph 4 thereof, and I deny that the occasions on which I brought out morning and afternoon teas and lunches were infrequent and that I was reluctant to assist in this regard. If there were one virtue that I did have it is that I have always been prepared to extend hospitality to both our mutual friends and any employees of my husband, and for my husband to suggest that this was done reluctantly on my part I consider most ungracious.

2. THAT I was never reluctant in any degree to fulfil my responsibilities for my husband's comfort and it is most significant that nowhere in my husband's affidavit is there any criticism raised except in regard to the morning and afternoon teas aspect.

3. THAT I would wish to refer to paragraph 5 of my husband's affidavit and I would deny that our marriage was not attended by a great deal of mutual regard and affection in its initial stages, and in fact when my husband was in the Armed Services it was at his direct insistence that I had to follow him to wherever he was in camp.

4. THAT I would like to refer to this question of my being a heavy gin drinker, and would emphatically deny that I have ever been anything but a social drinker with my friends, who very often would bring a bottle of gin with them because of the fact that they were aware of my husband's attitude to the expense involved in this social drinking. I could point out that for the past eight years I have been head of the Hastings

Subcentre of the New Zealand Red Cross, and I would suggest that this form of activity would not fit in very well with the picture that my husband tries to create of my being something of an alcoholic.

5. THAT when my husband speaks of advising tradesmen that no further debts should be incurred in my name, he completely overlooks the fact that at the time the children and I had been forced to leave our home at the point of a gun and had had to find shelter elsewhere. Acting on the advice of the Solicitor who was employed by me at the time, I was pledging my husband's credit to make provision for myself and my children to live. This situation did not last very long, and to suggest otherwise would be a gross exaggeration.

6. THAT I would refer to the question of the use of the family car for social purposes and would be bound to point out that a good proportion of this running was for good causes, such as meals-on-wheels and the Red Cross work that I have spoken about previously in this affidavit.

7. THAT my husband refers to the fact that in 1960 he was paying money into a Bank account for me, but I would point out that at no time before 1967 did I have an account and I have only one account and that was with the Bank of New Zealand.

8. THAT the impression that is created in paragraph 5 of my husband's affidavit of my husband systematically paying me does not square with the facts. This was always a matter of his personal whim, and would be increased or decreased or cut out as the spirit moved him.

9. THAT I would refer in particular to paragraph 2 on page 5 of my husband's affidavit when he creates the impression that the allowance was entirely for my benefit. In point of fact, I would be given money in the form of a cheque which I would cash and which money I would apply in

In the Supreme Court of New Zealand

No. 6

Second Affidavit of Applicant (Appellant)

26th August 1971

- continued

payment of all sorts of accounts around the town, many of which would have no reference to me or my needs, but which would be directly referable to my husband's personal accounts.

10. THAT as far as paragraph 6 of my husband's affidavit is concerned, I would be bound to say that I do not think that my husband in the event had any great affection for the children, and that far from trying to get them away from the atmosphere of the home where there were constant arguments and quarrels, my husband was seeking to achieve the preservation of his own peace and quiet. This would be borne out by the fact that he was not prone to go and attend school functions, though the children in their activities at boarding school could have been regarded as doing him a great deal of credit.

11. THAT I would refer to paragraph 9 of my husband's affidavit in which he suggests that I have had associations with other men in the past and as to this I would say that regrettably one of my husband's great failings has been an insane jealousy which was prepared to distort the most innocent associations into affairs, and a lot of our marital difficulties arose from this fact of my husband's jealousy.

12. THAT I would refer to paragraph 10 of the affidavit in which my husband refers to an offer to settle, and all I can say to this is that I have regarded myself as in the hands of my professional advisers and have been content to accept their advice and await the outcome of this present matter.

13. THAT I would refer to paragraph 13 of the affidavit and would agree that my daughter was responsible for recovering some property of mine from the former matrimonial home, for which I am most grateful to her. Probably the situation which comes nearer the truth is not that my husband requested the Police not to prosecute but that they were dubious in the circumstances as to

In the Supreme Court of New Zealand

No. 6

Second Affidavit of Applicant (Respondent)

26th August 1971

- continued

whether or not the recovery of what was my own property could be regarded as theft.

14. THAT I would refer to paragraph 16 of the affidavit and would refer in particular to the questions of the increase in mortgage on the property insofar as this is related to school fees for the children. It would be my clear impression that while he was living my husband's father Christopher
10 Haldane, paid for the fees of my two daughters, Sandra and Virginia, while they attended Queenswood School and also paid the fees of my son, Warwick, while he was at Hereworth School. I do not really see how I can be severely criticised for the increase of the mortgage expenditure of my husband, as I had never at any time sought to dictate where the children were sent to school or anything in connection with his farming activities, and
20 all I can say is that my husband was an extravagant man in himself for his own personal pleasure and would have expended some thousands of dollars on the addition of a music room to our property in Southland Road. A conservative estimate would be $10,000.00. This room was furnished with high quality equipment. At first it was built for Hi-Fidelity and later when stereophonic records came in, he changed the
30 equipment and records. It was supposed to be accoustically perfect and was equipped with the best stereophonic sound equipment that could be purchased, and this room was kept locked by my husband and the only persons who were allowed to enter it were his friends at his express invitation. Later on when he acquired television, the music room was only used about once every few months.

40 SWORN at Hastings this)
26th day of August 1971) 'D . Haldane'
before me :)

'E.R. Bate'

A Solicitor of the Supreme Court of New Zealand

No. 7

In the Supreme Court of New Zealand

No. 7

Affidavit of Warwick Greville George Haldane for Applicant (Appellant)

20th August 1971

AFFIDAVIT OF WARWICK GREVILLE GEORGE HALDANE

I, WARWICK GREVILLE GEORGE HALDANE formerly of Wellington, Solicitor, now of Hong Kong, Crown Counsel, make oath and say as follows :

1. THAT I am the eldest son of Dorothy and George Christopher Haldane the parties hereto (hereinafter referred to as 'mother' and 'father' respectively). 10

2. THAT I have read the affidavit of my father the abovenamed Respondent and I crave leave to refer thereto.

3. THAT with reference to paragraph 3 of the said affidavit father also cropped both dwarf and broad beans during some of the establishment and developmental years referred to. There were occasions during this period when two crops in a period of twelve months would be grown in the same piece of ground. 20

4. THAT with reference to paragraph 4 of the said affidavit I say that mother never failed to supply morning or afternoon teas when these were required. Although I was away for eight years at boarding school until December 1960 after which I went to Victoria University and then worked in Wellington until coming to Hong Kong, I was at the family home during all holidays until the parties hereto separated. Whenever 30 father wanted teas or meals provided he would always demand. I have never heard him beg or plead for anything. In particular I recall the grass seed harvests from 1955 onwards when I was directly involved and mother would provide morning, afternoon teas and lunch in the paddocks. Over a long period of years I helped on the farm with various tasks including planting, cultivation, weeding, haymaking, tractor 40 work, stock work, irrigation, feeding animals and collecting of crops for cartage to the factory. At no time did mother ever refuse to supply teas or meals.

What was most noticeable was the total lack of appreciation by father for anything at all done by mother.

5. THAT with reference to paragraphs 5 and 6 of the said affidavit I say that mother did not become a heavy gin drinker over any period of years in my memory. I say that father showed an unreasonable attitude to mother's consumption of any liquor at all.
10 I say that it was mother's custom to enjoy a few drinks at the end of the day after she had changed and prior to the evening meal. Father would refuse to join in this with her e cept on rare occasions. He did not drink gin but preferred when it was available to have either beer, muscatel, sherry, or whiskey.

I say that it was common for father to accuse mother of being drunk without any
20 cause whatever. At times the mere fact that a drink was being had was sufficient provocation for him to become rude and unpleasant and so accuse her. I say that that at no time did mother's consumption of gin ever interfere with her ability or efficiency as a wife housekeeper and mother.

I further say that at no time did the state of the family home, mother, or her family ever suffer because of gin or alcohol
30 consumed by her, or from any other cause whatsoever.

6. THAT with reference to paragraph 6 of the said affidavit I say again that father's attitude to liquor was unreasonable. I say that mother has had two car accidents but I say that neither was attributed to excess of alcohol. I say further that over the years father has had more car accidents than mother.

40 7. THAT with reference to paragraph 8 of the said affidavit I say that mother did give me money during my final year at university. I do not remember the exact amount but she would on occasions give me amounts of

In the Supreme Court of New Zealand

No. 7

Affidavit of Warwick Greville George Haldane for Applicant (Appellant)

20th August 1971

- continued

approximately $10 and $20. It is not true that I was full time at university for most of the time neither is it true that I worked in a law firm for the last two years only of the course. The facts are as follows :

(i) 1960 December left school and worked in Tomoana freezing works until I contracted an infection and left in February after which I helped on the farm. I had earned insufficient to sustain myself at University for the whole year and father gave me the necessary balance. During this year I also washed dishes at Orsinis restaurant and wrapped Truth on Monday nights to earn money.

(ii) 1961 University full time. In long holidays worked at Birdseye in Hastings for 3½ months.

(iii) 1962 University full time followed by further 3½ months at Birdseye.

(iv) 1963 University part time with a full time office job. Left job after finals and worked on construction sites in Wellington as I had been called up for National service in January.

(v) 1964 January to March Waiouru Camp. University part time - full time office job.

(vi) 1965 January to March Waiouru Camp. University part time - full time office job.

(vii) 1966 University part time - full time office job.

(viii) 1967 University part time - full time office job.

I was admitted as a solicitor in June of this year.

(ix) 1968 last year at University - full time office job. In April of this year I became a partner with Mr W.S. Shires of Wellington.

In the Supreme Court of New Zealand

No. 7

Affidavit of Warwick Greville George Haldane for Applicant (Appellant)

20th August 1971

- continued

It is my recollection that after national service camp in 1964 and 1965 I had insufficient money to pay enrolment fees and purchase essential books. When I asked father for assistance this was declined. My sister Sandra gave me £100 in 1964 and my sister Virginia gave me £100 in 1965. In each case my attitude to this was that of a loan and I have since repaid $50 to each of my
10 sisters.

During the years prior to 1968 I would occasionally receive sums of money from father of varying amounts. There was no question of a regular allowance intended to support me and at no stage of my career did father ever discuss my rate of or lack of progress on which such payments would turn. On the other hand, as I have previously stated, both my brothers and I were
20 accustomed to help out with odd jobs on the farm during all our holidays be they school or the university short vacation. These payments sometimes followed such jobs.

8. THAT with reference to paragraph 9 of the said affidavit father did order mother from the house at the point of a shotgun. This happened in 1955 during the August school holidays. My recollection of this incident is that father returned home late in
30 the evening when mother and the rest of the family were in bed and attacked mother with a hair brush and his fists. He then took his double barrelled shotgun and for much of the night until about four o'clock in the morning when mother and all children left he held this gun on us all. We were all taken to friends in Havelock North. Father did not drive us. At the time I was 12 years old and the children's ages ranged
40 from 14 to 6.

I have heard father threaten to shoot mother.

9. THAT with reference to paragraph 13 I say that father did not learn from the police of his elder daughter's responsibility

In the Supreme Court of New Zealand

No. 7

Affidavit of Warwick Greville George Haldane for Applicant (Appellant)

20th August 1971

- continued

for the removal of certain household goods in October 1969. I was informed by my sister of what she had done. I went to Hawke's Bay immediately and eventually visited the family home taking with me certain of the removed articles. I made this visit against the wishes of my two sisters who were worried that I would be the subject of an attack by father. I have been so threatened in the past. I told father who was responsible and asked him to tell the police it was a family matter so that they would not continue to investigate. He was adamant that charges would be made and he refused to intervene. During this discussion Mrs Williams arrived at the house and she too asked him to take no further action but to no avail. It was some weeks after this before his attitude changed.

10. THAT with reference to paragraph 16 of the said affidavit I say that in June 1970 father informed me that the market value of Lot 4 being the asparagus plot and other undeveloped land was over $90,000. I took my fiancee down to the house and farm to meet father at this time and it was then that he made this comment in response to my question as to the price of Lot 4.

11. THAT mother has never been a grasping person in money matters neither has she spent freely for only her own needs. I say that interests of her family and children came always before her own. I say that there were many times when this required sheer physical courage and endurance to stand up to and take what my father meted out. Mother has suffered physically and been persecuted and abused constantly over a long period of years. These were the worst times. There were others when the family as a whole would be closer and I say the children and mother are still very close and affectionate.

12. THAT father has always over the years been a selfish man both temperamentally and

financially. I say that after taking into account even only his music room and equipment, his Fiat Sports Car, and his Alfa Romeo he has spent more freely on himself alone than mother could ever find herself in the position to.

I say that his own interests have always been put before those of his children or wife as is illustrated by the following :

10 (i) his lack of interest in his children and their activities at school, university, or in business.

(ii) his lack of interest in his family's small festive occasions such as birthdays and Christmas. This culminated in his refusal to attend the family Christmas gathering in the two years prior to the parties hereto being separated. It is true that over the years the family has made excuses and attempted to ignore father's absence or rudeness on frequent social occasions both at home and away but this has always been a source of anxiety and distress to all.

20

(iii) his failure to reply to the invitations to and even attend my wedding in September 1970. A fortnight earlier he had attended my brother's wedding and this had meant a lot to us all.

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(iv) his frequent allusions to the property on which we lived as his and his alone to the exclusion of the children's or mother's rights. We were repeatedly reminded of this in both word and deed. On a calmer occasion I and my two sisters, and on a further occasion my two brothers, tried to show father how he would improve the farm net income situation by forming a trust or company and

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In the Supreme Court of New Zealand

No. 7

Affidavit of Warwick Greville George Haldane for Applicant (Appellant)

20th August 1971

- continued

investing in more life insurance. At that time and times the situation was of course drastically different from the present. We told father we did not relish the prospect of selling the farm to pay death duties in the event of his death. His attitude was always to laugh and say there would be enough left over. I say this was a selfish and financially unsound attitude to adopt. As it then could directly affect his children I also say it was indicative of his lack of interest in their welfare. 10

13. THAT over the years mother has had to battle constantly in the interests of both herself and her children. At the same time I have never known her to fail in providing all that we needed in a mother and all that a normal man would require in a housekeeper and wife. I say that she provided all these tangible and intangible things despite the extreme inconsistency of mood and manner of father who would range from charming to violent foul temper without apparent provocation or cause. I say this created a difficult and tense atmosphere where we were all accustomed to do anything to appease father and avoid friction. 20 30

SWORN at Hong Kong this)
20th day of August 1971) 'W.G.G. Haldane'
before me :)

'L. Crawford'

Consular Secretary
New Zealand Commission,
Hong Kong.

No. 8.

In the Supreme Court of New Zealand

No. 8

Affidavit of Virginia Anne Sherratt and Sandra Christina Chambers for Applicant (Appellant)

1st September 1971

AFFIDAVIT OF VIRGINIA ANNE SHERRATT AND SANDRA CHRISTINA CHAMBERS

WE VIRGINIA ANNE SHERRATT of Rissington Married Woman and SANDRA CHRISTINA CHAMBERS of Mokopeka Havelock North Widow jointly and severally make oath and say as follows :

1. THAT we have had access to the affidavit of our father GEORGE CHRISTOPHER HALDANE and wish to comment in writing as follows :

2. THAT we refer to paragraph 4 and would say that our mother was always a competent and capable housekeeper and to our knowledge provided luncheons and afternoon teas and morning teas plus an additional snack meal at 5 o'clock in hot weather for our father to keep him going along with his employees until dark.

3. THAT whenever work finished, a bath would be ready for our father and his comfort was the first consideration of our mother. Our father was not the sort of man to be grateful for anything that was done for him.

4. THAT we refer to paragraph 5 of the Affidavit where there is the suggestion our father was forced into marriage with our mother by virtue of a pregnancy. Our father has told us that Grandfather Haldane offered to "buy her off" but that our father was not prepared to agree to this and was very happy to marry our mother at the time because he loved her.

5. THAT we refer also to the suggestion that our mother was a grasping person and would refute this by pointing out that along with the children, she would pick peas out of our father's paddocks and these would be sold to local greengrocers so that the money could be applied towards buying

In the Supreme Court of New Zealand

No. 8

Affidavit of Virginia Anne Sherratt and Sandra Christina Chambers for Applicant (Appellant)

1st September 1971

- continued

Christmas presents. This situation would have gone on for a number of years.

6. THAT on the whole, our mother was a much more pleasant personality to have about the house than our father.

7. THAT our father was not very responsive to children or grandchildren or the friends of his children.

8. THAT on the question of our mother's drinking habits, we would not agree with the suggestion which appears to be contained in the Affidavit, that she wassomething of an alcoholic. As far as we are concerned, she would not be regarded as anything other than a social drinker who enjoyed an odd drink with her friends in the evening. 10

9. THAT we say that there was always a meal for our father whenever he wanted it.

10. THAT we notice in paragraph 5 also an assertion that our mother had an allowance of $40.00 to $80.00 ; from our observations and from our talking with our mother we would be incredulous that the figure was ever more than $40.00. Sometimes the amount would be perhaps more than $40 but $40.00 would certainly be a good average figure, depending on the mood of our father when the housekeeping cheque was being written. 20

11. THAT the suggestion that we were sent to boarding school to get us away from the acrimonious atmosphere in our home, we would not take too seriously because it would be our opinion that children were something of a bore to our father and on the whole he would have been happier with us away. 30

12. THAT we refer to paragraph 8 and would say that our mother went to work at Birds Eye to our certain knowledge and we verily believe that the prime reason for her doing so was that she could make some funds 40

available to our brother Warwick, who was a law student in the final stages of his training.

13. THAT it is our belief that our brother, Warwick was not assisted to any marked degree financially by our father and that largely he would have fended for himself as far as the costs of his education were concerned.

14. THAT as far as we are concerned, we are able to confirm that we did contribute money to our brother to assist him in the completion of his education and we consider that this help should have been forthcoming from our father, and not from us.

15. THAT as far as paragraph 9 is concerned, there is a reference there to an incident whereby our father denies ordering his wife and children out of the house at the point of a shot-gun, but this would be a vivid memory to both of us, we being 14 and 11 respectively and there is no doubt that this is no invention but actually happened.

16. THAT as far as paragraph 13 is concerned, the only goods which were taken were essential clothes and everything else was left including a great number of our mother's personal effects.

SWORN at Hastings this 1st)
day of September 1971) 'V.A. Sherratt'
before me :)

'H.L. Crawford'

SWORN at Hastings this 1st)
day of September 1971) 'S. Chambers'
before me:)

'J. Von Dadelszen'

A Solicitor of the Supreme Court
of New Zealand

No. 9

In the Supreme Court of New Zealand

No. 9

Second Affidavit of Dora Agnes Yeoman for Applicant (Appellant)

26th November 1971

SECOND AFFIDAVIT OF DORA AGNES YEOMAN

I, DORA AGNES YEOMAN of Hastings Law Clerk make oath and say as follows :

1. THAT I refer to my previous affidavit sworn in March 1971 wherein it was stated that following subdivision of the land contained in Certificate of Title D2/764 into two lots, Lot 1 was sold and the balance of the land containing Thirty acres Three roods and Nine perches (30a.3r.9.) being Lot 2 Deposited Plan 12401 and all the land in Certificate of Title D3/373 was vested in George Christopher Haldane. 10

2. THAT the capital value of the said land vested in George Christopher Haldane is $39,500.00, and attached hereto and marked with the letter "A" is a copy of the valuation certificate to this effect, which valuation certificate is dated the 6th day of October 1971, and the valuation of the property having been done on the 1st day of November 1970. 20

SWORN at Hastings this)
26th day of November) 'D.A. Yeoman'
1971 before me :)

'John Baker'

A Solicitor of the Supreme Court of New Zealand

"A"

Valuation reference: 962/367

V.I.	$14000	Nature of improvements:	Occupier : (within the meaning of the Rating Act)
U.V.	$25500	CT O/I Gg Fg Cg	
C.V.	$39500		HALDANE, George Christipher

Area: 30 - 2 - 09.00 Situation:

Owner - if other than occupier: OCCUPIER

Description : Lot 2 D.P. 12401 Blk III Te Mata S.D.

Date of Valuation : 1.11.70

NO. 21516 THE VALUATION OF LAND ACT 1951

The above is a copy of an entry in the District Valuation Roll for Hawke's Bay County

The date of the Valuation is as shown above.

Abbreviations used in this Certificate are :
CT - Cultivation; Gg - Grassing; Fg - Fencing; Cg - Clearing;
O/I - Other improvements:

"J. Graham"
For Valuer-General

Fee: $2.10
Date of Issue : 6.10.71

In the Supreme Court of New Zealand

No.10

Exhibit "A" to Affidavit of Dora Agnes Yeoman sworn 26th November 1971.

No. 11.

In the Supreme Court of New Zealand

No. 11

Reasons for Judgment of Wild C.J.

19th June 1973

REASONS FOR ORAL JUDGMENT OF WILD C.J.

This is an application by a wife under s.5 of the Matrimonial Property Act 1963 for an order "that the husband pay such sum as the Court thinks fair and reasonable". Counsel for the applicant acknowledges that since the decision of the Court of Appeal in E. v. E. [1971] N.Z.L.R. 859 an order cannot be made as simply as that and he asks, and I am prepared to deal with the application on this basis, that any order made should take a form indicated by that decision. 10

The parties were married on 2 December 1940 when they were both only 19. There were five children who were born respectively in the years 1941, 1942, 1944, 1947 and 1948. These children were all given an education at private schools and have gone off into adult life. After some preliminary 20 moves brought about by the fact that the husband was in the Services in the war, the couple settled down on a property of about 112 acres at Southland Road, near Hastings, which at that time was owned by the husband's father. The husband's parents built a house for the couple on that farm. They went into it just at the end of the war and they established a cropping and fruit growing business on the property which in due course 30 was gifted by the Husband's father to the husband. Unhappily, the marriage has been affected by a good deal of disharmony and discord. There was a separation in 1958. There was another separation in 1962. And there was a final separation when the wife left in June 1969. There is argument about the cause of that. The wife says the husband was associating with another woman and it is acknowledged that he is now living 40 with that lady. The husband blames the wife for the separation. In her affidavit the wife describes the husband as selfish and ungenerous. The husband says that the wife was grasping, and that there was never much affection between them and as time went on it grew less.

It is no part of my duty on this application to apportion blame. I am obliged by s.6A of the statute to leave out of account any question of wrongful conduct that does not relate to the acquisition of the property in question. So I am glad to leave that out of account. It is perhaps a consequence of the unhappy state of disharmony that the children are brought into the matter. Three of them have made affidavits and I think some significance attaches to the fact that, broadly speaking, they support the application of their mother. Having regard to the opportunities they had to observe the domestic situation and their ages, I attach some weight to that.

The present situation is that the wife has no home, no savings and no assets, and is obliged to live with one or other of her children. She has half the income of a trust set up by her husband's mother. She also has, as I am told today, maintenance at $50 a week which was fixed in the Magistrate's Court.

The husband's assets are set out by him in his affidavit of July 1971 as follows :

Land, worth approximately	$60,000
Flaxmere flats	$22,000
Beach house	$12,000
Farm equipment, say	$ 2,000
Company shares	$ 3,200
Company debenture	$ 3,000
Two motor cars, valued at	$ 8,000
Bank account in London of	$ 2,000
Bank of New Zealand, Hastings	$ 4,000
H.B. & Gisborne Savings Bank	$ 2,300
	$118,500

The wife seeks an order in respect of all those items of property. In fact most of the original 112 acres, having been subdivided, was sold off by the husband, and counsel very sensibly agree that the assets just mentioned represent what is left of the

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Reasons for Judgment of Wild C.J.

19th June 1973

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original 112 acres and the further property acquired with the proceeds of sales.

The first question for decision relates to the property in dispute. For the husband it is submitted that this is not matrimonial property at all but the husband's property, in effect his business, to which the wife has made no contribution. It is emphasised that the property came from the husband's father and it is urged that the assets, as they now are, represent simply the enhanced value of the property originally so given by him which became the husband's business. In my opinion that is an unreal view in this case. It is true that the property here is different in its history from that in a case both counsel have canvassed, Burgess. v. Burgess [1968] N.Z.L.R. 65, where the property in dispute resulted from a joint enterprise in the fullest sense between the husband and the wife from the beginning of their marriage. Here the property came originally from the husband's father and the wife admittedly contributed nothing towards its acquisition. But I agree with Mr Kent's submission that it is artificial not to treat the home and the area of land on which it stood as one family unit. I think it ought properly to be regarded as matrimonial property, the value of which over the period during which the marriage subsisted has been increased and enhanced by a number of factors. Perhaps the most important of these, and a happy one for both parties, is the appreciation in value of the good land of Hawke's Bay, particularly near Hastings. Another is the development of the canning industry in that area to which this very land has obviously contributed substantially. Another factor is that the husband has worked on the property over the years of the marriage; and another is that the wife has kept the home and the family and made it possible for the husband to do that work. The value would not have increased to the present level of the assets without the husband's work, but the fact that he did that work was contributed to, in my view, by the wife's

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- continued

services and her management, and by her general contribution as a wife and a mother of five children born, as I have said, over a period of some 7 years. For those reasons I think the case is a different one from that in the mind of North P. when he said in E. v. E at p.885 :

> "The mere fact that a wife has been a good wife and looked after her husband well domestically, cannot possibly, in my opinion, justify an order being made in her favour in respect of a business owned by the husband in the running of which the wife had no share."

Mr Monagan relies on that passage, but in my view the wife here did do her share in the running of the husband's business.

I have already said that it is expressly agreed by counsel that the assets represent the present form of the original matrimonial property and can accordingly be traced and dealt with in the manner mentioned by North P. at p.882 of that case.

The next question is how the wife's contribution to the property is to be assessed. This is always a difficult question and I approach it bearing in mind what the Court of Appeal laid down in E. v. E., where the onus lies, and bearing in mind the origin of this property. Specifically, Mr Kent refers to the wife's contribution in providing tea and refreshments for the husband and people working on the property, to the sale of fruit at the gate, and to the fact that she worked for a short time in the Bird's Eye factory. The value of these contributions is criticised by Mr Monagan and I agree broadly with him that they are really minimal. But I think the wife's real contribution was her general services and management over the 24 years during which the marriage in fact subsisted and the property developed, despite the separations I have mentioned. Another factor is that on my

deduction from the affidavits the wife had no regular allowance from her husband virtually until the time when she finally left. Obviously both of them lived extravagantly but the wife did not in fact have what all wives are entitled to expect and what most receive, namely, a regular allowance for herself.

The affidavits of the three older children bear testimony to the forebearance which she had to show in that regard and generally in the circumstances of the marriage. In regard to the bringing up of the family I do not overlook the point made by Mr Monagan that these children were substantially educated at boarding schools. Nevertheless, the mother's part was still vitally important.

I was told that the parties had made some attempt to reach a compromise, and that the husband was prepared to pay maintenance at $30 - $35 a week as part of that offer, to provide her with a small car, and to allow her occupancy of one of the Flaxmere flats. That offer was not acceptable to the wife but I think I am entitled to take into account the fact that it was made as reflecting an acknowledgement on the part of the husband or his advisers that there was an obligation upon him in regard to the property. I think that that acknowledgement was proper. Maintenance is not in dispute before this Court and it remains for me to fix the order that I think is "just".

Having regard to all the circumstances the order is that one-fourth share of the land which remains from the original farm will be vested in the wife, and from the cash funds of the husband, as listed, the sum of $4,000 will be vested in her.

I invite counsel to make a suggestion as to appropriate costs.

No. 12.

In the Supreme Court of New Zealand

No.12

ORDER AS TO DISPOSITION OF PROPERTY

Tuesday, the 19th day of June 1973

Before the Right Honourable the Chief Justice

Order as to Disposition of Property

19th June 1973

UPON READING the Notice of Motion dated the 23rd day of December 1970 filed herein and the Affidavits of Dorothy Haldane, Dora Agnes Yeoman, Virginia Anne Sherratt and Sandra Christina Chambers and Warwick Greville George
10 Haldane and George Christopher Haldane sworn and filed herein AND UPON HEARING Mr G.C. Kent and I.T. Heath of Counsel for the Applicant Dorothy Haldane and Mr A.K. Monagan of Counsel for the Respondent George Christopher Haldane THIS COURT ORDERS :

(1) That a one quarter (¼) share or interest in all that piece of land containing thirty (30) acres, three (3) roods, nine (9) perches more or less being Lot 2 on
20 Deposited Plan Number 12401 and being all the land in Certificate of Title Volume D3 Folio 373 be and the same is hereby vested in the applicant.

(2) That the respondent do forthwith pay to the applicant the sum of $4,000.00 (Four thousand dollars).

(3) That the respondent do pay to the applicant her costs in the agreed sum of $500.00 (Five hundred dollars) together
30 with all disbursements (including agency charges).

By the Court

L.S. 'R. ON HING'

DEPUTY REGISTRAR.

No. 13

IN THE COURT OF APPEAL OF NEW ZEALAND

In the Court of Appeal of New Zealand

No. 13

Notice of Motion of Appeal

31st October 1973

C.A. No. 97/73

IN THE MATTER of the Matrimonial Property Act 1963

BETWEEN GEORGE CHRISTOPHER HALDANE of Hastings, Farmer

Appellant

A N D DOROTHY HALDANE of Maraetotara, Married Woman 10

Respondent

NOTICE OF MOTION ON APPEAL

TAKE NOTICE that on day the day of 1974 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard, Counsel for the above-named Appellant WILL MOVE this Honourable Court at Wellington ON APPEAL from the whole of the Judgment of the Supreme Court of New 20 Zealand delivered by the Right Honourable the Chief Justice at Napier on Tuesday the 19th day of June 1973 in No. M.53/70 in the Napier Registry of the Supreme Court of New Zealand wherein it was ordered :

1. That a one-quarter (¼) share or interest in all that piece of land containing thirty acres three roods nine perches (30a.3r.9ps) more or less being Lot 2 on Deposited Plan Number 30 12401 and being all the land in Certificate of Title Volume D3 Folio 373 be vested in the above-named Respondent.

2. That the above-named Appellant pay to the Respondent the sum of Four thousand dollars ($4,000).

In the Court of Appeal of New Zealand

No. 13

Notice of Motion of Appeal

31st October 1973

- continued

3. That the Appellant pay to the Respondent her costs in the agreed sum of Five hundred dollars ($500) together with all disbursements (including agency charges).

UPON THE GROUNDS that the said Judgment is erroneous in fact and/or law.

DATED at Napier this 31st day of October 1973.

'A.K. Monaghan'

10 Counsel for the above-named Appellant

TO: The Registrar of the Court of Appeal

AND TO: The Registrar of the Supreme Court at Napier.

AND TO: The above-named Respondent.

No. 14

Reasons for Judgment of McCarthy P.

21st February 1975

No. 14

REASONS FOR JUDGMENT OF McCARTHY P.

This is an appeal from an order made under the Matrimonial Property Act 1963 by the Chief Justice in favour of the claimant 20 wife. My approach to it is dominated by two considerations: the judgment of this Court in E. v. E. [1971] N.Z.L.R. 859, and the case's own particular facts.

E. v. E. has been the subject of much discussion. Approval and condemnation followed its delivery. But as we endeavoured to emphasise in Aitken v. Aitken (unreported, 30 November 1973), the views of the majority must be accepted as being definitive of 30 certain aspects of the application of the Matrimonial Property Act, however much they may conflict with any particular view of what should be recognised as the social rights

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of wives in these days. Trying to do that, I see the law, as it currently governs applications under this Act, as being in accord with the following propositions, which I state only because it has appeared to me that there still exists some uncertainty in the minds of some Judges and writers concerning some aspects.

1. Section 5 (1) is directed solely to the determination of disputes regarding identifiable items of real or personal property, and the Court must consider each item individually before it can make an order in respect of it: the community of surplus approach must be rejected as not compatible with the Act. This proposition is derived from the judgments of North P. and Turner J. in E. v. E.

2. That except in those cases where a right enforceable at law or in equity exists independently of the Act, a spouse's claim must be based on contributions and an award can be made only if and to the extent that the claimant spouse establishes contributions. This may not be said in so many words in the judgments of the majority in E. v. E., but it is subsumed in both. In any event I think it emerges plainly from s.6. Though s.6 (1A) provides that contributions need not be in the form of money payments and may be in any form and of usual and not extraordinary character, and though this sub-section does not distinguish between the classes of contributions which may be taken into account in respect of a claim to a share in the matrimonial home, on the one hand, and those to shares in other assets, on the other, it is proper to take a more benevolent attitude in favour of a wife when she claims in respect of a matrimonial home, and perhaps also of some other assets which can fairly be regarded as a "family" asset. In E. v. E. North P. at p.885 agreed that "there is much to be said for the view that too much regard should not be had to the way the legal or

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equitable interest of the husband and wife in the matrimonial home have been defined". This more benevolent attitude in respect of the matrimonial home at least, seems to me to be in accordance with the general objective of the Act, and has influenced a large number of decisions in the Supreme Court. So, though the onus lies on a wife to establish her claim, including a claim to
10 a share in the matrimonial home, I imagine that most Judges quite rightly will not be over-ready to hold the burden of proof unsatisfied in a matrimonial home claim by a wife who has performed her matrimonial responsibilities with credit.

3. Though North P. thought that a spouse should not be entitled to share in the other's business interests (as distinct from the matrimonial home, and possible other
20 "family" assets) unless it is shown that they both had carried on the business "more or less jointly" (p.884) and, as a corollary, that the fact that the wife had been a good wife looking after her husband well domestically should not itself justify an order in respect of those business assets, I do not believe that he meant to be heavily technical in his use of the words "more or less jointly". I have not much doubt that
30 he would have included as permissible a claim by a wife who had deliberately accepted a reduction in her standard of living - had gone without - in order to make more money available for employment by the husband in his business activities with consequent growth in his assets. There may be cases too when the Court, exercising the discretion given it by s.6, in claims in respect of a husband's business assets may
40 have regard to the assumption of domestic responsibility in some special or unusual way if that form of contribution resulted in freeing the husband to add to his assets.

4. When the Court is dealing with assets of a spouse other than the matrimonial home, the Court has a discretion (subject to the provisions of s.6(2) relating to a common

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21st February 1975

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intention) whether to take the contributions of the other spouse into account, whatever form they may have assumed; but when the application is in respect of a matrimonial home, the Court is obliged to have regard to those contributions. The term "matrimonial home", however, is not defined. When the issue concerns urban property no great difficulty is likely to arise from this absence of definition, but when the subject matter in dispute is a farm property, it is obvious that there will often be considerable difficulty. I believe that in each of those cases the Court must act in a common sense way and include so much of the total land holding as can fairly be said to be used for domestic purposes associated with the home in contrast with that used mainly for farm activities. "Matrimonial home" is defined in the Matrimonial Proceedings Act, but that definition is not strictly applicable; nor, indeed, is it of great help in cases where the difficulty is thrown up.

5. Though s.5 (2) includes a listing of certain orders which the Court can make (for example, sale or partition etc.) the Court is given the widest discretion in the form of order it makes. It can make such order "as it thinks fit" and the enumeration of special forms is expressly declared not to limit the generality of the power given. Therefore, in my view the Court can, if the case is one calling for it, order the payment of a sum of money in lieu of partition or the vesting of an interest in a specific asset. North P's observations at p.879 have been understood sometimes to convey some doubt concerning such orders, but I believe that what that learned President was emphasising was that the powers given by s.5 (2) should not be used as conferring a like jurisdiction to that covered by the Matrimonial Proceedings Act - namely as a general maintenance empowering statute. The general purposes of the two Acts are

different, and these differences should be maintained.

6. Though the purpose of s.6 (a) is to make wrongful conduct irrelevant in the generality of cases, it preserves the right of the Court to take that conduct into account when it is related to the acquisition of the property in dispute or to its extent or value. I think this entitles the Court to take, in those circumstances, wrongful conduct into account in determining both the form and the extent of the order.

7. I see no justification, having regard to these propositions, nor indeed in any of the decided cases, for allowing a spouse an interest in property obtained by the other by way of gift or inheritance during the marriage, unless it be established that both spouses were intended to be beneficiaries, in which case both would have an interest enforceable in equity. There is an exception to this; the case where the claimant spouse can show that by his or her contributions in one form or another he or she has contributed to the retention of a property received by way of gift or to some increase in its extent or value. It is interesting that the Special Committee on Matrimonial Property in its 1972 Report, which included a number of recommendations intended to improve the position of a wife under the Act, would exempt property obtained by gift or inheritance from third parties.

When I apply these propositions to the facts of this present case, those facts force me, with great respect to the view taken by the Chief Justice in the Supreme Court, to a different one. As I have said earlier, its special facts are a dominating feature of this case. They are set out in a carefully detailed way by Richmond J. in a judgment which he is about to deliver and which I have had the advantage of reading in advance. I do not intend to recount them. It is desirable to stress however that the equity

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in this farm property on which the matrimonial home is erected was derived originally by the husband as a gift from his parents. I cannot accept the view contended for that the husband should be regarded as a normal purchaser of the property though, as I have indicated, I recognise that he took it subject to certain mortgages. There is no evidence which justifies an assumption that the equity at the time of acquisition was not substantial. 10

As I understand the law as established by E. v. E. in such circumstances the wife has a claim only to the extent that the property was retained or improved as a result of her contributions. I separate at this stage the matrimonial home and the remainder of the farming property and put the former on one side. As to the latter 20 I see no evidence which really justifies a finding that the wife assisted by contributions either to its retention or improvement in value. I agree with what Richmond J. has to say concerning the evidence relating to that aspect of the case. I think that what she did was relatively unimportant, and certainly insufficient to support a claim under the Matrimonial Property Act. To hold 30 otherwise seems to me to involve taking large steps in the proof which I do not feel able to take. I do not overlook the strength of the sociological arguments in favour of allowing a wife who has long borne the stresses of married life to share in assets which the husband has acquiried or developed during the period of the marriage, even if it be that she cannot establish any significant 40 contributions beyond that which a wife normally provides in looking after a home and children. But we must decide according to law and that requires us to preserve the distinction between a wife's rights under the Matrimonial

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Reasons for Judgment of McCarthy P.

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Property Act and those which she has under the Matrimonial Proceedings Act. Considerations which I have just mentioned seem to me to have strong relevance to an application under the latter Act but insufficient under the former. Perhaps it would be to the good if the two Acts were combined in one piece of legislation, but that is not the current situation. It may well be, too, that too little use has been made of the powers under the Matrimonial Proceedings Act to make orders for capital sums. There seems to be a growing appreciation of the justice of such orders in England. For example, see the observations of Lord Denning recently in Cumbers v. Cumbers [1975] 1 All E.R. 1. Be that as it may in this present case far from there being an accretion in the husband's interest in his farming and other business assets in real money terms over the period of the marriage, I share with Richmond J. the view that the high standard of living which the family as a whole enjoyed and in which the wife must in some degree at least have participated, resulted in depletion rather than growth.

So far as the matrimonial home including so much of the surrounds as can fairly be included is concerned, I have also entertained doubts whether the wife established a claim, but I am persuaded by Richmond J's judgment that I should apply the benevolent approach, to which I have referred earlier, and in doing so I agree with what he proposes, namely a payment of the sum of $5,000 which he estimates to be roughly one-fourth of the value of that asset.

In the result I would allow the appeal. I would quash the order of the Chief Justice insofar as it allows the wife a one-quarter share in the area of land containing 30 acres 3 roods and 9 perches being all the land in Certificate of Title Volume D3 Folio 373, but I would increase the amount stated in the provision for payment of a sum of money to $5,000.

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The wife is legally aided. I would make no order for costs nor specify any sum pursuant to s.17 (2) of the Legal Aid Act.

'Thaddeus McCarthy P.'

No. 15

No. 15

Reasons for Judgment of Richmond J.

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REASONS FOR JUDGMENT OF RICHMOND J.

This is an appeal from a judgment of the Chief Justice whereby he vested in the respondent wife a one-quarter interest in an area of land containing approximately 30 acres and registered in the name of the appellant husband, and also ordered the husband to pay to the respondent wife the sum of $4000. 10

The parties were married in 1940 when both were aged 19 years. There were five children of the marriage who were born respectively in 1941, 1942, 1944, 1947 and 1948. The husband's parents had a large family home near Hastings. They also owned a farm of some 112 acres, some distance from the family home, in Southland Road. They were people of substance and worked the farm on a limited basis. After their marriage the parties lived with the husband's parents in their family home and there then followed a period during which the husband served in the Armed Forces. He returned to civilian life towards the end of 1944, and he and his wife again lived with his parents for about a year. By this time three of the children had been born. 20 30

Somewhere about the end of 1945 they moved into a house on the farm which had been built for them by the husband's parents. It is not entirely clear from

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the affidavits at exactly what point of time the husband acquired title to the farm. His wife says she believes that the farm had been gifted to him when the family moved into their new home. The husband agrees that he derived the farm property by gift from his father but gives no precise date. He says it was subject to a mortgage in favour of the Public Trustee for $12,600 and also that he gave a mortgage back to his father securing $5300. By the time his father died in December 1955 the amount owing to his father had been reduced to $2550 but it does not appear whether this was as the result of further gifts from the father or of repayments by the husband. The $2550 was discharged from the husband's share of his father's residuary estate and in addition he received from that estate cash and assets valued at approximately $29,000.

From 1945 until 1962 the husband grazed sheep on the farm property and also harvested approximately 50 acres of grass seed together with one paddock of peas each year. Then he decided to switch to intensive farming of the property with the object of growing peaches, asparagus, maize, beans and tomatoes. He planted an area of 30 acres of asparagus and then an area of 15 acres in peaches. During this developmental period he also cropped approximately 20 acres of tomatoes and 40 acres of maize each year.

I have mentioned that when the farm property was gifted to the husband it was subject to a mortgage to the Public Trustee for $12,600. This mortgage was refinanced from time to time but without going into detail the amount owing on first mortgage on the property steadily increased over the years. The only detailed figures relate to the period from 1955 to 1967 and are as follows :

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Year	Amount of Mortgage
1955	$17,540
1956	24,999
1956	12,400
1959	16,000
1961	18,000
1962	24,000
1963	30,000
1963	36,000
1964	40,000
1967	46,000

10

This increase in the amount of the mortgage accrued notwithstanding the fact that round about the year 1956 the husband repaid $11,600 of the amount then owing, using for that purpose money received from his father's estate. He says that his only capital expenditure on the farm property was $4000 spent upon irrigation in 1957 or thereabouts and also a sum of $3000 for additions to the residence on the farm. The following table shows his net income after taxation, personal drawings and net deficit during the years 1959 to 1969.

20

Year Ended 30 June	Net Income after Taxation	Personal Drawings	Life Insurance	Net Deficit
1959	$1319.17	$6454.49		$5135.32
1960	1175.67	6298.41		5122.74
1961	2954.24	7904.41		4950.17
1962	4591.27	7214.78		2623.51
1963	2280.91	9192.53	335.50	7247.12
1964	92.50	3371.18	740.00	4018.68
1965	1591.84	5996.99	56.64	4461.79
1966	4968.19	6055.48	56.65	1143.94
1967	2128.38	4733.34	56.65	2661.61
1968	3544.72	3206.21	656.65	318.14
1969	2266.34	4674.78	706.40	3114.84
Totals:	$26,913.23	$65,102.60	$2,608.49	$40,797.86

30

He says that the various increases in the amount owing on mortgage were due to the fact that the amount being spent on normal living expenses and school fees greatly exceeded his farming income. It may be added here that all five children were educated at private schools and were boarders for a large part of their school careers. This of course lightened the responsibilities of their mother.

There is no suggestion that the wife made any contribution in money to the marriage. However at some stage after the marriage the husband's mother set up a trust under which the husband and the wife each received one half of the income. The wife's half share amounted to round about $300 per annum.

As the years went by the marriage became an unhappy one. There were periods of separation in 1958 and 1962. There was a final separation in June 1969. The exact reason for this separation is not material to the present proceedings as it in no way affected the acquisition or value or extent of the property. The wife at that stage had no assets of her own other than the interest in the trust fund already referred to. She has since received maintenance from her husband originally at $30 per week and more latterly at $50 per week as a result of proceedings in the Magistrate's Court. There is no evidence that the wife played any active part in the farming, cropping and fruit growing operations on the property. It cannot be said that the parties carried on the farming business more or less jointly. The wife says that from time to time she would take lunches and morning and afternoon teas to her husband and morning and afternoon tea to a contracting gang employed in planting tomatoes. She sold some tomatoes and walnuts at the front gate. She also at one stage for a few months worked in the Birdseye factory but this appears to have been for the purpose of helping one of the children

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Reasons for Judgment of Richmond J.

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who was then at University, but also working full time in a solicitor's office. There is no evidence as to what money she derived from these operations which must be regarded as minimal. There is no satisfactory evidence as to the value of the matrimonial home.

The general impression one receives from the affidavits is that the parties lived well and that although there were disagreements between them over money matters the wife by one means or another did not go short as regards her personal requirements. She had the use of the family car for social purposes. She gives no specific evidence of the duties she was called upon to perform in and around the home. There is, for example, no evidence that she looked after the garden or contributed any special services such as redecorating any part of the house, or growing vegetables. From the somewhat meagre information in the affidavits I infer that she cooked the meals, looked after the children when they were at home and generally carried out ordinary domestic duties of a wife in a reasonable and proper way. The chilren, as already mentioned, were away at boarding school for a great deal of the time. So the overall picture is of a wife who, during the years 1946 to 1969, made no special domestic contributions such as specially frugal management or any of the other types of special service to which I have earlier referred. She, however, over that period of some 24 years carried out the ordinary and usual domestic duties of a wife and mother in a proper way. In return she received the benefit of what appears to have been, at the very least, a fairly high standard of living.

Such then was the general situation at the time when the parties finally separated in 1969. The husband then decided to subdivide and sell off portions

of the 112 acre farm. The property was subdivided into four separate lots in July 1970. In that month Lot 2 was sold for $37,500. This lot contained 17 acres and included the former matrimonial home. In the same month Lot 3 (containing 16 acres) was sold for $26,000. The next month Lot 1 (containing 31 acres) was sold for $38,000.

Then in December 1970 Lot 4 was sub-
10 divided into two lots one of which was sold in the same month for $15,800. This left as the balance of the land originally given to the husband by his father an area of approximately 30 acres which was still vested in the husband when the present proceedings were heard by the Chief Justice. This remaining portion is an area used by the husband for cropping asparagus and in his affidavit he estimated that this asparagus
20 land will produce a gross income of $10,000 rising to perhaps $15,000 when the asparagus beds have reached full production. The cost of production will be one-third of the gross but perhaps more.

The result of all the sales of the subdivided land, after discharging the mortgage and a bank overdraft and allowing for various expenses involved in the sub- division, was a net figure of $42,800.
30 The husband spent $34,000 of this in acquiring two flats in Hastings (for $22,000) and a beach cottage(for $12,000). This left a cash balance of approximately $9,000. He had been associating at the time of the separation with another woman and after the separation and the purchase of the flats he lived in one of those flats with that woman, and received rent from the other flat. His assets at the time when his affidavit
40 was sworn in July 1971 were as follows :

Land, worth approximately	$60,000
Flaxmere flats	22,000
Beach house	12,000
Farm equipment, say,	2,000

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[brought forward]	$96,000
Company shares	3,200
Company Debenture	3,000
Two motor cars, valued at	8,000
Bank Account in London of	2,000
Bank of New Zealand, Hastings	4,000
H.B. & Gisborne Savings Bank	2,300
	$118,500

The land which is referred to as the first item in the above list is of course the 30 acres of asparagus land still retained by the husband. It was in respect of this land that the Chief Justice vested a one-quarter share in the wife. On the above figures this share would be worth $15,000. He also, as already mentioned, ordered a payment of $4,000, perhaps having regard to the fact that the husband's Hastings Bank Account had that amount in credit.

Although there is no reference in the affidavits to any divorce proceedings between the parties we were informed from the Bar that since the order of the Chief Justice was made a decree absolute has been granted.

Both in the Supreme Court and in this Court the central submission made by Mr Monagan was that the entire farm of 112 acres (with the exception of the matrimonial home itself) was a business asset of the husband and that the wife made no such contribution either to the acquisition of that asset or the carrying on of the business itself which would entitle her to an order of the Court vesting in her some interest in the land. The Chief Justice did not accept this submission. He said :

"It is true that the property here is different in its history from that in a case both counsel have canvassed,

Burgess v. Burgess [1968] N.Z.L.R. 65, where the property in dispute resulted from a joint enterprise in the fullest sense between the husband and the wife from the beginning of their marriage. Here the property came originally from the husband's father and the wife admittedly contributed nothing towards its acquisition. But I agree with Mr Kent's submission that it is artificial not to treat the home and the area of land on which it stood as one family unit. I think it ought properly to be regarded as matrimonial property, the value of which over the period during which the marriage subsisted has been increased and enhanced by a number of factors. Perhaps the most important of these, and a happy one for both parties, is the appreciation in value of the good land of Hawke's Bay, particularly near Hastings. Another is the development of the canning industry in that area to which this very land has obviously contributed substantially. Another factor is that the husband has worked on the property over the years of the marriage; and another is that the wife has kept the home and the family and made it possible for the husband to do that work. The value would not have increased to the present level of the assets without the husband's work, but the fact that he did that work was contributed to, in my view, by the wife's services and her management, and by her general contribution as a wife and a mother of five children born, as I have said, over a period of some 7 years. For those reasons I think the case is a different one from that in the mind of North P. when he said in E. v. E. at p.885 :

> 'The mere fact that a wife has been a good wife and looked after her husband well domestically, cannot

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> possibly, in my opinion, justify an order being made in her favour in respect of a business owned by the husband in the running of which the wife had no share.'
>
> Mr Monagan relies on that passage, but in my view the wife here did do her share in the running of the husband's business."

It may be pointed out here that the judgment now under appeal was an oral judgment delivered on 19 June 1973. Subsequently, in November of the same year, this Court heard an appeal (Aitken v. Aitken C.A. 28/73 judgment November 30, 1973) in which another passage in the judgment of North P. in E. v. E. was expressly approved as definitive of the law. That passage occurs in his judgment in E. v. E. at p.884, and is as follows :

> "(The applicant) ... must accept the burden of proving in a reasonable manner the nature of the contributions she made to one or more particular properties ... I am not prepared to extend the observations (in Hofman v. Hofman [1965] N.Z.L.R. 795) to the husband's business interests unless it is shown that the spouses have carried on a business more or less jointly."

I am in agreement with what the President has already said about these observations made by North P. and indeed with what he has said as to the general approach which has to be made in the application of the Act. In the present case the Chief Justice thought that it would be artificial not to treat the home and the entire 112 acres of land on which it stood "as one family unit". In the next sentence he thought that the entire farm should properly be regarded "as matrimonial property". These expressions are not to be found in the Matrimonial Property Act

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itself. The only distinction made in the Act is between a "matrimonial home" and other forms of property. There is no definition of "matrimonial home" in the Act, which differs in this respect from the Matrimonial Proceedings Act. In my opinion the ordinary popular meaning of "matrimonial home" is the dwelling-house itself together with its immediate domestic grounds. With respect, I think that the entirety of this particular farm, with the exception of the matrimonial home itself, ought to be regarded as a purely business asset of the husband. The Chief Justice considered that "the wife here did do her share in the running of the husband's business". He did not explain exactly what he meant by this. For myself I am quite satisfied that there is nothing in the evidence which, in the words of North P., established that the spouses carried on a business more or less jointly. The fact that the wife sometimes took food or tea to her husband when he was working on the farm and on occasions to contract labour, and that she sold some unspecified but probably minimal quantity of tomatoes and walnuts at the front gate does not bring the case within the category of a business being run more or less jointly. Basically, it seems to me that the Chief Justice was relying on the fact that, as pointed out by him, "the wife has kept the home and the family and made it possible for the husband to do that work". But this can be said of every good wife who has a husband going out to work, whether on a farm or in a city. It is this very situation, as appears from the view expressed by North P. and subsequently approved in Aitken v. Aitken, which has been held insufficient in itself to entitle the wife to an interest in a business as opposed to a matrimonial home. For a wife to become entitled to an interest in a business asset it must be shown that she played a real part either in contributing to its acquisition or in the carrying on of the business. With respect therefore, and in the light of the decision in Aitken v. Aitken

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which was not available at the time when judgment was delivered in the present case, I myself think that Mr Monagan's submission must be accepted.

The question remains however whether the wife had acquired, at the time of the separation in 1969, a right to have some interest in the property recognised in relation to her contributions to the matrimonial home. There have been cases, 10 such as Haycock v. Haycock [1974] 1 N.Z.L.R. 409 (C.A.) where a wife has been held entitled to a substantial interest - in that case one-quarter - essentially on the basis of her performance over a long period of years of usual domestic services. Those cases, so far as I am aware, have always been ones in which the matrimonial home, or a series of matrimonial homes, have been acquired by purchase either in 20 contemplation of or subsequently to the marriage. Very often quite small cash deposits are involved and repayments are made in respect of the mortgage. Simultaneously inflation has had a substantial effect on the value of the equity. It is not difficult in such circumstances to apply the principle that a wife's ordinary domestic services have played a real part in the acquisition and 30 retention of the property. The difficulty in the present case is that the family home, along with the rest of the farm, was given to the husband. The most that can be said is that the wife's services over a long period of years no doubt assisted in the husband's ability to retain the family home and to keep the mortgage on the property at a level which, though constantly increasing because of 40 heavy family expenditure, nevertheless might have been greater still. I think it just, in the circumstqnces of the present case, that the Court should make an order recognising that she was entitled to some interest in the entire property by virtue of her services and it seemed to me that

Mr Monagan felt unable to make any strong submission to the contrary. I emphasise however that this case is governed by its own particular facts.

It is however very difficult to quantify that interest. I mentioned earlier that there is no evidence as to the value of the matrimonial home itself. All that does appear from the affidavits is that the family home together with 17 acres on which it stood, and which had been subdivided as a separate lot in 1970, was sold for $37,000. There is no evidence as to the nature of improvements, if any, made to this 17 acres nor is there any information as to the value per acre of that land or as to how much of the total area could properly be regarded as the domestic grounds of the matrimonial home. Mr Monagan however made a calculation apportioning to the entire 17 acres its proportion of subdivisional costs and mortgage indebtedness and thereby arrived at a net value of $21,800. In all the circumstances, including the fairly high standard of living enjoyed by the wife, I would quantify her interest at $5000.

It was agreed by Mr Monagan that in the event of the Court coming to some such conclusion as the foregoing the proper course to adopt would be that which found favour with the Chief Justice, namely to order the husband to pay in money the quantified interest of the wife. It was common ground that the proceeds of sales of the subdivided lots could be traced into the husband's assets as set out earlier in this judgment.

I would add that in the circumstances of the present case the wife is not without further remedy, namely an application to the Supreme Court for maintenance under the provisions of the Matrimonial Proceedings Act. Those provisions enable the Supreme Court not only to award periodic maintenance but also to award a capital sum in suitable

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cases. The principles applicable to the award of a capital sum were discussed in <u>Long</u> v. <u>Long</u> [1973] 1 N.Z.L.R. 379. I, of course, express no opinion as to the outcome of any such proceedings but the wife would certainly be able to put forward any special need she has for a capital sum payment in addition to periodic maintenance.

For the reasons already given I would allow the appeal in part by vacating that part of the order of the Chief Justice whereby he vested in the wife a one-fourth share of the land retained by the husband. I would vary the second part of the order, by increasing the amount which the husband was ordered to pay to the wife from $4000 to $5000. I would not vary the order as to costs. 10

'C.P. Richmond J.' 20

No. 16

Reasons for Judgment of Woodhouse J.

21st February 1975

No. 16

REASONS FOR JUDGMENT OF WOODHOUSE J.

This appeal concerns property held by a husband at the end of a marriage that had lasted for about 29 years. The marriage finally ended when he went to live with another woman. By then on his own estimate he was worth $118,500. His wife had nothing - neither home nor capital nor savings; and she was obliged to live with one or other of their five children. So she applied under the Matrimonial Property Act 1963. As a result the Chief Justice made an order that in essence gave her about $19,000 and left the husband with the balance of almost $100,000. Yet he is dissatisfied. Hence the present appeal. 30

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At the time of the marriage in December 1940 each of the parties was only 19 years of age and neither had any assets. At the outset they lived with his parents although their married life together was interrupted during this period by war service he performed. By March 1948 there were five children - two daughters and three sons, born in little more than seven years. In 1945 the husband took over from his father a small farm of 112 acres. It was on the outskirts of Hastings and he used it, not for intensive cultivation but to graze some sheep, grow some grass and, as he put it, an annual paddock of peas. In 1962 he attempted to sell the place but not surprisingly he was "unable" as he said, "to get an adequate market price because the farm was not properly developed". For that reason he switched to more productive use of the place and in 1970 (soon after the separation) he subdivided it and sold at substantial prices all but 30 acres.

The application under the Matrimonial Property Act was for an order "that the husband pay such sum as the Court thinks fair and reasonable". Recognising that by reason of E. v. E. [1971] N.Z.L.R. 859 any order would need to relate to shares in specific assets counsel invited the Chief Justice to make an order that would conform with the requirements of the decision. In the event the Chief Justice ordered that $4,000 of certain cash funds be vested in the wife, together with a one-fourth share in the 30 acres or so of the land still remaining in the husband's hands of the original small farm. On the 1971 estimate of the husband a one-fourth share would be worth $15,000. However, his counsel attempted to argue that substantial increases in the value of the 30 acres since 1971 meant that instead of receiving about one-sixth of the overall property this wife would receive a higher proportion. The mathematical flaw in that claim is that on the basis of the order of the Chief Justice the husband is to receive three parts of the

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additional value (if it exists) and the wife only one part. This, without doubt, is one point that can be disregarded.

Subject to the proper influence of any particular factors that are relevant to the division of the assets the husband might have been expected to regard the outcome of this litigation as specially fortunate from his point of view. But he submits that the order could not properly be made. In the circumstances of the case he complains that he has been treated unjustly and his wife far too generously. In my opinion it is a grudging attitude. I think it represents a classical example of the very social problem that the legislation has been designed to prevent. Many spouses have their disagreements but most fair-minded couples do not have to be coerced into recognising either expressly or by implication that each is making important practical contributions to the assets that are acquired and built-up during their marriage. The Act is designed in part to deal with those other cases where there has been a disposition by one or the other to obtain and hold absolute and exclusive control of property. I think this is such a case and I would be sorry indeed if on technical, legal grounds the appeal must succeed. To justify that opinion I now turn to examine the facts and then the present state of the law.

First it is necessary to refer to the purchase in 1945 of the 112 acres. In the affidavits the transaction is certainly described as a gift to the husband by his family. Apparently this description of the transaction has been influenced by the undoubted fact that the place was acquired from the father. But clearly it was not a gift as the following extract from the husband's affidavit makes plain:

> "I derived my farm property by gift from my late father subject to a mortgage in favour of the Public Trustee securing the sum of Twelve thousand six hundred dollars ($12,600). I also

gave a mortgage back to my Father securing the sum of Five thousand three hundred dollars ($5,300). At the date of my father's death namely, the 10th day of December 1955 the mortgage to the Public Trustee had increased to the sum of Seventeen thousand five hundred and forty dollars ($17,540) and the amount that I owed to my Father was reduced
10 to the sum of Two thousand five hundred and fifty dollars ($2,550)."

It will be observed that it is not mentioned whether any cash changed hands as part of the purchase price but as he has stated, the husband was left responsible to the Public Trustee for a mortgage of $12,600 and as part of the purchase price he gave a second mortgage to the father for $5,300. So at the least he paid $17,900 at 1945
20 values for what was no more than a grazing farmlet which was subject (like all other real property at the time) to the restricted land sales values related to production. Moreover the mortgage to the father was not a notional arrangement. During the ten years until the father died in 1955 repayments of capital were paid and accepted totalling $2,750. The balance of $2,550 was then discharged by will and the
30 husband also received other assets from the estate worth $29,000. I mention these matters because it would be wrong to regard the land as a gift derived from the husband's family. Instead it should be considered like any other asset acquired by purchase during the continuance of the marriage.

The next factual issue that deserves attention is the husband's claim that
40 during the marriage the standard of living they enjoyed in the home was a high one. The submission is made, indeed, that "the appellant and respondent lived extravagantly throughout the marriage and the respondent shared fully in the extravagance. The value of the property was, as a result of

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the aforesaid extravagance, not maintained or enhanced in value but was diminishing by reason of increased mortgages over the property". In his affidavit the husband said -

> "I could never explain my financial position to the Applicant or convince her that there was any need for economy. The Applicant seemed to think that I was made of money. The children's schooling, which was substantially paid for by me and so far as the secondary education was concerned entirely paid for by me, was most expensive and for some years absorbed more than my net income. I say that the Applicant was always a grasping person when it came to money matters and she looked upon me as a person of unlimited means. The Applicant expected to live well and she did so, spending freely for her own needs."

The reference to school fees relates to the education the children received at private schools and which he said "at their highest level cost me $5,000 per year". And there is a schedule attached to the affidavit describing actual drawings, net income and excess of drawings over income for the eleven years ending 1969. When those figures are compared with counsel's submissions to which I have referred and the extract taken from the affidavit by the husband it is possible to contrast complaints about extravagant living (which, of course, can have no bearing upon his own considerable expenditures upon education) with the amounts available each year. The average annual income after tax was the very modest amount of $2,446. Accordingly the husband regularly drew amounts in excess of the income but even that figure averages only $5,918 and out of it he was obliged to pay the heavy school fees to which he refers in the extract from his affidavit. The modest

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balance then available for living expenses seems to me to be self evident. Moreover to meet the excess drawings the mortgage to the Public Trustee had to be increased by about $28,000 between 1955 and 1967, despite a repayment of $11,600 in 1956 out of moneys received from his father's estate.

In my opinion those figures, which he supplied himself, show quite clearly that far from any extravagance in housekeeping that he implies marked the contribution of the wife to their joint efforts or the high standard of living that he claims was a feature of their family life, it was necessary for this wife to exercise a good deal of prudent restraint in order to prevent a strained economic situation becoming far worse. I agree that there is no evidence that the farming operation, such as it was, had been carried on jointly by the two of them in the sense that both toiled in the field. But I think it is clear that this wife has demonstrated that she did everything that could be expected of her as a wife and a mother of five children - and in general terms as an unpaid housekeeper. The amount required to discharge the mortgage when finally he sold the land would certainly have been much greater if he had been obliged to pay somebody to manage his home during the period in issue. Indeed it is improbable that he could have retained the place at all if there had been such an additional drain on his resources.

In essence the submission is made on behalf of the husband that an absence of direct physical or money contributions to the farming business excludes any entitlement by her to a share in the capital asset concerned with that business. I do not agree. I do not believe that such a proposition is justified by E. v. E (supra); nor do I think that it is in accord with the underlying purpose of the Act itself.

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It seems obvious enough that a lazy, slatternly housewife could seriously prejudice her husband's ability in handling business interests by the mere fact that he would be kept unnecessarily involved in domestic activities that otherwise would be taken off his hands. That situation would need to be taken into account against a woman applicant because plainly her failures as a housewife had been the reverse of helpful. Conversely I cannot understand how a housewife who has smoothed the way for her husband in all these respects can be denied the right to claim that her effort has helped to build up the business that her husband has actively managed. It was said in E. v. E (at p.884) that an applicant must relate "the nature of the contributions she made to one or more particular properties"; but for the reason I have given a domestic contribution that will free a man to apply himself to business activities is surely an important even if indirect contribution to that activity and to the preservation of the capital assets of the business. Take the present case. On the figures the husband, relieved though he was from responsibility within the home, achieved from the farming business a net return of no more than $1,319 in 1959 and $2,266 in 1969 with a general average of $2,446 overall. It may be that these figures could have been greatly increased. They certainly could have degenerated into losses if there had been indolence or neglect. The question that needs to be answered in such a case is whether the housewife who has loyally worked within the home is to be excluded from any share of the capital still remaining in the business even where the husband had been gradually dissipating that capital by poor management.

The true need in my opinion is to compare the relative performance of each spouse in order to consider what has been the respective influence of each upon

the acquisition and the accretion to or diminution of the property concerned, whether or not that contribution or influence can be regarded as direct or indirect. In cases where a matrimonial home is alone the property in issue it seems easier to relate the domestic activities of a housewife to the notion of contributions to the property than where other assets are involved; and this I think arises from a tendency to equate the home as an institution with the house itself as a capital asset. I ventured in Aitken v. Aitken (unreported judgment, Supreme Court, Auckland, 22 November 1972) to make a comment upon these matters and that comment was expressly cited and considered on appeal by this Court (C.A. 28/73, judgment 30 November 1973). I said:

> "Usually that principle will not pose a problem when the contribution is of a domestic nature and the asset in issue is the matrimonial home because then the physical association of domestic effort and domestic environment seems to provide an obvious nexus between cause and effect. But in truth there can be no more reason for recognising the influence of a domestic contribution upon the value of a matrimonial home (considered as an asset as distinct from its value as a well-organised establishment in which to live) than for recognising the same sort of contribution where it has had an impact upon the value of other types of property. It would be quite false in my opinion to assume that a purely domestic achievement could not or should not be reflected in the value or acquisition of such other property and I do not understand the Court of Appeal in E. v. E. to have held otherwise. There must be many couples who do not own a matrimonial home but who have loyally supported one another in acquiring some other valuable asset.

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Reasons for Judgment of Woodhouse J.

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> In such a case, once a domestic type contribution had been proved to have assisted materially in the acquisition of that other asset then it would be as unjust to ignore it as it would to fail to recognise some more tangible or some more easily quantifiable type of contribution. If it were not so the one spouse in the example I have been considering could retain the whole of valuable non-domestic property acquired during the marriage to the exclusion of the other whose contribution by provident housekeeping and in other similar domestic respects had manifestly been essential to the whole enterprise. That, I am satisfied would be contrary to the purposes of the Act."

As I say, that passage was cited by the Court of Appeal and given express consideration. In the course of doing so the Court referred to passages from the majority judgments in E. v. E. and then remarked:

> "Despite the submissions to the contrary by counsel for the Appellant, the Court is of the view that Woodhouse J.'s judgment shows that he was applying [the principles in E. v. E.] when he was examining the assets which had been acquired in the name of the husband and, in particular, was examining the wife's claims that her exertions had been reflected in part in each of the subject properties."

In the result the passage from my judgment was in no way qualified and I think it should be regarded as having been given the blessing of this Court. I also think that the principle I have outlined should now be applied in the present case.

As I have said I do not agree that this is a case where the property in dispute can be regarded as a gift to the husband - except that there is need to take into account the bequest from the father's estate of $31,500. Subject to that matter the effect of the judgment of the Chief Justice was to give to the wife about a one-fifteenth part of the original farm (one quarter of 30 acres) together with a share in the cash fund amounting to $4,000. Whether the property be considered as a farming business or part farm and part matrimonial home I cannot think that the practical implications of that order can in any way be regarded as unjust to the husband. Indeed from his point of view, as I indicated earlier, I think he should regard it as a fortunate result. Nor do I think the issue is affected in his favour by the fact that gradually the mortgage liability increased. The wife was not responsible for this. It was his method of farming and his decision to have the children at expensive schools. Fortunately the effect of increasing land values has left a large equity following upon the subdivision even with the 30 acres still kept in hand.

I would dismiss the appeal.

'A.O. Woodhouse J.'

No. 17

ORDER OF THE COURT OF APPEAL

Friday the 21st day of February 1975

Before the Right Honourable Mr. Justice McCarthy, President, the Right Honourable Mr Justice Richmond and the Right Honourable Mr Justice Woodhouse

THIS APPEAL coming on for hearing on the 21st day of October 1974 and UPON HEARING Mr A.K. Monagan of Counsel for the Appellant and Mr G. Kent of Counsel for the Respondent this

In the Court of Appeal of New Zealand

No. 17

Order of the Court

21st February 1975

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Court HEREBY ORDERS that the Appeal brought by the Appellant against the Judgment of the Right Honourable the Chief Justice, delivered in the Supreme Court of New Zealand at Napier on the 19th day of June, 1973 BE AND THE SAME IS HEREBY ALLOWED and the Order of the Right Honourable the Chief Justice is quashed insofar as it allows the respondent one-quarter share in the area of land containing Thirty (30) Acres, Three (3) Roods and Nine (9) perches being all the land in Certificate of Title Volume D3, Folio 373 but the provision for payment provided by the said judgment is increased to the sum of Five Thousand Dollars ($5,000.).

By the Court

'D.V. Jenkin'

L.S.

Registrar

No. 18

ORDER GRANTING LEAVE TO APPEAL

No. 18

Order Granting Leave to Appeal

8th July 1975

Tuesday the 8th day of July 1975

Before the Right Honourable Mr Justice McCarthy, President; the Right Honourable Mr. Justice Richmond and the Right Honourable Mr. Justice Woodhouse.

UPON READING the Notice of Motion for grant of final leave to appeal to Her Majesty in Council and the Affidavit filed in support thereof AND UPON HEARING Mr J.R. Wild of Counsel for the Respondent and Mr. H.S. Hancock of Counsel for the Appellant this Court HEREBY ORDERS that the abovenamed Respondent be and is HEREBY GRANTED final lease to appeal to Her Majesty in Council from the judgment of this Honourable Court given and made on the 21st day of February, 1975.

By the Court

'D.V. Jenkin'

L.S.

Registrar

IN THE COURT OF APPEAL OF NEW ZEALAND

No. C.A. 97/73

BETWEEN GEORGE CHRISTOPHER HALDANE of Hastings, Farmer

Appellant

A N D DOROTHY HALDANE of Maraetotara, Married Woman

Respondent

I, DOUGLAS VICTOR JENKIN, Registrar of the Court of
10 Appeal of New Zealand DO HEREBY CERTIFY that the foregoing 74 pages of printed matter contain true and correct copies of all the proceedings, evidence, judgments, decrees and orders had or made in the above matter, so far as the same have related to the matters of appeal, and also correct copies of the reasons given by the Judges of the Court of Appeal of New Zealand in delivering judgment therein, such reasons having been given in writing:

AND I DO FURTHER CERTIFY that the Respondent has taken all the necessary steps for the purpose of procuring the
20 preparation of the record, and the despatch thereof to England, and has done all other acts, matters and things entitling the said Respondent to prosecute this Appeal.

AS WITNESS my hand and Seal of the Court of Appeal of New Zealand this 3rd day of September 1975.

'D.V. Jenkin'

L.S.

REGISTRAR

IN THE PRIVY COUNCIL

No. 39 of 1975

39 OF 1975

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN:

DOROTHY HALDANE

Appellant

- and -

GEORGE CHRISTOPHER HALDANE

Respondent

RECORD OF PROCEEDINGS

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