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BETWEEN ANTHONY FULTON REID
Appellant

AND LESLEY HERMIONE REID
Respondent

Coram: Cooke J. (presiding)
 Somers J.
 Tompkins J.

Hearing: 2 September 1985

Counsel: Appellant in person
 G.D. Pearson as amicus curiae
 M.J. Parun for Respondent

Judgment: 2 September 1985

JUDGMENT OF THE COURT DELIVERED BY COOKE J.

This is an application for leave to appeal to the Privy Council. No member of the Court sitting today took part in the decision from which Mr Reid wishes to appeal, but it is evident, as stated in that judgment, that the case is unusual. There is at present so far as appears from what is before the Court no dispute, claim or question between Mr and Mrs Reid. They are contemplating making an agreement contracting out of the provisions of the Matrimonial Property Act 1976. In effect they seek advice on what would be the meaning or import of the proposed agreement if it were made - Mr Reid tells us this morning that it is only a draft agreement. He is particularly concerned with the meaning of the word 'acquired'.

The giving of advice in advance of any actual difference is not normally a function of the courts, but it seems that the parties may be reluctant to act on legal advice obtained in the ordinary way. Instead an originating summons asking for the High Court's opinion was issued. This was dealt with by the Chief Justice. An appeal was brought. In the judgment of this Court delivered by Richardson J. doubt was expressed about whether there was any jurisdiction to make a declaration as to the meaning of a proposed agreement. In the end, as something of a concession to Mr Reid, the Court did express an opinion on the meaning of 'acquired' in the proposed agreement, but the Court expressly did not interpret the Matrimonial Property Act. It is true that the Chief Justice had dealt at least to some extent with the interpretation of the Act. That is shown by his reasons and by the sealed order in the High Court. The sealed order of this Court merely records a dismissal of the appeal, but so far as precedent is concerned it is the reasons for judgment of this Court that are important. Those reasons are specifically confined to the proposed or draft agreement.

Mr Reid now wishes to go the Privy Council. To do so he must bring the case within rule 2(a) or rule 2(b) of the Order in Council of 1910. As to (a), there is no evidence as to the identity or the value of any property that might be affected by the proposed agreement if it were entered into. In addition, as we have already mentioned, there appears to be no present dispute, claim or question between

the parties. As presented to the Courts the whole matter is academic or at best contingent. It is no part of the normal role of Her Majesty in Council, as we understand it, to give parties advice on such matters. In our view the case does not fall within either the words or the spirit of rule 2(a), so there is no appeal as of right.

As to rule 2(b), leave to appeal thereunder is discretionary. This Court has to be of opinion that the question involved in the appeal is one which by reason of its great general or public importance, or otherwise, ought to be submitted to Her Majesty in Council for decision. In no respect are we satisfied that, having regard to the form of proceeding that has been devised, this is the kind of case which ought to be submitted to Her Majesty in Council for decision. Moreover we have considerable reservations as to whether this is not an attempt to attack collaterally the earlier judgments in Reid v. Reid, including that of their Lordships reported in [1982] 1 N.Z.L.R. 147. Accordingly leave to appeal must be refused.

This does not prevent Mr Reid from applying to the Privy Council itself for special leave. It is not, of course, within our province to express any view regarding that course.

R B Cooke J

Solicitors:

Macalister Mazengarb Parkin & Rose, Wellington, for Respondent