

IN THE MATTER of the Family Protection
Act 1955

A N D

IN THE MATTER of the estate of
ROBERT HENRY WILLIAM SCOTT
of Geraldine, Dairy Farmer,
Deceased

BETWEEN COLLEEN GLORIA HYDE of
Ashburton Married Woman and
ROBERT PATRICK SCOTT of
Christchurch, Clerk

Plaintiffs

A N D GEORGE HENRY SCOTT of
Geraldine, County Council
Employee and ROBERT PATRICK
SCOTT of Christchurch, Clerk
as Executors and Trustees of
the will of the said Robert
Henry William Scott

Defendants

Hearing: 5 March 1982

Counsel: R.B. Walton for Plaintiffs
I. G. Mill for Defendants
N.C. Shannon and P.C. Dalziel
for Life Tenant and Remainderman

Judgment: 16 March 1982

Supplementary Judgment: 13 May 1982

SUPPLEMENTARY JUDGMENT OF HARDIE BOYS J.

Mr Shannon has brought to my attention that there is a mathematical error in the final sentence of the second part of my judgment delivered on 16 March 1982. Referring to increases over the years in the value of the farmlet, which is for all practical purposes the only asset, I made this comment:

"As a consequence of course the share of each plaintiff in the estate expressed as a proportion of its total value has dramatically decreased: from 20.20% when the will was made to 4.88% when Mr Scott died to 1.91% at the present time."

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②
No Special
Consideration

Each of these percentages reflects, not the value of each plaintiff's share (\$1,000), but the value of their combined shares (\$2,000). Accordingly, the correct figures are one half of those given, namely 10.1%, 2.44% and .955%. I very much regret the error.

Mr Shannon now invites me to reconsider the amount I awarded to the plaintiffs, and to halve it in each case. For what I wrote was this:

" It can I think fairly be said that both Colleen and Robert are in a sounder position now than they were when the will was made. I think justice in the case will be done if I award to each of them a proportionate share in the estate more or less equivalent to the share their legacies represented at the time the will was made. Possibly that share may have been a little low at that time. But in view of all the changed circumstances, I think it is the proper basis upon which the matter should be dealt with now. I accordingly hold that each of the plaintiffs is entitled to a 20% share in remainder, leaving Henry with 60%."

I am quite clear in my own mind that the conclusion I thus expressed was based on my erroneous belief that each plaintiff had been left a share equivalent to approximately 20% in value at the date the will was made. Had I appreciated the true position, I would have come to the same conclusion, but I would have expressed it differently. I was of course aware of the present value of the estate and I certainly intended that each plaintiff should have a 20% share in it, and Henry a 60% share.



Solicitors:

Kennedy, Mee & Co, ASHBURTON, for Plaintiffs
Blakiston, West & Dorman, GERALDINE, for Defendants
Shannon & Harrison, TEMUKA, for Life Tenant and
Remainderman.