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IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

No Special  
Consideration

GR No 60/81

IN THE MATTER of the Matrimonial Property  
Act 1963

BETWEEN V EDMUNDS of Timaru,  
Widow  
Applicant

AND S' CREIGHTON of  
Invercargill, Branch Manager,  
F BROOKS of  
Queenstown Farmer and I  
SAVAGE of Invercargill,  
Solicitor as Trustees and  
Executors of the Will of E  
EDMUNDS formerly of  
but lately of  
, Farmer deceased  
Defendants

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Hearing: 15 and 16 December 1982

Counsel: B J Petrie and A J P More for Applicant  
Mrs C Earl for Defendants Executors  
W M Wilson for Residuary Beneficiaries

Judgment: 26/4/83

JUDGMENT OF EICHELBAUM J

This is an application under s.5 of the Matrimonial Property Act 1963 ("the Act") by Mrs V Edmunds against the estate of her late husband. Having regard to the authorities, it is clear that the Court has jurisdiction to deal with the case under that Act. The executors took no active part. Mr Wilson presented argument for the residuary beneficiaries, three well known charities who very properly took the attitude that they wished Mrs Edmunds to receive whatever the Court thought just in terms of the Act. Pursuant to s.7(2) of the Act the hearing was in private.

The parties married in 1964 when the late Mr Edmunds was aged        and the applicant        . There were no children of the marriage. Mr Edmunds had not been married before. Mrs Edmunds had two children of a previous marriage. They met as a result of Mrs Edmunds purchasing the property in        adjacent to the one that Mr Edmunds had farmed for many years. From 1961 to 1968 Mrs Edmunds farmed her own property in partnership with one of her sons.

Mrs Edmunds' contributions commenced two or three years before their marriage when Mr Edmunds and some of his employees started going down to her house for an evening meal. During the same period she would go up to his property to cook for seasonal labour. She believed that no woman had lived at or been employed on Mr Edmunds' property at any stage prior to her marriage. In her affidavit Mrs Edmunds described him as a very hard working bachelor living under primitive conditions, endeavouring to break in a large property and to develop on it stock of a high quality. The country, situated near        , was inhospitable. Some picture of the deceased and his previous mode of life is obtained from the following description by Mr        Burgess, a friend who had known him for more than 30 years:

"He was a bachelor who was working hard to bring        in a rough property and to build up the quality of the stock on it and was one of those persons who seemed to have a distrust of most City people. He was in those days domineering, sometimes hostile and certainly contrary but was hard-working and lived under appalling conditions which discouraged easy social contact, and his apparently staple diet of boiled mutton, bread, cheese and black tea did not encourage many visitors for meals."

The saga of the civilising of this crusty middle aged workaholic bachelor might well have attracted the attention of a 19th century novelist. The witness already quoted saw changes in the deceased's health and general outlook after the commencement of his friendship with the applicant. Referring to the new house that was built the witness described it as a normal relatively basic farm house but a great improvement on the "dump"

which it replaced. He added:

"The transformation from the rough bachelor camp to the development of one of the best kept homes and gardens in the district was quite amazing and an example to the neighbours.... the energy which (the applicant) displayed in not only working around the farm but also in catering for large number of employees and people coming to inspect and purchase stock was a talking point in the district...She was about the hardest working woman in a hard working district."

Mr Burgess also referred to the assistance that the applicant, as a person of considerably greater education and business experience, was able to give towards the increasing success of Mr Edmunds' farming operation. He noted too that while marriage brought considerable changes in the deceased's life, his attitude to money remained the same. While not regarding Mr Edmunds as mean the witness described him as "hard", and rigid in his dealings with money. He added - and this remark assists one to understand how Mr Edmunds came to leave his affairs as he did - that he had no real concepts of the effect of inflation and still regarded himself as being "hard up". The witness concluded that he had seldom known a person to make such a fetish of work and hardship as did the deceased.

Another deponent, a stock and station agent, said that the living conditions of Mr Edmunds' farm in his early days were unbelievably spartan, and that one of the tests for a new employee was to have a meal with Mr Edmunds and his men in the dilapidated homestead. He described Mr Edmunds in those days as being careful with his money; demanding of everyone whom he employed or with whom he did business. He was of an old Southland school who regarded their property as their own; their attitude towards their wives and employees as to their proper place on the farm was that they had no need for money and few rights but would be looked after as necessary. This witness too referred to the mellowing that was evident following Mr Edmunds' marriage, but where property or money was concerned he continued to be very possessive.

When the newly married couple moved into the new house on Mr Edmunds' property on their marriage, Mrs Edmunds provided furniture, furnishings, and various household articles and from her own funds purchased floor coverings and drapes, landscaped the area and procured and planted trees and shrubs.

Following the marriage Mrs Edmunds, in addition to performing normal household duties, cooked for the farm labour, the shearers and numerous visitors to the farm. With her own farming background she was equipped to take an active part in the daily work on her husband's farm as well as in the management of it. I am satisfied that she did this in full measure. She was more than a farmer's wife; she could with justification be described as a farmer.

As the years went by, whether Mr Edmunds would admit it or not plainly the farm prospered. In 1977 he sold a one half interest in his land, stock and plant in the property to the Kings and thereafter traded in equal partnership with them. The sale price was \$350,000 which was satisfied in part by the vendor leaving \$100,000 in on mortgage. Under the agreement for sale and purchase the Kings had an option to acquire the remaining half share in the land, stock and plant at a price comprising a fixed sum of \$250,000 for the land plus a figure for stock and plant at valuation. Thereafter the property was farmed in partnership in the deceased's lifetime and in fact for a period after his death when eventually the Kings exercised their option to purchase, the sale being effected as at 1982. From the affidavit of Mr Savage, the deceased's solicitor in Invercargill, it is apparent that in time the deceased grew dissatisfied with the arrangement he had made with the Kings, believing it worked out too much in favour of the latter and that it had resulted in his not obtaining full value for the long period that he and in later years his wife had spent developing the property.

Reverting to the events of 1977, Mr Edmunds proceeded to purchase a smaller farm at near . The applicant deposes that she was unaware of the detail of either transaction; her husband told her that he had gifted her a share in the new property but that she still owed him some money. My impression

of Mr Edmunds is of a man long set in bachelor ways who while appreciating the assistance and the much greater degree of domestic comfort afforded to him by a wife, did not bend easily or adjust much. Apart from being inherently old fashioned in his attitude towards women and the concept of sharing with them his marriage came too late to have any great effect on his previous outlook. He was by nature close with his money and inclined to keep his own counsel about his business affairs. The evidence given by Mrs Edmunds in regard to her lack of knowledge of and involvement in his transactions therefore does not surprise.

The Levels property was purchased in the names of the deceased and the applicant as tenants in common in equal shares, the purchase price being \$260,000. The deceased advanced the sum of \$130,000 to the applicant on mortgage; this was reduced by gifts with the result that the balance owing at the date of death was \$84,000.

At Mrs Edmunds used her savings to buy floor coverings, drapes, furniture and furnishings. She continued to help with the farm work which became increasingly onerous as her husband's health failed. He was able to do little for a period of about a year. Having developed cancer he was obliged to commence ray treatment in or about February 1980. This lasted some 12 weeks during which time Mrs Edmunds drove to Christchurch each week in order to bring her husband home for the weekend and then returned him to the hospital. Mrs Edmunds cared for him at home until he was admitted to hospital on 1 October 1980. He died on 19 December the same year.

Mr Edmunds' last will was made in 1977. He bequeathed to his wife personal effects, his motor car and the sum of \$8,000. The trustees were authorised to purchase a house for Mrs Edmunds' use for life, the outgoings to be met by the estate. Of the income from the residue the widow was to receive \$5,000 per annum but the trustees were empowered to supplement this if they regarded it as insufficient. The balance of the income was left to the charities to whom the balance of the estate would pass on his wife's death.

At or about the time the ray treatment commenced Mr Edmunds called on his Invercargill solicitors and requested a copy of his will. He said that he had changes in mind but did not go into detail. Having become aware of his condition, for the first time

he started to talk to his wife about his dispositions. He was unhappy with his existing will and had been too generous to the charities. At that stage Mrs Edmunds had no idea what the will provided. In 1980 they went to [redacted] and Mrs Edmunds deposed that her husband spent some time at the offices of the solicitors. She said he returned very upset saying that he had to make big changes to his will and straighten out his affairs "and we should have had a partnership years ago." Curiously, this visit is not referred to by Mr Savage. At this time there were a number of discussions from which Mrs Edmunds formed the view that her husband thought he was probably worth about half a million dollars, which was probably half the true figure. She further gathered that Mr Edmunds had in mind to make a substantial gift to one of his former employees, to leave something in the nature of \$20-\$25,000 to each of three charities, and the balance of the estate to the applicant. From [redacted] until his death Mr Edmunds was in Timaru hospital and not in a state where he could attend to business affairs. He raised the question of his will repeatedly but Mrs Edmunds thought that much of the time he was not fit to discuss business or to make consistent or considered decisions. Being under the impression that she was in any event the major beneficiary Mrs Edmunds did not see any need to press the matter although it was apparent to her that he was unhappy with the extent of the provision he had made for her. In October she wrote to the solicitors saying that Mr Edmunds' health prevented him from visiting Invercargill but he wished to make a codicil appointing an additional trustee. This was prepared, sent to him by post and returned duly executed. Mr Edmunds did not take any further steps to amend the will.

In giving the background of Mr and Mrs Edmunds' work and life together there is now another aspect of the farming arrangements to which I need to refer. Mrs Edmunds deposed that when they moved to Levels she believed it was clearly agreed that it was going to be an equal partnership. Consequently she expected that on her husband's death she would receive one half of the profit on the realisation of the stock and plant. The trustees however have declined to acknowledge the existence of any such partnership. Nor would they accept that the deceased's bank account which at the date of death was in credit to the tune of over \$10,000 was a joint account as Mrs Edmunds believed. The reason for her belief was that most of their day to day needs had been paid from it, after exhausting their national superannuation. Evidently the account had been in Mr Edmunds' sole

name as Mrs Edmunds deposed that she had signing authority only since                      which of course was shortly after her husband was admitted to hospital. The information before me is insufficient to allow any finding that it was a joint account.

So far as the Levels' farming operation is concerned, when the shift from Lilburn Valley was made the surplus stock and plant used at the previous establishment were moved to Levels. The land at Levels was purchased as tenants in common, the applicant's share of the purchase price being provided by mortgage back in favour of her husband as already related. Mrs Edmunds acknowledges that she did not contribute directly to the purchase price of the stock or plant. She says however that virtually all the furniture and furnishings in the house were provided out of her funds as had been the case with those left at Lilburn Valley. At the time of her husband's death Mrs Edmunds' assets comprised some small holdings in shares, the furniture and personal effects, her one half share in the land at Levels (subject to the debt to her husband) and \$10,000 on deposit. This last sum was part of the proceeds of the sale of her own farm. In this regard she deposed that on the sale of that farm she broadly divided her assets into three, retaining one part for herself and passing a second to her elder son with whom she had farmed in partnership, while the \$10,000 deposit represented the share of her younger son and has since in fact been paid to him.

A neighbour at                      deposed that the workload that Mrs Edmunds was carrying became so heavy that he and his wife took the responsibility of persuading Mr Edmunds that he had to engage further help. They themselves gave as much assistance as they could. The neighbour had frequent discussions with Mr Edmunds and said that he was firmly lead to believe by Mr Edmunds that the Levels property was run as a partnership. It was this witness's opinion that Mrs Edmunds worked harder on the property than any other farmers' wife he had known. He described the deceased as essentially a kind man but old fashioned and pigheaded with little concept of the burden which his illness placed on his wife.

The final background matter I need to refer to is the nature of the deceased's estate. In round figures the net value for duty purposes was \$949,000. This included stock and plant on the

Levels property of \$96,000 and the deceased's half share in the land at \$212,000. The property was later sold for \$500,000. After realisation of various assets and payment of duty and other expenses the estate now comprises two advances on mortgage to the Kings totalling \$500,000 and various sums totalling \$395,000 in debenture stock or on deposit. The only liability, apart from tax on income earned since the date of death, is a small sum representing the balance of administration costs.

The estate has earned and continues to earn income from the mortgages and short term investments. In addition there was farm income from the Levels property until its sale and likewise until the Kings completed the purchase, from Lilburn Valley. There is contingent liability for tax arising out of the sale of livestock in relation to both properties.

It was submitted on behalf of the applicant, with the support of the respondents, that the Court's order should be framed so as to take effect at or before the date of death. Substantial income has accrued since the date of death and would be affected. Counsel disclaimed any suggestion that the question of reopening the assessment of duty had any bearing and in any event, in that regard the decision of the Court of Appeal in Thompson and Preest v C I R CA 102/81 Judgment 11 February 1982 unreported appears to be a formidable obstacle. It was submitted that the Court had jurisdiction to make such an order, flowing simply from the terms of s.5(2) empowering the Court to make such Order as it thinks fit. I doubt that this alone is sufficient to justify the making of a retrospective Order. In Lemon v Lemon M 133/81 Christchurch Registry, Judgment 7 May 1982 unreported, Casey J left open the question whether in appropriate circumstances an order could be made with retrospective effect in order to attain the purposes of the Act. For myself, I would be reluctant to read into the Act some fetter on the apparently unlimited discretion to make such Order as will do justice between the parties. In particular, it seems to me that it would do nothing to preserve the institution of marriage, weakened as it already is, if spouses were lead to the belief that if they did not raise a question of matrimonial property in a formal way immediately that the potential for doing so arose, they might be disadvantaged later. Such questions are constantly present in an inchoate way in most marriages, and



spouses living in harmony are generally content to let matters run, either in ignorance or because the disadvantaged spouse believes that eventually matters will turn out or be arranged to everyone's satisfaction.

However, assumption that jurisdiction exists to make a retrospective order is one thing; whether there is some basis to exercise it another. The vast majority of cases under the 1963 Act have been decided on the basis of an apportionment at the date of hearing and a valuation of the assets concerned at that date accordingly, subject to any necessary adjustments. The question arises whether there is any basis here to justify departure from the general practice.

In Lemon, Casey J, having decided on the facts, and after a review of the authorities, that the wife had no beneficial interest in the property at the date of her husband's death, could see no basis for a retrospective Order, assuming that jurisdiction to make one existed. The factual situation in Lemon is indistinguishable from the present, and I respectfully adopt Casey J's analysis of the authorities and agree with his conclusion in the terms just stated.

Counsel sought to distinguish Lemon, and Thompson and Preest, on the basis that here, the husband prior to his death had become concerned that he had made insufficient provision for his wife. He submitted that the wife would have had grounds for filing an application under the 1976 Act before her husband's death. He submitted that "questions" had arisen before the date of death, namely as to the applicant's entitlement to a share in the proceeds of the property, and whether there was a partnership in regard to the operation at Levels, and that the Order should reflect that position accordingly. Henry J remarked in 1973 (Bilcich v Bilcich 1973 2 NZLR 129,131) that scant attention had been given to the phrase in s.5(3), giving jurisdiction "In any question...as to the title to or possession or disposition of property." He considered that "question" must mean a justiciable question.

I accept of course that the jurisdiction of the Court under the 1963 Act is not contingent upon the existence of a matrimonial dispute in the conventional sense. The estate planning cases

now commonly brought before the Court make that clear, and indeed it was recognised as long ago as 1969 in Wacher v Guardian Trust 1969 NZLR 283 where it was only the death of the second spouse, shortly after the first, that gave rise to any issue. However, the mere existence in an inchoate way of a question that if raised could found "a question...as to the title to or possession or disposition of property" to my mind is not a ground for the making of an order on a basis retrospective to that point of time.

In Jarden v Jarden 3 MPC 90 the Court made an order vesting chattels as to 50% in the applicant wife, and a declaration that such interest subsisted at the date of death. The facts are not stated very fully in the report and it may be that they justified a different conclusion from that in Lemon. In Richards v Brown M 35/77 New Plymouth Registry, Judgment 18 October 1978 unreported Mahon J expressed the view that as from the date of commencement of the 1963 Act the applicant in that case, as with other spouses, "became entitled to a legal interest in her husband's assets, such interest to be determined and quantified by a reference to such domestic or capital contributions as might be established". It may be that the learned Judge (whose decision is not referred to in Lemon) meant no more than that spouses became entitled to claim a legal interest: if he did, I respectfully prefer the views to the contrary in Lemon and the authorities there discussed.

I conclude that the true position is that the applicant's interest in the property arises from this judgment, and that it would be wrong to make an order which purported to recognise the existence of an interest at any earlier date than the date of my decision.

Following the course taken by Wilson J in Robinson v Public Trustee 1966 NZLR 748 my first enquiry is whether a common intention existed and if so, whether it was expressed by the parties, either at the time of acquisition of any property or subsequently. See also Stevens v Stevens 1974 2 NZLR 129, and Mason v Mason 1976 1 NZLR 385.

In my view, there was no common intention. It was put to me that the farm was run as an equal partnership. I am not sure how far Mr More intended to press this aspect in relation to s.6(2). I think it is perfectly true that at Levels

as had been the case in \_\_\_\_\_, Mrs Edmunds played a full part in the management of the farm. In that sense it would be right to describe it as a partnership and I accept that the deceased referred to his wife and himself in that way, as many couples not engaged in farming or business pursuits do. But both husband and wife had had long experience in farming, each had farmed in partnership with others, and both were well aware of the significance of a formal partnership and its indicia. It was not suggested that the accounts of Levels were kept on a partnership basis.

True that \_\_\_\_\_ had been purchased in both names and that in the absence of a partnership, Mr Edmunds should have paid rent or grazing fees. The vivid picture that the evidence paints of him makes it clear that such a course would scarcely have crossed his mind; his outlook in such matters was typified by the incident when his wife's funds were used without interest to provide security for his banking arrangements. He had made his wife a half owner of Levels on a basis which he would have regarded as a gift, as indeed it would have been had he lived sufficiently long. Undoubtedly he would have been advised to take this course out of estate planning considerations but I suspect that in his eyes it was an astonishing feat of generosity to "the wife" and any suggestion that he should pay her for the use of what he would still have regarded as his land would have been preposterous. As to the conversations he had with his wife, under the shadow of his illness, I think that the most that can be inferred is that as a result of advice he received, an uneasy realisation came upon him first that he had failed to take sufficient steps by way of estate planning with the result that his estate would be heavily and unnecessarily depleted by duty, and secondly, seen through objective eyes, that the provisions he had made for his wife were not as generous as he had thought. Incidentally it should be stated that it is not a case where arrangements, sound and sufficient in their time, had been overtaken by inflation or other changes; his Will had been made as recently as 1977, the same year as the move to Levels and no doubt consequent upon it. Awareness of his failure to recognise his wife's proper claims sufficiently led to his proposal of

the gift of a luxury motor car which she declined. His illness prevented him from obtaining full advice as to how he might remedy the problems, or, if he received such advice, from giving instructions on it, as there is no suggestion that his solicitors had been requested to take any steps following his last visit to them, except to provide the additional trustee. I think that the fact of the matter is that Mr Edmunds did not reach any firm conclusion as to how to reorder his affairs. He did not form any intention, so there could be no common intention let alone any expressed.

For the sake of completeness I add that I have not overlooked the potential significance of the manner in which title of Levels was taken - I am conscious of the remarks of McCarthy P in Stevens v Stevens (above) - but I am satisfied that in this case the significance of that step is no greater than I have indicated above.

Accordingly, the provisions of s.6(2) do not inhibit any particular form of Order in this case.

I turn next to the contributions made by the respective spouses. In this respect I have to remind myself, without derogating in any way from Mrs Edmunds' efforts, that the foundation for the deceased's ultimate estate had been laid before their marriage. Mr Edmunds had then been farming the Tuatapere property for a period approaching twenty years. The evidence justifies the conclusions that he lived under spartan conditions, he was a successful farmer, he must have improved the farm land, and his material position had advanced to the point where without evidence of financial strain he was able to have a large new house built for him. There was no precise evidence as to his worth at that time but there was put before me the deceased's accounts for the year ended 30 June 1963 which showed his net assets at £64,000, the property and buildings accounts standing at £42,500 and stock shown as £10,000 (in quoting figures, I will round them off to the nearest £500 or \$500, as the case may be). Making due allowance for inflation, plainly Lilburn Valley was already a valuable property.

The applicant's contributions can be summarised as under the following headings:

1. The actual provision of cash and property.
  - (a) She furnished the new home at Lilburn Valley, providing both chattels from her previous home, and money. She also expended money on the planting of shrubs and trees around the homestead and having it landscaped. On the sale of the property, she did not receive any direct financial return.
  - (b) Mrs Edmunds provided chattels for the Levels homestead. However, in terms of the Will she received all personalty, and she also received the portion of the sale price attributable to chattels sold. These benefits can be taken as substantially cancelling out the contributions listed under (a) and (b).
  - (c) As already related, Mr Edmunds borrowed funds from his wife. However, in the absence of any more detailed information, this has limited weight.
2. The performances of domestic duties. It is fair to describe these as out of the ordinary. Mrs Edmunds transformed her husband's living conditions. As noted one affidavit described the new home as one of the best kept homesteads and gardens in the district. The deceased's final illness imposed a heavy burden on Mrs Edmunds, although for a limited period of time.
3. The performance of farm services. I have already referred to this aspect. Although in principle no doubt Mrs Edmunds' efforts were similar to those of many farming wives, the evidence makes it clear that not only was she extraordinarily hardworking, she brought to the marriage a considerable degree of business and farming experience which was of great value to her husband's farming business. As with the domestic services, this assistance continued over a period of 16 years. I bear in mind as pointed out by the author of "The Division of Farms under the Matrimonial Property Act" 1983 NZLJ 20, that the Courts have tended to assume that farmers' wives take part in the farm work in addition to their domestic services.

Although the bulk of the evidence was on affidavit I had the advantage of seeing Mrs Edmunds in the witness-box. I can fully believe the high opinions expressed of her qualities in the affidavits from neighbours, friends and business acquaintances.

In addition to the factors already listed, there was pressed on me the consideration that the applicant relinquished her own farming venture to marry Mr Edmunds, and that the loss of this valuable farm in a sense was a contribution to the property in issue. I do not say that a sacrifice by one spouse is in all circumstances incapable of constituting or being taken into account in that spouse's contributions but I do not see that it can be so regarded here. The fact is that Mrs Edmunds had an asset which if it proved impossible or inconvenient to retain she was free to dispose of at its true worth.

Turning to the husband's contributions, it has not been disputed that he too was hard working in an more than an ordinary degree. From the point of view of personal effort, and skills, I would regard the contributions made by the spouses over the course of their marriage as equal.

In fixing the actual proportion on which the applicant's entitlement is to be based, the most difficult remaining aspect is the weight to be given to the contribution made by the husband in the shape of the value of the Lilburn Valley farm, which he brought to the marriage. Basically the problem lies in the balancing of a financial contribution against the intangibles subscribed by the applicant. In performing this exercise I am handicapped by the absence of any detailed information that would enable me to deduce the extent to which the farm increased in value between 1964 and 1977 from factors other than inflation, those in other words for which Mrs Edmunds should receive a direct share of the credit. I am sure such factors existed to a significant degree but so far as matters of arithmetic are concerned, all I can really say is that land and building with a book value of some £42,000 in 1964 had become worth at least \$500,000 on the market in 1977. In 1977 the Lilburn Valley farm inclusive of stock and plant naturally still represented the most substantial part of Mr Edmunds' assets, but undoubtedly the proportion would have been greater in 1964.

Overall, I conclude that the provision of the Lilburn Valley property should be regarded as a very substantial contribution to be taken into account in the husband's favour, and that this factor distinguishes the case from the more common one where the parties, commencing married life with little, jointly built up the family assets.

I assess the value of the wife's contributions at one third.

Turning now to the valuation of the assets, certain adjustments need to be considered in regard to the value of the estate, which on the information before me was in round figures worth \$900,000. On the sale of the Levels property the estate received \$343,500 which included \$84,000 being the balance owing by Mrs Edmunds. Mr More properly agreed that the applicant could not make any claim in respect of the estate's half share of the proceeds of the sale of the Levels property. I have given some thought to what account should be taken of the payment of \$84,000. Had the husband made an outright gift to his wife of a one half share in the Levels property at the time of its acquisition Mrs Edmunds in my judgment would have received rather more in this respect than she was entitled to on an application under the Act. The \$84,000 goes to correct that imbalance so I do not propose to make any adjustment in respect of it. Accordingly, for purposes of establishing the value of the estate to which Mrs Edmunds' proportion is to apply, the figure of \$343,500 should be deducted.

Then, there is the question of the contingent liability of \$184,000 for tax, arising mainly out of the sale of livestock shown in the accounts at standard values. Bearing in mind the onus on the applicant, I think I must regard this as a sum to be deducted. As to the contingent liability for tax on income earned by the estate, I have not been given any information on which I can assess what is likely to be involved. I am conscious of the fact too that since the figures relating to the present value of the estate taken out as at 15 October 1982, there will have been a substantial increment (perhaps as much as \$80,000) by the date of delivery of my decision. These two factors work against each other. I propose to ignore them both in the expectation that broad justice will result.

Deduction of the sums of \$343,500 and \$184,000 reduce the available amount from \$900,000 to \$472,500. One third is \$157,500.

Some final adjustments are necessary. It is proper to take into account the benefits under the will, see McCandlish v NZ Insurance Co Ltd 3 MPC 105 and McComb v McComb 3 MPC 106. That involves deduction of the legacy of \$8,000 and allowance for the annuity (\$5,000) and of the value of the house provided in terms of the Will. Again, in the absence of evidence I can only make a broad assessment, bearing in mind the onus of proof. I assess the value of the house and outgoings at \$2,500 per annum. By reference to Table B of the Estate and Gift Duties Act 1968 I take eight years' purchase, or \$60,000 for the annuity and the house together. With the legacy, the total is \$68,000. Deducting this from \$157,500 there remains \$89,500. I make an order for payment of that sum to Mrs Edmunds accordingly.

Counsel requested that any order should lie in Court to enable them to consider the position in regard to proceedings under the Family Protection Act. I therefore direct that the order shall lie in Court until 31 May 1983. Leave is reserved, for the same period, to enable any party to apply in respect of any matter of mechanics that I may not have dealt with or any incidental aspect. Costs are reserved.

*As per order of the Court*

SOLICITORS:

Petrie Mayman Timpany & More, Timaru for Applicant  
Watson Savage, Invercargill for Defendants  
Bell Gully & Co, Wellington for Residuary Beneficiaries