

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

NZHR

A.994/82

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IN THE MATTER of the Family Protection Act 1955

AND

IN THE MATTER of Section 26 Family Proceedings Act 1980

BETWEEN KELLOGG of Auckland, Widow  
Plaintiff

AND THE PUBLIC TRUSTEE as Administrator of the Estate of KELLOGG late of Auckland deceased

Defendant

Hearing: 2nd February, 1984

Counsel: Bowen for Plaintiff  
Hockly for Defendant  
Illingworth for Children of Deceased

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ORAL JUDGMENT OF SINCLAIR, J.

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This is an application by the widow of Kellogg under the provisions of the Family Protection Act 1955. Coupled with it is an application under the Matrimonial Property Act 1976 which for the moment I set to one side and simply observe that had I been compelled to deal with that application it would appear to me that there is nothing disclosed which would require the Court to depart from the notion of equal sharing as between husband and wife, particularly having regard to the history of the marriage and the nature of the assets involved. The only complicating factor is that there are five children, one of whom is of age and the other four are represented by Mr Illingworth.

The estate is but round about \$35,000 and the youngest child is not quite 12 so that Mrs Kellogg has the burden upon her shoulders of ensuring that the four children who are still with her are educated, housed and clothed in a proper manner. Fortunately for her the house now becomes vested in her and the mortgage has been discharged by a mortgage repayment insurance.

Normally one would look at trying to keep something intact for the children, but this is an intestate estate the Court is dealing with and had the testator made a will the probabilities are that he would have recognised the extent of his estate and would have vested the whole of it in his wife. Certainly she has been the mainstay of the family over the years and she has had considerable difficulties to contend with. One can with some confidence say that had it not been for her forbearance there may have been no asset in the estate at all.

Having regard to the size of the estate and the burden which rests upon the widow's shoulders in all the circumstances this is an appropriate case for the Court to vest the whole of the estate in Mrs Kellogg. Accordingly an order is made that that shall forthwith occur. However, out of the assets of the estate there is to be paid the sum of \$350 as costs to Mr Illingworth who was appointed to represent the infant children and \$200 to Mr Turbot who was the solicitor acting for . I simply record for what it is worth that the children themselves have recognised their mother's position and through counsel have indicated that they have no objection to their mother obtaining the whole of the estate. That is a very proper attitude for them

to adopt.

Accordingly there is no necessity to consider the Matrimonial Property application and that is dismissed but without costs.

*P. B. Hill*

SOLICITORS:

Bowen, Roche & Hill, Auckland for Plaintiff  
The Solicitor, Public Trust Office, Takapuna for Defendant  
G. M. Illingworth, Auckland for Children of Deceased

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