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IN THE HIGH COURT OF NEW ZEALAND

M NO 36/83

NELSON REGISTRY

IN THE MATTER of the Matrimonial Property Act 1976

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BETWEEN M MUELLER

Applicant

AND M MUELLER

Respondent

Hearing: 8-9 March 1984

Counsel: C N Tuohy for Applicant
D J Maze and Mrs J Daniell-Smith for Respondent

Judgment: 30 MAR 1984

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JUDGMENT OF JEFFRIES J

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This is a dispute of some complexity over matrimonial property, but the principal issues to be decided between this couple centre around one piece of property, which is called the farm. There is one central issue and that is whether the land and fixtures which comprise the farm (excluding the homestead) are the separate property of the applicant, or matrimonial property. The titles are in the sole name of the applicant but respondent has lodged a Notice of Claim of interest against the main title. That issue is decided by this judgment in favour of the applicant. With that decision a subsidiary issue arises under s 9(3) or s 17(1)

of the Matrimonial Property Act 1976 whether there was any increase in the value of separate property attributable to the actions of the other spouse, or the application of matrimonial property. That issue is also be decided by this judgment in favour of the applicant. Contributions of spouses will also be dealt with.

It is convenient here to mention something of the history of the proceedings. They were commenced by applicant in the District Court in March 1983 initially seeking an order pursuant to s 25 of the Act for posssession of the farm. Later the proceedings were transferred to the High Court and an amended application was made by applicant seeking complete determination of all matrimonial property matters. Since then applicant has made an interlocutory application for exclusive possession of the farm because she alleges it is deteriorating so rapidly and to enable her to decide upon its future and give her control of her assets. Prior to this applicant had made an attempt to impound his stock and respondent countered by applying for an injunction. An interim agreement was reached in November 1983 and recorded in a handwritten (by a solicitor) agreement but it very definitely has not been successfully implemented. The settlement gave the applicant the right to farm and manage the property while the respondent has the right to depasture his stock on it. It would be tiresome and avail neither party to attempt to sort through the accusation and counter accusation of the events at the farm in the latter part of last year and through to the hearing, all so meticulously recounted in their most recent affidavits. These

observations forecast further comments which must be made on the regrettable state into which the relationship has descended. Even at the hearing counsel for applicant was pressing this court for an interim order whichI indicated I would not give, for several reasons, but that I would try to give priority to publication of my decision which does not purport to be final on all issues disputed between the parties.

was farmed as a partnership by the couple but they were there together on the property for a relatively short time (about 18 months) in that capacity and only one set of accounts of the partnership, namely to the 31st of March 1981 have been prepared. There have not been prepared further final accounts acceptable to both parties, and it is not surprising because an essential base fact is that of ownership of the land. The partnership agreement was reduced to writing dated 31 March 1981 and was dissolved by another agreement dated 19 July 1982. Plant, stock, equipment and other assets have already been sold but as stated acceptable accounts have not been finalised. It is agreed between the parties that the homestead, as defined by s 12 of the Act, is matrimonial property to be divided equally but no valuations pursuant to the said section are before the court and therefore a final decision cannot be made on that piece of property although something is said hereafter. Likewise the family chattels have not yet been settled. With decisions on the farm land, increase in value and contributions, the parties will then have to consider this judgment. Depending upon their respective views they may either agree on the further subsidiary

matters mentioned above, or possibly return to court pursuant to the leave reserved but such future moves are for them and their advisers. These comments are made to explain the implication that on the state of the papers it is not possible to resolve all issues in dispute between the parties. Besides I think they ought to be given the opportunity with platform findings to reach agreement themselves on these matters.

It is now intended to give a factual background of the marriage, and acquisition of property during the marriage, then to concentrate more particularly on the three areas of dispute which are decided by this judgment.

The applicant was married to the respondent in Germany, which is the country of their birth, in She was then aged and he Apparently they both continued their education after marriage, she as a teacher of intellectually handicapped children, he as a geologist. They were living in the German city of where her parents lived, who are peole of considerable financial means, as will unfold. There is some dispute over the extent of financial assistance given by her parents in the early part of the marriage but that does not require a finding in this case. It is sufficient to say that from the very beginning Mr and Mrs Weber, her parents, were prepared to be generous and such generosity escalated after their emigration to New Zealand. They have three children of the marriage, namely A Mueller born on A Mueller born on and M Mueller born on . For reasons that are not exactly relevant

the couple decided to emigrate to New Zealand in 1977, that is after the birth of their first child. By this stage they had both qualified in their respective professions but it was in hers that they were principally occupied when they reached Christchurch in 1977. Together they became responsible for a home for intellectually handicapped children with the applicant teaching those children. They later decided on a rural life and were attracted to the Nelson district where they purchased a farm jointly at in February 1978. It was a dairy farm and the purchase price was $47,000. Here it need only be said that almost the entire purchase price was supplied by Mr Weber. In December 1978 Mr and Mrs Weber visited their daughter and son-in-law in New Zealand living at Applicant's evidence is that the marriage had already begun to deteriorate, and that she was unhappy. Such unhappiness, she said, was observable to her parents who naturally were concerned. The allegations made by applicant against her husband are that he was unpredictable, domineering, given to psychological and physical abuse and generally treated her as an inferior. The defendant strongly denies these allegations although he does admit on one occasion physically assaulting her. He said he was unaware that at Dovedale the marriage was in such serious difficulties.

It is implied, but needs to be said explicitly because of its importance, neither of these parties had any experience or knowledge of farming in New Zealand or elsewhere before purchase of the Dovedale property. They chose a dairy farm requiring unremitting commitment which they now both see was a mistake. Often at the inception

of matrimonial difficulties it is not always possible to diagnose the true cause. Whether it was largely circumstancial finding themselves in inherently difficult surroundings, or whether the cause lay deeper in a basic incompatibility in the partnership would have been hard for them to decide at that stage. At that point, namely about 1979, it was thought to be the circumstances, which admittedly were hard, but could be remedied by a change of property. This decision was apparently not made while Mr and Mrs Weber were in New Zealand but I am sure that when they departed they were very much aware of the difficulties of the marriage and the applicant said they foresaw it could end in divorce. This first hand knowledge of the Muellers' marriage by the Webers must, at least, be partly responsible for the great care they took with future payments to their daughter as will be detailed hereafter.

As a result of the foregoing the couple proceeded to search in the district for another property, this time the farming operation was to be predominently sheep with some cattle. They ultimately decided on a property known as which now contains 552 hectares in three separate titles. The property had been in the F family for some 60 years and at the time was farmed by B Faulkner, who ultimately became a farm adviser of the applicant, has filed an affidavit and given evidence before the court.

There is a suggestion in the applicant's affidavits that an underlying reason for the purchase was the detection by the respondent of the possibility of

minerals existing on the land partly explaining another allegation of hers that an excessive price was paid. This leads to the applicant's allegation that all major decisions were in fact made by respondent reflecting the domination he exercised over her. It is not really disputed by either party that until the separation the respondent was the member who handled all negotiations and dealings with agents and professional advisers such as lawyers and accountants. Neither is it disputed that whilst on the farms the division between parties of the labours was that he took full responsibility for the operation of the farm, although applicant maintained she did perform some duties in this regard, but that she exclusively managed the home and children. In her affidavits applicant consistently portrays herself as subservient and deferential in regard to her husband, dutifully acceding at all times to his wishes whilst they lived together. Probably he was the dominant partner in the marriage whilst it existed in fact, but the determination and purpose she has shown since the marriage ended, which I thought was reflected in her evidence before the court, makes it a little difficult to accept entirely her version of her role in the marriage.

More will be said about the farm hereafter but the court is satisfied it would not have been an easy property even for an experienced, organised and dedicated farmer, which I think the vendor, Mr B.L. Faulkner, probably was. Also I am satisfied that the respondent, whatever other skills he might possess did not fit that description.

The basic purchase price of the farm was $370,000 of which the land and buildings were worth $291,600 and the stock and plant $78,400. There was some dispute over what actually represented the purchase price because it was the obligation of the purchasers to pay the land agent's fees, and the respondent sought to include other costs in the purchase price which is not usually done. I have chosen to accept the contract figures as representing the purchase price for the purposes of this judgment. The applicant now alleges it was an excessive price to pay, which the respondent denies. Her purpose in making that allegation seems primarily to emphasise the inexperience of the respondent in these matters, and his dominance and control over her at the time. Again it will be detailed later but a very large part of the purchase price came from further payments made by her father.

The couple went into possession of the farm in November 1980 adopting the roles previously filled by them of him operating the farm, and her the home. M was born in whilst on the farm. She claims, with justification, her pregnancies and child rearing responsibilities during the time they occupied the farms reduced her ability to perform more outside work than she actually did. The respondent does not claim to have taken any appreciable part inside the home, and with the daily care of children. It can be stated shortly that the deteriorating relationship of the marriage was in reality unconnected with the hardships of for the marriage continued to decline, she alleges, along the lines already indicated as her viewpoint. She finally left with the three children in April 1982 to live with an

acquaintance for three months who seems to have taken her and the children in in an emergency situation. The marriage itself broke down by virtue of the inherent incompatibility and intolerance of its partners for each other. No other cause has been suggested by either party. He continues to occupy the farm in circumstances to be further detailed and she, again with the help of her parents, has purchased a dwelling at Hope where she now lives with the children.

With some marriages that break down the physical separation brings about restoration of balance and a reduction in the virulence of the animosity that caused the parting. Sometimes even the separation, and with it the ability to look objectively at the marriage, including inwards at themselves, brings about a state where reconciliation can be contemplated, and even achieved. Most assuredly this has not been the case with this couple. If anything after parting recriminations and animosity seem to have deepened and become more entrenched for each. Both blame the opposite party for this even worse situation in separation than when they lived together each attributing to the other's actions low motives. This is particularly regretful because they must look beyond the settlement of the property disputes, which at present dominate their thinking, to the future where they will be inescapably bound by the bond of their three children, even if their lives otherwise follow distinctly different paths. A court is unable to distribute blame for this state of affairs but says, even if negatively, the actions of each since the marriage ended seem free of any generosity, or cordiality, toward the other. Each is

strongly advised to examine very carefully first his and her attitude before making the accusation that the other is to blame.

Is The Farm Land Separate Or Matrimonial Property?

In making this decision there are some facts which are undisputed, or nearly so, and it is best to start with them. At the time of the marriage both were young, she quite young, and apparently neither had assets of his or her own. They were both still qualifying in their professions. The court is satisfied the Webers were significant contributors from the beginning. The respondent does not detail exactly his earnings or occupations before emigration to New Zealand but he was employed as a geologist for a company which first brought him to this part of the world and no doubt that was responsible for the decision to emigrate here. He says he supported his wife in Germany and in fact paid the costs of emigration, at which stage they had one child. Accepting that, nevertheless, they must have arrived in New Zealand with little capital. They worked for about a year in a foster home and during that time resolved to live in the country and farm. Without the assistance of Mr Weber it is clear farm could never have been purchased, and clear beyond any question the change to could not have been accomplished either.

It is now pertinent to reproduce the table of payments recorded in the affidavit of the applicant listing monies received from her father. Respondent accepts this table excepting to point out that items 8, 9

and 10 giving a conversion to New Zealand dollars of 220,000 is in fact incorrect and should read $250,855.

| "No. | Date | Amount Deutsch-marks | Approx N.Z. |
|---|---|---|---|
| 1 | 04-11-77 | 20,000 | $ 10,000 |
| 2 | 29-11-77 | 70,000 | $ 35,000 |
| 3 | 10-03-78 | 15,000 | $ 7,500 |
| 4 | 27-10-78 | 5,000 | $ 2,500 |
| 5 | 29-11-78 | 10,000 | $ 5,000 |
| 6 | 24-12-78 | 2,000 | $ 1,000 |
| 7 | 24-07-79 | 5,000 | $ 2,500 |
| 8 | 11-02-80 | 20,000 | $ 10,000 |
| 9 | 18-04-80 | 20,000 | $ 10,000 |
| 10 | 29-06-80 | 400,000 | $200,000" |

The respondent claims the first transfer in November 1977 contains as well as gift money some of his savings, which is not denied by applicant who implies the savings were joint.

She says the farm cost $47,000 made up in the following way:-

| | |
|---|---|
| Gifts from her father | $42,500 |
| Joint savings of husband and wife | 4,500 |
| Total | $47,000 |

That calculation is accepted by respondent. Applicant says the gifts 1-5 inclusive enabled this purchase to be completed.

The farm purchased in May 1980 (settlement October) from the Faulkners cost $370,000 made up as follows:-

| | |
|---|---|
| Land and fixtures | $291,600 |
| Livestock and chattels | $ 78,400 |
| | $370,000 |

Very broadly the $370,000 came from gifts 8, 9 and 10 above of about $251,000 in value, $51,500 from sale of , mortgage back of $60,000 and a bank loan of $5,000. Although the farm was jointly owned as a matter of historical accuracy the major portion of the funds came from the father. Those are the respondent's figures. The applicant insists that $261,500 was contributed directly from her banking account for the purchase which sum came to her from her father. She points to interest of $2,055. To add some difficulty in deciding what the purchase price really was a short time after settlement a block of 49 ha was sold for $30,000. It seems accepted this was a sale at a material under-valuation. In this court's view there is a fruitless dispute in the affidavits which found its way into the legal argument about the true purchase price. There seems no dispute over amounts paid and received and therefore it becomes simply a matter of definition and how on a fair and reasonable accounting basis the sums are to

be allocated. That is an issue which is left, and if necessary returnedto court pursuant to leave but with a sharper focus on what is to be decided, and its relevance.

It is important now to examine the legal formalities of the purchase of . It has already been mentioned that by the time was to be purchased the marriage was in difficulties and to the observable knowledge of Mr and Mrs Weber, who had lived with them when in New Zealand in 1979 at farm. He had indicated, then confirmed in correspondence with the Muellers, that he was prepared to assist, and in a very substantial way with the purchase of an alternative farm. The correspondence between the Webers and the Muellers reproduced in evidence quite clearly shows that Mr Weber was prepared to advance very substantial amounts only on condition that the asset purchased remained the exclusive property of his daughter. He said in his evidence, which is before the court, that he and his wife had to sell assets to arrange the transfers of funds and that it was to be clearly understood by his daughter, the applicant, that she was obtaining in advance her share in his estate. The important inter family personal correspondence took place in early 1980 mostly before the contract was signed. Respondent's letter extract dated 24 May 1980, after the contract was signed, addressed to his father-in-law, plainly conveys his willingness to abide faithfully by the conditions about the property being in applicant's name. There is evidence she has a brother with whom equality had to be maintained. I am satisfied that this was all entirely understood and accepted by the respondent subject to what he now says and referred to

below. Mr Weber, himself in , Germany, is an architect, obviously familiar with commercial transactions and with the necessity to record in writing, and even formally in public agencies, such family arrangements. Without detailing them in this judgment he took those steps in ermany and New Zealand to have recorded his intentions in regard to his daughter and for which she was apparently separately represented. Those documents in translation are before the court in evidence. He said he would not arrange the transfers of money until these legal formalities had been completed. He obtained by way of personal correspondence assurances from the Muellers here in New Zealand that his wishes in this regard, namely that his daughter would be the legal owner of the land for which he was contributing so much in the purchase price would be met. In strict accordance with those arrangements it was the applicant alone who signed the contract for purchase and in whose sole name transfers of the land were taken. Apparently the Muellers were not advised by lawyers in New Zealand of the additional action they could have taken by way of a formal agreement pursuant to s 21 of the Act.

In addition to the foregoing the couple entered into a partnership agreement by which the land was to be farmed by them in partnership and the partnership assets specified in the agreement do not include the land. In clause 3 the capital of the partnership is stated as all plant, stock, equipment and other chattels including the lease of any farmland. Mrs Mueller has accepted that plant, equipment and stock were matrimonial property and there has been already an auction and the proceeds from

the auction divided. However, as stated, the partnership accounts are not in a fit state for completion of this division. Looking back it is to be regretted perhaps that the land was not mentioned in the partnership agreement and it is common ground that no specific provision for rental of that land to the partnership was decided upon.

As formal facts the respondent does not deny any of the foregoing but his claim to have the land of the farm included in matrimonial property is based upon what he alleges was a private and internal agreement between him and his wife that no matter what formal documents and actions were taken on the insistence of the donor, Mr Webber, he and his wife agreed that they would share the land and that he was de facto its half owner. He continued to insist this arrangement existed when he gave evidence, and Mr Tuohy on behalf of the applicant in cross examination did not fail to put to him the inherent dishonesty if that were the case in their dealings with Mr Weber who had made his views so plain. As slight external support for his view the defendant suggests Mr Weber's precautions were related to tax advantages by this method in Germany. This court does not think for one moment this case is such a one as presented itself in McIndoe v McIndoe 1 M.P.C. 133 where there appeared to be a genuine conflict between substance and form but which has since been overruled by the Court of Appeal in Mills v Dowdall 2 NZFLR 210. On the evidence the court is satisfied there was an arrangement whereby applicant received gifts 8, 9 and 10 amounting to $250,885, which sum beyond question made the purchase of possible, on condition the land and buildings remained her

separate property in her name. It is agreed was joint property and it went in to the purchase and respondent's share of that property was protected by sharing the assets other than the farm land and buildings. So that there is no misunderstanding the court rejects the evidence of respondent based primarily on the alleged internal arrangement in favour of applicant's evidence which is amply supported by the documentation. Neither can I on the evidence find that there was intermingling of this asset whereby it could lose its identity as separate property to become matrimonial property.

Change In Value Of Separate Property

The alternative approach of the respondent is that if the court's decision is that the land and buildings are separate property then he is entitled to half share on the increase pursuant either to s 9(3) or s 17(1) of the Act. One way or another those sections make provision for recompense to a non-owning spouse for actions taken by such spouse, or application of matrimonial property.

This is not an easy question. As already stated above the farm land itself has been reduced in size and it is not disputed that the sale price of $30,000 was received entirely by the applicant. A further complicating factor is that the mortgage back to the vendor of $60,000 has been discharged from partnership income or assets. The applicant is prepared tomake allowance to respondent under that heading as detailed hereafter.

The respondent calculates the increase in value as $63,281.00 by adopting the current valuation of the land performed by applicant's consultant and adding in the valuation of timber thus:-

| | | |
|---|---|---|
| Land and buildings (including homestead) | | $246,700 |
| Add timber stands | | 78,181 |
| | | $324,881 |
| Deduct: | | |
| Land and buildings at contract price | 291,600 | |
| Less sale of 49 ha block | 30,000 | $261,600 |
| | | $ 63,281 |

It seems to this court the first basic fact or facts to be established is whether ornot there has been an increase in the value of the separate property and any income or gains derived from the separate property. First some dates and information about advisers. The parties apparently took possession of the farm at the beginning of November 1980. The partnership is said to have commenced in October 1980. Mrs Mueller left some 18 months later in April 1982. The respondent has remained in possession since then and conducted the farming operation as best he could but amended by the November 1983 agreement. Since the separation both parties have engaged consultants to advise them, supply valuations and to give evidence in

support of the respective cases. Respondent's adviser is Mr Richard Bennison, farm management consultant. Applicant's principal adviser is Mr M.J. Leighs, a registered valuer and soil conservator. Also advising her is the former owner who farmed the property, Mr B.L. Faulkner. In addition a forestry consultant, Mr P.T. Evans, filed an affidavit concerning valuations of trees on the property. This evidence really challenged the valuation done by Mr Bennison but it seemed accepted Mr Evans's qualifications on this particular topic were superior to Mr Bennison's and his evidence was accepted. All these expert witnesses were called and cross examined.

The court returns to the basic question of whether or not there was an increase in value and the relevant period for quantifying the increase is between date of acquisition and date of separation set out above. See Bowen, 4 M.P.C. 22, Thomson, 5 M.P.C. 158. The period in question of 18 months is relatively short. For convenience in argument it was agreed respondent's counsel would put his argument first. On the question of value the calculation is set out above at $63,281. Mr Tuohy, who argued after Mr Maze, altered to an extent the written submissions he put before the court that there was no acceptable evidence to enable the court to quantify in any way precisely the increase in value of the farm land. After hearing Mr Maze he conceded that there had been an increase in value without doubt, and as I understood his argument he was prepared to accept the figure of $63,281 as being the increase in value of the whole land and buildings for the purposes of the argument under s 9(3). He also agreed there was no other acceptable evidence as

at precisely the date of separation. In making that concession Mr Tuohy still felt, no doubt, he had adequate weapons in his armoury in the two consequential arguments. First, that whatever the value respondent could not partake of it because he did not qualify in terms of s 9(3)(a) and (b) and if the court found against him on that he still disputed a 50/50 division notwithstanding a strong line of cases against him. Because of the decision made on the qualifications of respondent to partake of the increase in value the second argument does not need to be reached in this judgment. The acknowledgement by counsel for applicant that the property had increased in value disposes of the suggestion the respondent's activities diminished the value calling for adjustment in terms of s 17(2) of the Act.

I turn now to the pre-conditions, namely that to partake of the increase in value respondent must show it was attributable wholly or in part to his actions, or to the application of matrimonial property. The onus to satisfy the court on this aspect rests upon respondent. It is not unfair to respondent to observe it would be difficult for him under any circumstances as the period was only 18 months. He was at that stage a farmer of some 2 years' experience, unable to point to any background of farming, and having changed from a dairy farm to a high country sheep and cattle farm with its own particular difficulties. In attempting to establish increase in value as attributable either to him or the application of matrimonial property he seems to lay more emphasis upon his personal contributions and actions rather than on the application of matrimonial property. His affidavits of

the work he had done were extensive and very detailed as to his performance. However, when read critically it could be said he did no more than what an average farmer would do on his land in the course of his normal farming operation. One imagines a farmer is never free of the tyranny of maintaining fences and gates on a reasonably large property in hill country. He made some point regarding a stand of hazlenut trees, but it was not convincing as likely to add real value to the land as an independent project.

The court has attempted to make to an extent its own judgment of the evidence placed before it by Mr Mueller on his efforts in the first 18 months on the farm before turning to the evidence of the experts. Perhaps because of the evidence in cross examinations given by each of the three knowledgeable on a farming operation, namely Messrs Bennison, Leighs and Faulkner, the court detected at least a relaxation in the strict rule of objectivity for an expert. There may be some explanation for Mr Faulkner's attitude because of his long association with the property and possible disappointment at some of the policy decisions made by the purchasers. The affidavits of the respondent seemed inclined to allege bias against him unconnected with strict application of objective standards of assessment. To an extent the affidavits and evidence of Messrs Bennison and Leighs exhibited a sharpness about each other's views not normally associated with expert opinion.

Now to more concrete observations following the aforesaid. Enough has been said of the inexperience of

both parties in farming without more. In addition to that it was plain that they had reached policy decisions about the way the farm was to be operated, not strictly connected with hard headed commercial practice. For example I accept respondent's evidence there was an agreement between him and his wife to farm on the organic method and not to apply chemical fertilizers. Mrs Mueller is now critical of her husband on this aspect and perhaps does not shoulder her full responsibility for that policy decision. The inexperience was also tinged with idealism in the operation. There is no doubt that in the affidavits and evidence of Messrs Leighs and Faulkner they are very critical of respondent's efforts as a farmer and about the farming operation, such as care of land, trees, stock and buildings, positively assert under his control the farm regressed. Given his very brief experience in practical farming with an academic background in Europe it is hardly surprising that such an opinion could be held by two knowledgeable men, one with expert training. Some of the allegations made by applicant against respondent could be said to be somewhat trivial, but nevertheless the court is left with the clear impression not only was no value added by respondent's farming activities but probably the land did regress to an extent. The court, in reaching this decision, has considered carefully the evidence of Mr Bennison which, without relaxing objective expert standards, has looked sympathetically at respondent's activities. His evidence can not displace the view referred to above.

So as to put the issue at rest the evidence does not support a claim under s 17(1) of sustaining the property apart from the repayment of the mortgage and that issue can be dealt with in the partnership accounts.

Contributions to the Marriage

The court has found that the farm land and buildings are separate property and the increase in value is also separate property. The homestead and family chattels are matrimonial property and it is agreed they are to be divided equally. The partnership assets are also matrimonial property to be divided according to s 15 of the Act. The partnership accounts have not yet been finalised. Applicant's counsel argued that these assets should not be shared equally but this argument seemed to be advanced ex abundante cautela in the event of findings not favourable to the applicant on the farm land. Mr Touhy conceded in an oblique way if the farm land and increase in value were separate property then his argument on contributions was not so weighty.

The section has been amended from 1 January 1984 to make it plain that for equal sharing of these assets to be displaced the contribution to the marriage partnership must have been clearly greater than that of the other spouse. Bearing in mind the court must be guided by s 18(1) I do not find the contributions of the applicant have been clearly greater. Admittedly she applied her separate property to the Baton River farm partnership but it was the respondent who worked the farm whilst she cared

for the family. See s 18(2). In deciding on contributions it would distort the portrait of the marriage to concentrate on the events which led to the purchase of : and the 18 months there to the final separation. That period occupied only about 2 years. The total marriage time was 9 years. There are no allegations of lack of energy or commitment in the respective zones of work in which each one principally laboured throughout the marriage. The court holds all matrimonial assets are to be shared equally.

There appears to be no dispute that the $60,000 mortgage back was repaid out of matrimonial property but that is to be dealt with in another way set out hereafter. There is no other evidence that the property was increased in value by application of matrimonial property.

Before recording finally the orders that result from the aforesaid decisions that the farm land is the separate property of the applicant, and that there is no increase in value able to be claimed by respondent pursuant to s 9(3) or s 17(1) of the Act, I mention some of the outstanding issues still to be resolved. First, there is the homestead. In the course of hearing it seemed agreement had been reached that the homestead was to receive a value of $33,000. I see no harm in the court avoiding making a formal order and leaving it to the parties to confirm that the aforesaid is the agreement. There is really no way the court would feel confident in making an order without some evidence or the clearest indication, preferably in writing, from the parties

themselves. In other words the court specifically leaves this question to be decided in the future.

Applicant, through her counsel's argument, has made it quite clear she intends to make allowance to respondent for the repayment of the mortgage back. It is also clear that the partnership accounts have yet to be finalised in a form acceptable to both parties. Some decisions made at the directions of the respondent in the draft accounts are strongly challenged by the applicant and her professional advisers in this field. It should be mentioned respondent alleges failure to communicate by applicant as a reason for their present state. In the course of argument I indicated in a reasonably firm way that the court was not going to embark upon decisions as to accounting in the farm partnership using only the evidence before it, and its own knowledge of farming practice which is exiguous. The matters of principle referred to in Mr Wesney's affidavit should be capable of solution with findings on separate property and contributions. As stated earlier in the judgment the parties must now consider this decision and use it as a basis for giving instruction on the preparation of final accounts. There is no reason why this work cannot be performed speedily and pursuant to the leave granted the parties may return to court for resolution of areas that cannot be reached by agreement.

The final outstanding matter concerns the family chattels. Apparently the parties can agree to valuations being done by Mr A. Lipscombe. I direct, as requested, the taking of an inventory and a valuation.

As the finding of the court is the farm is the separate property of the applicant I see no reason why she is not entitled to an order for possession of the farm property excluding the homestead itself currently occupied by respondent. Such an order is made. A final order on the homestead may be postponed in accordance with observations already expressed. The court realises that throughout the hearing respondent's counsel stressed that the respondent wished to have the opportunity to purchase the land. Applicant firmly opposes this and the court does not consider such an order ought to be made by it apart altogether from the jurisdictional point.

Leave is reserved for the parties to return to court for further orders. Costs are also reserved.

Solicitors for Applicant: Fletcher & Moore

Solicitors for Respondent: Ralfe Collins & Maze