

HAMILTON REGISTRY

IN THE MATTER of the Matrimonial  
Property Act 1976

429

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IN THE MATTER of an application

BETWEEN                    W                    RAYMOND

APPLICANT

A N D                    J                    RAYMOND

RESPONDENT

Judgment:        2 May 1984  
Hearing:           2 May 1984  
Counsel:           P.R. Connell for Applicant  
                      A.L. Hassall for Respondent

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ORAL JUDGMENT OF CASEY J.

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These parties were married in 1958 when Mrs Raymond was        and Mr Raymond was        and they separated in        1982, after a marriage of 24 years, during which they had four children, only one of whom is now dependent and is living at home at the farm property at Murrayfield with her mother. Her parents were farmers and both Mr and Mrs Raymond followed the same career undertaking farm work after their marriage and then, as is the case with so many young couples, moving into sharemilking. In 1966 they obtained a post on Mrs Raymond's parents' property at Murrayfield sharemilking for them and eventually purchased the farm from them seven years later in 1973. Mrs Raymond's parents helped with generous purchase terms and financial assistance, and I have no doubt that they were pleased to see them get on to the property. In 1974 Mr Raymond Senior made a gift of \$5,000 off their debt to him, but the rest of his financial help was repaid during the course of their operations.

They formed a company to acquire this farm with an

equal shareholding of 1,000 each. It was a dairy property of about 103 acres; one would not describe it as substantial property, but I think it provided a good family living, and from the affidavits I conclude that the marriage fulfilled the normal expectations of a farming couple in their situation. Mrs Raymond was, of course, mainly involved with the children and household tasks. She undertook the nursing of her father and mother who lived there until their death in 1983 and 1980 respectively, and I accept that she would have helped in the shed and around the farm and played her full part as a sharemilker's, and later as a farmer's, wife. Undoubtedly their family helped also as they grew older.

In 1977 when Mr Raymond was about he suffered health problems which led him to believe he could no longer carry on farming, so sharemilkers were engaged. After a spell as a land agent, he took on a permanent job in a dairy company and remained there until 1982 when there was obviously a crisis in his personal life and health. He suffered from epilepsy, and his wife describes in her affidavit fits of moodiness and depression. What emerged later was that he had become emotionally involved with a young woman (a ward of the State) who had been fostered by the Raymonds for about 18 months, and he maintained his association with her after she left their house. Eventually, as it now turns out, he took her with him on an overseas trip in May 1982, a factor of which his wife was unaware at the time, his stated purpose being a visit to his parents. As a result of this and other matters, she went through a period of obvious concern about his mental stability and judgment, compounded by the discovery of substantial cheques which he had drawn on the company's account without reference to her, and misleading entries to cover them up. I have no doubt that a good deal of this must have been concerned with the girl. Clearly Mrs Raymond went through a period of great strain and distress at this time.

Following their separation in 1982 arrangements were made for their eldest son, N to sharemilk on the farm property. The existing sharemilkers were due to leave in

May 1983 and it had always been understood in the family that N would take over the property and this aim had been encouraged by both his parents. After he left school at 15½, on his father's advice he underwent an apprenticeship as a fitter and turner to have some alternative avenue to the farming which was planned. Then for two years he was working as a labourer acquiring experience around different farms. It seemed to him and his mother that after his father left, the time would be right for him to take over the property. He discovered that the only way he could raise the necessary finance was on a 50/50 basis with his own herd, and to do this he would have to borrow virtually all the capital needed as he had not saved a great deal. There was a meeting with his parents and other advisors in late 1982 or early 1983 to discuss this. He had an option to buy a herd. He says it was inspected and approved by his father, and he was then able to raise a \$35,000 loan through the Rural Bank to buy it, on the basis that he would be entering into a three-year sharemilking contract with his parent's farming company. I am quite satisfied that Mr Raymond was fully aware of this, although he wanted it to be a sharemilking agreement for one year only, because by this time, of course, the parties were separated and he not unnaturally wanted to get his interest out of the farm as soon as possible. However, he signed the loan documents which had been put forward by the Bank on the three-year basis, although the sharemilking agreement itself was signed only by Mrs Raymond and N. I am satisfied they did so on the basis, as they understood the arrangement, that it was in order for him to carry on with the three-year contract. Mrs Raymond was at this time the person in immediate control of the farming business.

After Mr Raymond left home in October 1982 he obtained various temporary jobs. He has had no direct income from the farm but drew a number of cheques on the company's account and after allowing for Director's fees and other credits, his debit in the accounts as at 31st May 1983 appears as \$13,613. According to Mr Hassall's calculations, since then another \$405.52 is to be taken into account against him. He claims that he has been having a struggle to make ends meet

with the various temporary jobs that he has undertaken and that his future is quite uncertain. He now seeks orders for division and sale of the matrimonial property, which in general terms consists of their equal shareholding in the farming company. I think it appropriate to accept Mr Hassall's calculations based on book value which yield a figure of \$354,578 as the equity in the company assets after allowing for the debts. There is a value of \$2,285 placed on the household chattels which have apparently been divided between the parties on the basis of \$1,930 to Mrs Raymond and \$355 to her husband, and there are various bank accounts; all these latter figures are those at the date of separation, and I am unsure of the present situation. Counsel accept that there would be no significant alteration in the value of the company assets.

Mrs Raymond concedes that all these assets are matrimonial property, but she seeks an unequal division under s.15(1) of the Act on the basis that her contribution to the marriage partnership has been clearly greater than that of her husband. Mr Hassall, in his usual painstaking and thorough way, took me through the evidence in detail. Broadly, he emphasised the assistance and opportunity which this couple had derived from Mrs Raymond's parents in their early years, and the relatively poor farming record of Mr Raymond from the time they acquired the farm in 1973 until it was let out to sharemilkers some four years later. He emphasised the declining production records, compounded by his bad health which led to a reduction of the effort he could put into the business, and the financial problems leading to the separation, when a far greater burden of management and responsibility for the farm and the family was imposed on Mrs Raymond. I might say that this could only have been for a relatively short time, and Mr Raymond was working for the Dairy Company for most of the period after he gave up active farming, where he seems to have been earning \$10,000 to \$12,000 a year over that period.

In considering s.15 of the Act under which this claim is made, it is important to bear in mind the basic principle behind it - the recognition of the equal contribution

by each spouse to the marriage partnership, which is set out in the pre-ambule. As the Courts have emphasised in a number of cases, this must be taken into account in determining the effect of this section, and the onus is on the party seeking other than an equal division. One must avoid the temptation to look at contributions to specific assets or over selected periods during the marriage, when the efforts of one or other of the spouses may dominate. Here, there is a marriage of 24 years. It is inevitable that over such a period there would be such instances of unequal contribution. But viewed as a whole and having regard to the current asset position of these parties (which is only one of the factors to be taken into account) I am unable to say at the end of the day that the contribution from one or other has been clearly greater. It must be more than just a tilting of the scales in his or her favour. Mr Hassall himself recognised that any difference could not be substantial. The assistance given by Mrs Raymond's parents in the early days of their marriage and with the purchase of the farm is, I think, fairly described by Mr Connell as assistance to both of them. They were obviously pleased to have the farm kept in the family and to encourage their son-in-law in his enterprise. Such matters take their place over the years as facets which are not uncommon in such a farming situation. It becomes increasingly difficult to isolate them or give them extra emphasis when weighed against the solid contribution that both have made in their own ways over that period.

Similar remarks can be made about the health problems which caused Mr Raymond to give up farming and possibly leading to the fall in production. But it cannot be said these problems led to a reduction in the living standards they expected to enjoy as a farming family in this situation. The value of the farm continued to increase with inflation and rising land values and Mr Raymond took steps to obtain other employment. Their 50/50 shareholding in the company when they bought the property in 1973 illustrates their own view of their marriage and their interest in it. Of course, that is not a matter binding this Court in determining an appropriate

division, but it tends to confirm the view I have reached that overall on the basis of their contributions under s.18, this was an equal marriage partnership and their shares in it should be equal.

Mr Hassall then raised a number of points on post-separation contribution. Mrs Raymond had the burden of keeping the family together after the crisis that had developed in 1982 but the Act does not provide for such matters to be taken into account as contributions to the marriage partnership because it has ended. It is accepted that the \$2,000 she provided after the separation for the purchase of the company car came from her father's estate, and was her own separate property so that in the final settlement this amount should be refunded to her. I fix today as the date on which any assets should be valued if this is necessary for the purposes of assessment or division. Counsel are in general agreement that there has been no significant change since 1982 in the value of the farm property. Looking on the other side of the coin, while Mrs Raymond has had to assume greater burdens, undertaking the sole responsibility for the maintenance of the younger children at home, she has enjoyed the use of the house to compensate her in part for this.

The real problem is Mr Raymond's request for an early sale. The clear policy of the Act is that the Court should aim at making a clean and early break once the marriage has come to an end, so that the parties are free to go their own ways without further claims or demands on each other. This case has undoubtedly revealed a distressing family situation, where the expected continuity of this farm through the generations has been broken, contrary to the Raymond family's expectations as fostered by Mrs Raymond's parents. One must accept this as one of the consequences of the Act and there is little the Court can do about it. It is not a case where I have to take the interest of dependent children into account to any real extent. The only one left is their daughter. On a sale there would be ample available for a new home for her and, with the assets then available to him, Mr

Raymond could also be expected to contribute to her maintenance. He says he is unable to do so now because he has nothing above his own living expenses. There would be only passing inconvenience if this young girl had to shift house and perhaps move to another school - that happens normally to a large number of families.

The interest of N Raymond could be described as only the interest of a third party; I am asked to balance it against his father's clear entitlement to be paid out his share in the farm. The latter accepts that it would be unrealistic to sell the farm property now, and concedes that N should carry on until the end of the May 1985 season, whereas under his contract, he could expect to continue until May 1986. There was a good deal of evidence on this aspect which occupied a large part of Mr Raymond's cross-examination, and I accept that a three-year period is really necessary for a sharemilker to establish himself on a new property and get it into full production, in spite of Mr Raymond's reservations in his cross-examination. I gathered that in effect he maintains he agreed to the financial application and documentation going forward on the basis that Neil would have a three-year contract so that he could obtain the finance necessary for his herd; but he claims that everybody understood that his wish would prevail that Neil would only be there one year and he would then get out to allow the property to be sold. On the other hand, he and his mother flatly deny that there was any such arrangement. They acknowledge they knew Mr Raymond only wanted Neil there for a year, but he eventually signed the loan documents on the basis of a three-year sharemilking contract. They reject any suggestion of attempting to deceive the Bank, implicit in Mr Raymond's approach to this matter.

It is clear that N planned his working life in the expectancy of taking over the farm, and the arrangement for him to become a 50/50 sharemilker was the first step. Whether at the end of his three-year term he can refinance (as he and his mother hope) in order to buy out his father's share may be questionable. But I accept the evidence that any term

shorter than the three years will put him at least at a substantial disadvantage in his working career, if it does not subject him to an outright loss in having to dispose of his herd and repay the loan. I am satisfied that he needs this minimum period to establish himself financially and give him the start he needs in seeking other sharemilking positions. In this family situation, I think Mr Raymond should have recognised at least some moral obligation to give N this minimum opportunity out of what he was promised, especially as he directed his working life in reliance upon it. In my experience, there is seldom a problem in most of the cases involving disputes between husband and wife in similar farming situations, because both of them are usually anxious that the farm be kept for the children.

In looking at this question, I must, of course, take into account Mr Raymond's situation. He accepts now that any sale should be delayed until 31st May 1985, which will give a further year to N. One can ask whether allowing a further year beyond that would override any obligation to Mr Raymond. There is not much evidence about his financial future. He is clearly a man of some capabilities and in spite of gloomy forecasts in his earlier affidavits, he appears to be supporting himself adequately. But quite apart from any question of moral obligations I am satisfied that his conduct in dealing with the loan application on the basis of a three-year contract, against the general background of the understanding with Neil, has led the latter to believe that he would enjoy a three-year term. He has undertaken obligations in reliance on that, and deprived himself of taking advantage of other work opportunities that might have been available to him. This adds an element of estoppel to the moral obligations I have discussed, and leads me to the conclusion that I should exercise my discretion about time of sale in N's favour. To do otherwise would fail to do justice in the situation that has developed here.

As I have emphasised, this is a special family problem. While the Act is directed at making a clean break between husband and wife, I do not think it precludes the



Court taking into account, in the exercise of these ancillary discretionary powers, rights or obligations which may have accrued to other members of the family beyond those provided for specifically in the Act for dependent children, and which it would be unjust to ignore. I therefore find that the parties are entitled to share all their property in dispute in this application equally, but I will defer any direction about sale until the further order of the Court, on the basis that no sale or division of the proceeds is to be undertaken that will affect Neil's ability to carry out his sharemilking agreement with the company pending expiry of its term on 31st May 1986.

I have no evidence about the company's income and expenses up to date. The last balance sheet is for March 1983 and while I appreciate Mrs Raymond's wish to accumulate income in order to assist refinancing to pay out Mr Raymond and enable Neil to take over the property, it should not be altogether at his expense. He is already meeting the difference in interest rates on the loan to give N favourable terms to buy the stock. He sought at one stage a weekly payment of \$100 for his own maintenance and support. I allow for the fact that in the final division he will have to account to the company for the debit in his current account, and that can therefore be put to one side. On the other hand, he has not been maintaining his daughter because he has not had the means. An appropriate allowance for maintenance would certainly not be substantial having regard to the fact that Mrs Raymond herself is earning, and the Courts usually consider that maintenance obligations should be shared between parents when each is deriving an income. Mrs Raymond has the advantage of living in the property, so she is getting the benefit of some of the capital assets.

From the last accounts Mr Raymond was credited with Director's fees in the order of some \$5,500, set off against his debits. I think that Neil should be coming to grips with his new responsibilities after 12 or 18 months as a sharemilker on the property. In my view it would not be right to keep Mr Raymond out of any return on or compensation

for the capital tied up in this farm company for the full three-year term. I appreciate the practicalities and the difficulty in knowing what income the company will derive under N's sharemilking contract (allowing also for the differential interest rates) in determining any realistic sort of payment to him. My view is that Mr Raymond should receive the \$100 a week he requested, if this can be paid, and I would propose that this should be done effectively by quarterly instalments from 1st September, the first payment to be made on 1st December of this year (which will be well into the new season) and continue until the sale or division of the property. I would be prepared to make an order to that effect but, as I said, the accounts are not sufficiently up to date to persuade me that it is feasible to do so at this stage, and I would not like to make a final decision until Counsel have had an opportunity to consider it and decide what can be done. I am encouraged, of course, by the fact that in the previous accounts there was a Director's allowance available for him which is pretty much along the lines of what I have suggested now.

The position about the shares was also a matter which concerned Mr Hassall. As he pointed out, the equal shareholding means that there is nobody ultimately in control of the company and this could give rise to serious problems. Concern arose over Mr Raymond's actions in the past of charging amounts to the company incurred to various firms and drawing cheques on its account - something which as an equal shareholder and Director he is currently able to do. Indeed, this was one of the matters which suggested to Mr Hassall the solution of unequal contributions. As I indicated, this could also be resolved by vesting one of his shares in an independent party. I am not prepared to do so at the moment, in the absence of evidence that this is a continuing problem; but I expect that the running of the company should remain in Mrs Raymond's hands, with the advice she is getting from the farming expert, and I will have resort to that solution only if there should be any further difficulties of the type that have been encountered.

The question of how the assets could be disposed also came up, because the farm property - really the main matrimonial asset - is represented by the shares which each holds in the company. It would be quite unrealistic, of course, to direct a sale of the shares only and neither party would gain by that. Now that the matter has reached the stage where their rights have been resolved in this broad way, I do not anticipate any difficulty. Any sale will logically be a sale of the farm property itself with resulting division of the proceeds on the equal basis to which I find they are entitled. But leave will be reserved to either party to apply for any further order or directions in terms of this judgment should the circumstances require it. If the parties cannot agree on payments to be made to Mr Raymond they can come to me under this reservation. There will be no order for costs on this application.

*W. G. Casey J.*

Solicitors:

O'Neill Allen & Co., Hamilton, for Applicant  
Edmonds Marshall & Co., Matamata, for Respondent