

X

No Special  
Consideration

LR 4  
84

BETWEEN M : RELLING  
Plaintiff

A N D M : RELLING  
Defendant

Minute: 16 December 1983

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MINUTE OF HOLLAND, J.

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The plaintiff is the widow and sole executrix and trustee and beneficiary of her deceased husband. She seeks orders under the Matrimonial Property Act 1976 as to the division of matrimonial property and vesting in her of such proportion as the Court thinks fit. For this purpose she sues herself. As she has inherited the entire estate the only purpose of the application can be to save death duties on her husband's estate. Until the passing of the Estate and Gift Duties Amendment Act 1983 no saving would be achieved as estate duty would have been payable on property the subject of an order under the Matrimonial Property Act. The amendment to the Estate and Gift Duties Act provides that property comprised in an order under the Matrimonial Property Act does not form part of the dutiable estate.

Although separate counsel appeared to represent the estate I indicated that this would not assist the Court to determine the true position because the duty of the executrix in the circumstances would be to act in accordance with the interests of the beneficiary, herself. The only person concerned to oppose the application or to enquire as to its merits is the Commissioner of Inland Revenue. I am told that he does not seek to be served with the proceedings nor to take any part in the proceedings. If that is his considered attitude then so be it but it does not

assist the Court because there is no adversary and it is not really the Court's function to protect the revenue.

I am satisfied that the Commissioner of Inland Revenue is a person having an interest in the property which would be affected by the order under the provisions of section 37 of the Matrimonial Property Act. I accordingly direct that the Commissioner of Inland Revenue is to be served. If the Commissioner still does not wish to be heard he may indicate so by a memorandum signed by him personally or by counsel.

*A D Holland J*