

20/11

W244

X

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M 326/84

1422

<u>BETWEEN</u>	<u>E</u>	<u>WALLIS</u>
		Applicant
<u>A N D</u>	<u>E</u>	<u>WALLIS</u>
		Respondent

Hearing: 8 November 1984

Judgment: 8 November 1984

Counsel: D.J.Sharp for applicant
A.S.Menzies for Respondent

ORAL JUDGMENT OF BISSON J.

This is an application under the provisions of the Matrimonial Property Act 1963 on behalf of a deceased wife in which her son, as the administrator of her estate, seeks to have defined the share of the deceased in a farm property owned by her husband and in certain farm machinery associated with that property. Mr Sharp for the applicant has summarised in written submissions the contributions which the deceased had made to the marriage partnership and those submissions are supported by the affidavit evidence. He has also directed the attention of the court to the law relating to such applications as this and in particular to the case of Haldane v Haldane (1976) 2 NZLR page 715.

The farm property is a valuable one having a capital value of \$730,000 according to a government valuation at 1 July 1983. There was not a valuation before the court in respect of machinery. However, a draft order has been placed before the court for its consideration which provides for the estate of the deceased wife to have vested in it

as a tenant in common with the respondent husband a two-fifths share in the appellant and a three-fifths share in the respondent. So far as the farm machinery is concerned there are four items listed in the draft order, there being only a half interest in respect of one of those items. The proposal is that the applicant have a half share and the respondent a half share in the machinery.

Mr Menzies for the respondent concedes on his behalf that the proposals would be just and in accordance with the provisions of the Matrimonial Property Act 1963. Indeed he might well have gone further to accept that the deceased wife be entitled to a half share in the farm property. But I prefer to adhere to the shares which are set out in the draft order, bearing in mind that the applicant also claims to be entitled to repayment of a loan of \$10,000 which was made by the deceased wife in connection with the acquisition of the matrimonial property. That being the case I have no hesitation in making an order in the terms of the draft. No order as to costs is sought.

G. B. Simon

Solicitors

Garrard & Osmond Cambridge by their agents Stace Hammond
Grace & Partners Hamilton for applicant
Harkness Henry & Co, Hamilton, for respondent