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IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.399/83

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IN THE MATTER OF The Matrimonial Property Act 1963

AND

IN THE MATTER OF An application by
SHIRLEY EMMELINE DALLINGER
of Horahora, Widow

Applicant

AND

SHIRLEY EMMELINE DALLINGER
and CHARLES DESMOND LA TROBE
of Horahora and TONY IRWIN
DALLINGER of Horahora,
Farmer as Trustees in the
Estate of PETER IRWIN DALLINGER

Respondent

Hearing: 4 May 1984

Counsel: D.M. Wilson for Applicant
P.R. Heath for Respondent
E.O.K. Blaikie for Beneficiaries
M.D. Grant for Commissioner of Inland Revenue

Judgment: 9-5-84

JUDGMENT OF GALLEN J.

This is an application under the provisions of the Matrimonial Property Act 1963 by the applicant who is the widow of the late Peter Irwin Dallinger. Mr and Mrs Dallinger were married for more than 33 years. It was the only marriage for both husband and wife and it terminated with the death of Mr Dallinger. There were 3 children of the marriage who are

now all adult and self-supporting. At the time of the marriage of Mr and Mrs Dallinger, neither had any assets. Mr Dallinger was employed on his father's farm as a farm labourer and although presumably he had some expectations of inheritance, no formal obligation of any kind had been entered into. In fact Mr Dallinger was able subsequently to purchase the family farm on reasonably favourable terms, but the transaction did involve a sale with a substantial mortgage back. Some of this was repaid from subsequent farm income and some was realised by way of gift. At the death of Mr Dallinger's father, a substantial sum was still owing and this became an obligation to the estate.

In 1967 a second farm was purchased and this was assisted by moneys made available by the applicant, Mrs Dallinger, who had received these by way of an inheritance from her parents' estate. The moneys were loaned at a concessional interest rate. Mrs Dallinger also had certain other funds which she had inherited and which were invested. The returns which she received from her investments including that made in the farm transaction, were all used for the benefit of her family. There is no doubt on the affidavits that the contribution made by Mrs Dallinger from the commencement of the marriage, was of an exceptional nature even bearing in mind that contribution which is not infrequently made by farmers' wives. There appears to have been no aspect of the farming operation in which she was not directly involved and to which she did not

make an actual labour contribution.

The present very substantial financial assets of what may properly be described as the marriage partnership, are clearly in no small part due not only to the direct physical contribution made by Mrs Dallinger but by her acceptance of frugal and restricted living standards and the determined effort which both she and her husband made to create a substantial family enterprise.

The principles upon which the Court acts in relation to applications made under the 1963 Act are well established, but in the end they are discretionary and can properly reflect the individual situation from which those applications arise. Authority for the extent of the discretion may be found in the decision of the Privy Council in Haldane v. Haldane (1976) 2 N.Z.L.R. 715. I accept that in most cases the tendency has been for a proportion lower than 50% to be awarded to wives applying in respect of farm assets, but there is no rigid rule to this effect. Each case must reflect the circumstances out of which it arises. My attention was drawn to the decision of Bisson J. in Meadway v. Meadway 14 March 1984. In that case there was no doubt that the contribution made by the applicant was substantial. However, it appears that a substantial proportion of the estate came by way of advancement from the husband's father and the learned Judge specifically stated that the evidence did not indicate that the applicant took an active

or any part in actual farm management. From this he considered that the success of the farming business had to be considered as entirely due to the husband. In that case, he considered that it was proper to award a share amounting to one-third in all matrimonial property.

The case with which I am concerned is rather different. It is not opposed by the Trustees of the estate of the late Mr Dallinger and the application is supported by the children of Mr and Mrs Dallinger. Counsel appointed to represent grandchildren was also able to support the application. In my view, this is the kind of case where it would be wrong to endeavour to quantify the efforts made by Mr and Mrs Dallinger over such a long period in other than equal terms. Accordingly I am prepared to award Mrs Dallinger an equal share in all matrimonial property. Counsel has suggested that if this was my view, that an appropriate way to deal with the matter would be by making an award effectively vesting a mortgage from Mr and Mrs Tony Dallinger in the applicant by vesting in her the Holden Commodore car owned by Mr Dallinger at the date of his death and by vesting in her also as her sole property, the 58 in-calf friesan mixed age cows and the 4 friesan in-calf heifers referred to in the farming accounts. I am prepared to do this. I understand that there are no

practical difficulties associated with such an order. A draft order is to be submitted and counsel may submit a memorandum as to costs.

R. J. Lawrence
8/5/84

Solicitors for Applicant: Messrs McCaw, Lewis, Jecks, Hamilton

Solicitors for Respondent: Messrs Towle and Cooper, Auckland

Solicitor for Beneficiaries: E.O.K. Blaikie, Esq., Hamilton

Solicitors for Commissioner
of Inland Revenue: Messrs Norris, Ward and Company,
Hamilton
