

IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

M.53/84

BETWEEN E CAMPBELL

Appellant

A N D R CAMPBELL

Respondent

Hearing: 23 - 27 July 1984

Counsel: M.R.D. Guest and D.J. Blaikie for Appellant
 J.D. Large for Respondent
 J.D. Polson for Children

Judgment - 9 AUG 1984

JUDGMENT OF HARDIE BOYS J.

The mother of three boys, A now just 12, R
9, and B 6, appeals against an order of the Family Court
that their custody be entrusted to their father. It was the
father's fourth application for custody and on this last
occasion he was successful because the mother proposed to move
the boys to an entirely new location for the fourth time in 18
months. The Family Court Judge found each of the decisions he
had to make a painful one. So is this of mine: although at
the outset I acknowledge the great assistance of counsel and
especially of Mr Polson who has represented the interests of
the children throughout with great care and sensitivity.

My task on this appeal is to approach the matter afresh, and, on the evidence presented to me, to form my own view of what ought to be done in the best interests of the children: Guardianship Act 1968, ss 31(1) and 23(1). Counsel agreed that I should have regard to the various reports, psychiatric, psychological and Social Welfare, that are on the Family Court file, and of course I have read the judgments of the Family Court not only for the background assistance they give, but also because the findings and conclusions expressed in all but the one appealed from were not challenged on this appeal; and indeed from the material placed before me appear to be entirely unexceptionable.

The parties were married on 18 April 1970, the wife then being 19 and the husband 23. They had both lived in Dunedin and their married life was spent here, until 1978 in Kaikorai Valley Road and then at 4 Larkin Street, Helensburgh. The marriage effectively came to an end on 24 April 1982, when Mrs Campbell without warning or subsequent intimation to her husband left the home with the children and sought refuge with the Salvation Army. She says she left because she was desperately unhappy and she now attributes her unhappiness to the fact that she was kept short of money and was abused physically and sexually. Neither spouse was entirely faithful to the other during the marriage, but I do not see their respective escapades as presently relevant, except that the wife's had a significant effect on her psychological wellbeing. I very much doubt that there is substance in any of the other allegations Mrs Campbell made against her husband. These I suspect are more likely to represent an

attempted justification of her behaviour at and since the time of separation, which plainly caused great anxiety and distress to her husband and also widened, apparently irremediably, an already existing rift between her and her parents. The basic cause of the breakdown of the marriage is I think to be found at a deeper level than anything the wife now suggests, namely in some degree of emotional instability on her part and in some lack of sensitivity and insight on her husband's.

A psychiatric report prepared in April 1983 noted that five years earlier, following a crisis resulting from an occasion of adultery, Mrs Campbell had been described as "a fragile dependent young woman who appears to function adequately as a wife and mother until some emotional disturbance throws her off balance". Following the separation in August 1982 she appeared to have considerably improved, but the psychiatrist nonetheless expressed serious reservations, in view of her history of sudden mood changes and unpredictable actions, as to whether she would remain sufficiently reliable to be entrusted with long term custody. There is no more recent psychiatric assessment, but it does appear that since 1983 there has been further improvement, largely, perhaps entirely due to the understanding and support of Mrs Campbell's intended second husband, Mr Graham. The problem is not entirely overcome however. Mr Graham acknowledged its existence, although he expressed confidence in his ability to manage it. It was to some degree apparent as Mrs Campbell gave her evidence. And it manifested itself in an extraordinary incident involving the youngest boy at school the very morning the hearing of the appeal began.

Apart from his infidelity, Mr Campbell appears to have done all he could to help his wife through the various crises of her life. But they are both simple, unsophisticated people. She was probably quite unable to analyse or express her emotional needs, whilst he was unable to perceive her feelings and the causes of her crises, and so the means of avoiding them were largely beyond his comprehension. Thus his genuine efforts to help and comfort were probably fairly heavy-handed. The children must have been affected by the stressful home environment, and it is certain that Mrs Campbell did not leave without reason. Yet Mr Campbell appears to have remained largely unaware of what was developing and hence was quite bewildered by the final turn of events. Even now he thinks the marriage was a good one, although having reflected on what he has heard his wife say in Court, he is beginning to understand her appreciation of the reasons that prompted her to leave.

After a week with the Salvation Army in Dunedin, Mrs Campbell took the children to a rented house at Willowbridge near Waimate. She knew no one in the vicinity, but the local people proved supportive. Mr Campbell visited her there several times in an attempt to effect a reconciliation but eventually her behaviour and the company she appeared to be keeping caused him such concern that he applied to the Family Court for custody. However at a hearing on 26 November 1982 it was decided that the mother should retain custody in the interim, the father continuing to have access at Willowbridge for the greater part of each weekend. He was regular and faithful in exercising that access, at obvious cost and

inconvenience for it involved him staying in Waimate every Saturday night so that he could see the boys in accordance with the order on the Saturday afternoon and the Sunday morning. Matters continued thus until the question of permanent custody could be dealt with, and that was not until 21 July 1983.

The uprooting to which Mrs Campbell subjected her sons would be disturbing enough for any child but there were particular dangers with these boys. They all had learning problems and had language and speech disabilities which it was thought may have been related to similar problems Mr Campbell had encountered as a child. In August, 1980, 's speech was largely limited to single word utterances. He was not using multiple word sentences. He had not begun school. The two older boys had been at the local School. All three clearly needed a great deal of attention and encouragement but both parents were somewhat limited in their ability to help. Neither had progressed at school past the fourth form and Mr Campbell has not fully mastered the arts of reading and writing.

However the boys did not suffer any setback from their move from home and thus it is likely that some of their difficulties were due to the stresses there. By the time of the hearing in July, all three were attending the Willowbridge School, and had been assessed there by Mr Brodie, an Education Department psychologist. He found them all to be working at academic levels approximately eighteen months below their chronological age. At those levels, they were progressing reasonably, receiving individualised instruction in small classes. was attending speech therapy in Waimate, and

in her house, for if she did either of those things, he continued:

" The result, of course, would be obvious. One would have to look at the matter again if she was in that situation. It would mean that she had lost touch with the proper priorities. She would be putting something else in front of the welfare of the children. From this day forward she has to prove that she has, at last, a grip on her life. I would not hesitate in removing the children if she fails to maintain stability."

Shortly before this hearing the wife had written to Mr Graham whom she had met a number of years before. He had been married, but the marriage had come to end and he had retained custody of the only child, C [redacted], who is the same age as R [redacted]. C [redacted] had learning problems similar to those of the Campbell boys. Mr Graham was living with C [redacted] in Balfour in Southland and was principal of the Five Rivers school 32 kilometres away. Mrs Campbell wrote to him asking his assistance in dealing with her children's reading problems. A short exchange of correspondence led to an invitation to Mrs Campbell and the boys to visit Mr Graham in the August school holidays. Quite quickly they became attracted to each other and it was arranged that Mrs Campbell would move to Mr Graham's home, initially as his housekeeper, but on the understanding that if they found each other compatible they would live together as husband and wife. On 7 September 1983 Mrs Campbell's solicitors gave notice of the proposed move, but the exact nature of the understanding she had reached with Mr Graham was not disclosed. She moved to Balfour with the children in time for them to attend Mr Graham's school with C [redacted] on the first day of the third term.

Her actions prompted another custody application by Mr Campbell and this came before the Family Court Judge on 26 October 1983. Mr Brodie went to Southland to see the children a few days before the hearing. He found that in the three months since he last saw them there had been considerable improvement. B had made significant gains in his language skills; R was continuing to make slow progress with his reading, but was lacking in self-confidence and required a great deal of praise and general boosting; whilst A general approach was more confident and he had made academic gains. The School had two teachers and some 34 pupils. The children were given close personal attention, and the general educational standard was high. Mr Graham impressed as a most competent teacher. The Judge was impressed with him too. He was clearly able to play a significant role in the boys' development. He told the Court that he was committed to the lifestyle of the area. He had purchased and was renovating a large house with ten acres of land on which the children were able to share in the care of a variety of animals. The Judge was also impressed by Mrs Campbell, who appeared much better adjusted than previously and was obviously happy in her new relationship. He was naturally concerned about the circumstances in which the couple were living and about the apparent deception over the move from Willowbridge. And he still had reservations as to her stability, although he saw hope for continuing improvement in her approach to life. Despite his reservations, he was satisfied that the new arrangements provided a much better situation for the boys than had been the case in Willow-

bridge. Once again he had nothing but praise for Mr Campbell's conscientiousness and he expressed no doubt that in the physical sense he could provide well for the children.

However there were other factors to be considered::

" I am left in doubt, however, as to the degree to which he could assist in their educational development and am also concerned that this arrangement would deprive them of the close attachment which is still apparent to the mother. Moreover the Dunedin family climate appears still to be such that the whole emotional environment of the children would be at serious risk because there would be bound to be visits by the mother and there would be bound also to be some contact with the mother's family which, given the history, would almost certainly lead to conflicts. Such a situation would in my view be detrimental to the children."

He concluded that Mrs Campbell's actions since the previous hearing should not disqualify her from retaining custody, although he added this caution:

" Any breakdown in the existing arrangement will necessarily be an indication that the mother is not capable of maintaining a stable environment for the children."

He accordingly directed continuation of the condition that any change in the children's circumstances must be reported.

Over the next few months Mr Campbell continued to enjoy regular access to the boys. Indeed it is to be noted that there has in this case been none of that niggardliness over access which so frequently is encountered. Throughout the hearing of the appeal each party maintained the attitude that if he or she has custody in the future the other is to have the most liberal access. Both parents recognise the great importance of the children preserving as close a relationship

as possible with the non-custodial parent.

Mr Graham's avowed intention of remaining in Southland was short lived. In the Education Gazette of 2 December 1983 he saw advertised the position of deputy principal of the Area (i.e., combined junior, primary and secondary) School at Ohura, a township of some 700 inhabitants 48 kms west of Taumarunui. Not expecting to be successful, he said, he applied for the position and at the end of January it was offered to him. He accepted. The Court was notified on 14 February. Mr Campbell's present application for custody was filed three days later. It was dealt with urgently, being heard on 9 and 10 May, and a decision given on the second day, so that Mrs Campbell and Mr Graham would know where they stood before moving north to take up Mr Graham's new position at the beginning of the second term.

Once more Mr Brodie had prepared a report for the Court. He had again visited Southland, but neither he nor Mr Polson had been to Ohura. Mr Brodie found that all three boys had made significant gains, both in their attitude towards their work and in their academic attainments. This he considered was in part due to careful guidance at school and in part to the consistent follow-up carried out in the home. The Judge readily recognised this important contribution on the part of Mrs Campbell and most particularly Mr Graham but was not sure that the latter would necessarily afford the same support in a different kind of school situation. He also recognised that A was more emotionally attached to his mother than his father, although he had doubts about the other two children. He also referred to the father's intellectual

and emotional limitations and to the dissension in Mrs Campbell's family, which had become very apparent at the hearing when her mother and one of her sisters gave evidence. What outweighed these factors in favour of the father was essentially his feeling that Ohura was a completely unknown quantity, and his view that the three boys were "susceptible to any substantial change of environment into the unknown". Whilst he felt that neither Mr Graham nor Mrs Campbell had put the children's interests to the forefront in their decision to move to Ohura, what he found conclusive was the general uncertainty of the home, family and educational environment that would prevail at Ohura. Better than that, he thought, was the alternative that the boys "stay with their father in the environment of the home in which they were brought up during the greater part of their lives".

Mrs Campbell sought to obtain a stay of the order giving custody to her husband but she was unsuccessful. Accordingly she and Mr Graham moved to Ohura and that is where they now are, living with Christian in the school house provided with the position Mr Graham holds. Mr Campbell resigned from the employment he had held for a number of years, withdrew his superannuation so that he could obtain proper furniture for the house (for his wife had taken away much of what had been there) and went onto the domestic purposes benefit. His income on the benefit is greater than it was when he was in employment. He has incurred a substantial additional commitment in borrowing in order to buy out his wife's share in the home, but he is obviously budgetting carefully and managing well. The boys appear well fed, well dressed and well cared for. He has

devoted his full time to their care. He has had some help from his mother-in-law and sister-in-law and a little from his own parents but by and large he seems to have managed on his own. He is clearly very competent. He teaches the boys to cook and they help him in the garden. He encourages them to play games and joins in all aspects of their lives and interests. He understands and provides for 's special problems. He is very aware of the need to help them all with their reading. He takes them to the library and he goes over their homework with them diligently. Their progress at school has been good. He has the occasional difficulty in defining the limits of acceptable behaviour, but there is plainly a close bond between all four. I have no doubt that within his limitations Mr Campbell could bring up his three boys quite satisfactorily. Certainly they will be brought up as well (and because of the absence of the former stresses in the home perhaps rather better) than if the marriage had continued. And because of their father's increased awareness of their particular needs they will probably do better educationally than might have been the case had not this litigation concentrated so much attention upon them.

The Family Court Judge saw some degree of risk to the children's welfare whichever parent obtained custody. He saw his task to be to determine which option carried the least risk. Counsel approached the appeal in the same way. They all acknowledged that in many respects the merits of each parent's case are evenly balanced, that there are elements of disadvantage and risk on both sides, and that the choice to be made is a difficult one. But in the end Mr Polson found

himself constrained to support the mother's claim rather than the father's. That I think was also the conclusion to which Mr Brodie had come, although he was careful not to express it in so many words. And it is the conclusion to which I have been brought; but not without much anxious thought, and not without considerable reservations which only time can dispel. I naturally differ from this most experienced and respected Family Court Judge with the greatest diffidence. But in the four and a half days which the hearing before me occupied there was opportunity for a much more extensive examination of all the relevant considerations than was possible before him. In the weeks since his decision was given the lives of all concerned have taken new directions and I now have the opportunity of reflecting upon the implications of these developments. And although finality of decision has been important, I was not under the same time constraint as was the Family Court Judge and so I have had much fuller opportunity to reflect upon the evidence and the submissions of counsel at the conclusion of the case.

Although the weeks that have elapsed have only served to confirm Mr Campbell's ability to provide for the physical and material needs of the boys, it remains true that his abilities and his horizons are circumscribed. There will come a time when the boys' educational and social needs will outgrow his capacity to continue to help them. Moreover try as he might he cannot provide a fully rounded family life. The all-male and rather masculine household is not the best preparation for adult life. He has of course friends and family, but by and large he and his boys have been a self contained unit. There

are no cousins of comparable age. His own parents admirably fill the grandparental role but they live at Wanaka, an ideal holiday base, but too far away for their contribution to be other than occasional. I am afraid that I see Mrs Campbell's family as a positively detrimental influence. This is not because I share her long-standing concerns about interference. It is because of the attitudes Mrs P. herself has expressed. The children are naturally and properly fond of her, and spend some time at her home. She would be the dominant female figure in their lives in Dunedin. Her attitudes will thus have influence upon them. She looks upon their mother, and Mr Graham who is about to become their stepfather, with a bitter and apparently intransigent condemnation. The harshness with which she spoke of her daughter from the witness box was fearful to hear. It caused more obvious distress to Mrs Campbell than anything else during the hearing. Yet Mrs P. was quite unmoved. I gather that her attitude is shared by her husband. This means that the children will receive from that quarter an entirely negative, even destructive, view of their mother which will inevitably affect their relationships with her, and may also have wider ramifications in terms of their attitudes generally. It is fairly apparent that Mr Campbell does not see this. That is indicative of what I am sure is a certain lack of sensitivity to the feelings and emotions of others. I therefore doubt that the emotional needs of the boys as they mature can be adequately nurtured under his care.

The time that has passed since the Family Court hearing also enables a fuller appraisal of the environment in which the

boys would be reared if they went to Ohura. Mr Brodie had been impressed by the warmth and strength of the family circle in Balfour, and by the absence of those strains often encountered in a new step-family situation. Mrs Campbell's relationship with Mr Graham had obviously helped stabilise her and had brought a sense of security to the boys as well, although they had not fully come to terms with his role and tended to regard him as the schoolteacher rather than in a parental role. It was apparent that their future would depend very much on the stability of that relationship. And plainly that will still be so if they return to their mother. The relationship between Mrs Campbell and Mr Graham is somewhat unusual. There is a wide gulf between them educationally and, I suspect, in terms of intelligence and emotional strength. He is articulate, confident and assured, by far the dominant character. I suspect there may have been an element of desperation in their rapid commitment to each other. One of my reservations in the case is therefore as to the permanence of that commitment. However I do not doubt its present intensity and the sincerity of the couple's intentions in proposing marriage as soon as Mrs Campbell is free. And I find considerable comfort in the fact that their relationship has so well survived the very great strains that must have been occasioned by the lower Court decision in May. Yet some reservation remains.

No matter how strong the bond between Mr Graham and Mrs Campbell, it can be advantageous to the children only if they are part of it, so that their interests are not subservient to those of their mother and their stepfather-to-be. It was of

course at this point that the Family Court Judge began to be persuaded in favour of the father's claim. In his evidence before me, Mr Graham spoke most feelingly of his affection for the boys. I am sure it is genuine, although surely, and naturally enough, it must spring not so much from any personal affinities with them as from his attachment to Mrs Campbell and from his renewed experience of a full family life for himself and his son. I think too that he may see the Campbell boys as a professional challenge, as material in the moulding of which he can exercise his skills in a way that is satisfying and rewarding to him. He gives indications of possessiveness, and of denigrating Mr Campbell and his abilities, and will have to be careful about this. Yet his concern for the boys is not any the less genuine and I am quite satisfied that, as in the past, he will continue to do all he can to promote their fullest development. But I agree with the Family Court Judge that Mr Graham's concern for the Campbell boys took second place in the decision to move to Ohura. The advantages to them of that move, as detailed to me, were not the reason for the move. The reason was Mr Graham's own professional advancement and personal satisfaction. True there was considerable consultation about the desirability of the move from the children's point of view but that was in order that custody rather than the children's welfare was not put at risk. All this is however no real criticism of Mr Graham or Mrs Campbell. He was quite entitled to pursue his career. Whilst she was placed in a quandary; she really had no choice but to go with him. And there were indeed some less than satisfactory features about Balfour. The school was very

small. The boys could not stay there past Standard 4, and A was to be in that class this year. Because the home was so far from the school, and neighbouring children attended a different school, friendships were not easy to form. Ohura would be a considerable improvement in those respects.

The real importance of the reasons for the move to Ohura lies in the future rather than in the past. How many more moves is Mr Graham likely to make? He was adamant that there would be no more until all the boys had completed their secondary education. He offered to sign an undertaking to that effect. He pointed out that as he has no degree, his promotional opportunities are limited. He professes an affinity with the area school concept and sees his ambitions at present as not extending beyond the senior position at Ohura. No human plans can be immutable, but that conceded I accept Mr Graham's assurances that he will not willingly move from Ohura while the children's well-being requires him to remain there. It must not be forgotten that he has also to consider the interests of his own son Christian, and further that his whole career to date has demonstrated his disinterest in the kind of school which might be expected to attract the truly ambitious.

Whilst Mrs Campbell remains emotionally labile, rather narrow in outlook and attitude, and still shows some immaturity and naivete, she has settled and matured quite considerably, thanks to the healthy influence of Mr Graham. She is likely to remain very dependent upon him, but I do not see that as a serious disadvantage. She is more perceptive than Mr Campbell, and so will be the better able to support and encourage the boys in the difficulties which are bound to

attend their future development. Mr Graham will be of the greatest assistance to her in this regard. Her emotional instability apart, it has not been suggested that she has been other than a caring and competent mother. The home in Ohura will I am sure be secure and stable.

The boys themselves have very mixed feelings about the whole business. They have a deep affection for both parents. Their best wish would be to have the whole family reunited in the family home. Short of that, they are greatly torn in their loyalties and their wishes. A and B especially are clearly missing their mother and will continue to suffer from her loss for some time to come. In contrast with what was perceived in May, Mr Brodie now finds to be the one most at risk emotionally as a result of being separated from her, and at having to cope with access by her if he remained separated, but there are very close bonds between him and A, and A must also be affected. R seems able largely to conceal his feelings. He has the greatest academic potential of the three. Also he has the potential for some behavioural problems unless he is carefully managed. He is perhaps closer to his father but would not wish to be separated from his brothers. Despite his view of A and B in particular, Mr Brodie thinks that all three boys would accept whichever placement the Court decides upon, provided that there is now finality. He sees no ill effects resulting from a move to Ohura, provided there were no more moves. The boys are in great need of putting down roots, forming lasting relationships and becoming a permanent part of the activities of a community.

In the days immediately preceding the hearing, and during it, some one or more of the boys had expressed preferences, and then apparently retracted them. I do not think any weight should be placed on these expressions. The boys have been subjected to considerable pressure. Some of it has come from their awareness of the proceedings and their contacts with Mr Brodie and Mr Polson. Some of it has come from parents and family. Everyone disclaims any deliberate pressure and despite suggestions to the contrary I accept that there have been none. I think that the boys have simply been responding to the concern and distress displayed by their parents. They have been offering in their own way reassurance of affection and loyalty towards both. In the short time available to me, and because of their immaturity and Mr Brodie's counsel, I thought it inadvisable to endeavour to obtain any expression of opinion from them. Mr Polson, who has had quite close contact with them, believes A and B really wish to be with their mother, whilst R is ambivalent. Everyone is agreed that there can be no question of separating them. They want to be together. That much is clear. Beyond that, I do not think that anything they have said, even to Mr Polson, ought to be given more emphasis than as a manifestation of deeper emotional bonds. Although Mr Campbell cannot see it, because it does not impair the boys' relationship with him, I think it must be accepted that in the case of A and B the bond with their mother is stronger than their bond with him.

Thus far I have been discussing the various factors that are material to the decision that must be reached. It remains

now to draw them together in order to show why the decision falls in favour of the mother.

In many respects, the relevant considerations are evenly balanced. Both parents are devoted to their children. The children are closely tied to both parents. Both parents are able to provide adequately for the boys' material and physical welfare. More money is available in the Graham household, but Mr Campbell's means are quite adequate. He moreover owns his own home, whilst the home in Ohura is a school house. Yet it is comfortable and sufficient and Mr Graham proposes to buy a block of land in the vicinity, which will provide outdoor opportunities and involvement with animals not readily available in Dunedin. On the other hand there is doubtless a wider range of activities and interests in Dunedin. Educationally Dunedin offers the greater scope. But the smaller school and the closer teacher involvement at Ohura would enable greater and more continuous attention to the very particular needs of these boys. There is this qualification, that will have to be taken into Taumarunui each week for speech therapy, whereas such therapy is much more accessible in Dunedin.

The substantial advantage of Ohura over Dunedin, and ultimately it is perhaps the only advantage, lies in the family unit that will be established there. It could be no more caring or devoted than that in Dunedin. But it includes the mother, with whom two of the children have such strong bonds. And whilst it does not include the father, it does include, as its dominant and cohesive influence, a man who is far more able than the father to appreciate and provide for the particular

educational needs of the children. He will be able to maintain close supervision in the school and provide skilled guidance in the home. The household in Ohura is likely to be more harmonious, more perceptive, more controlled and more stimulating than that in Dunedin, better able to bring out the full potential of each boy and to prepare him for a full and satisfying life.

Mr Large placed great emphasis on the need for stability. That word means many things. I agree that Mr Campbell has shown the greater stability in terms of constancy and sense of responsibility. He has done his very best for his boys and has no cause for regret that he might have done more or acted differently. However in the important years that lie ahead, I think Ohura can provide even greater stability, in the rather different but even more important sense of harmony and security I have been discussing. The Family Court Judge saw stability in terms of familiarity of the environment of home and school. He thought that the move north would be destabilising: it is a long way from anything and anyone familiar. However the boys had been away from those familiar things for 21 months. Now that they have been back amongst them for two months, the argument may seem strengthened. But I have been assured that the fear of disturbance is not justified. Moreover the reality of the move has to be accepted. Mother and father are now hundreds of miles apart, and whoever has custody the opportunities of familiarity with the other are greatly reduced. It is not appropriate to penalise Mrs Campbell for having brought that situation about. The possibility of removal to a distance is

inherent in every separation. The Court must do the best it can in the new situation.

I see the merits to be much the same as they were when custody was twice given to the mother. There is no sound reason why the move to Ohura should not be made: and there is sound reason why it should be. The appeal must accordingly be allowed and custody entrusted to the mother. The change of custody is not to take effect until the end of the first week of the August school holidays. Mrs Campbell and Mr Graham should then come to Dunedin, by arrangement, and take the boys back to Ohura with them.

For me, one of the greatest difficulties in the case has been to put to one side - as I must for it is the children's welfare and not his which is my prime concern - my very strong sympathies for Mr Campbell. He is a simple man with simple pleasures, and his home and his sons are very important to him. He acted with great restraint in an endeavour to have his wife return after her quite cruel departure. He exercised his access rights to the full, at considerable inconvenience, discomfort and expense. With a dogged determination he has come again and again to the Court because of his concern for the children's wellbeing. He has given up his job to care for them. And now the boys are to be taken far away, not really because his wife has greater qualities or abilities than he, but rather because of the fortuitous circumstance that she intends to marry a man who has a particular ability to deal with their special needs. If the case fell for decision on grounds of what was fair and just to the parents, he would win. What the future will hold for him I do not know. All I

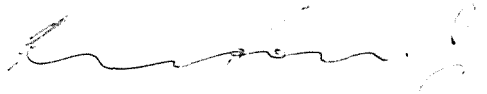
can do is give him the fullest credit for the genuineness of his motives and his intentions: and I think I can also credit him with the ability to understand why it is that even his devotion is not sufficient. He has said that if the boys go to Ohura, he will go there too. I urge him to reconsider that. I think that he has more to offer his sons in Dunedin than in Ohura.

It was acknowledged by both Mrs Campbell and Mr Graham that if the boys went to Ohura there should be the fullest access and that they should make a substantial contribution to the cost involved. I would like to think that Mr Campbell would mostly have the boys in Dunedin, but of course he may wish to see them in the North Island too. In view of the present uncertainty of his movements, and the expression of good intent that came from his wife and Mr Graham, I think it better that I do not at present attempt any precise definition of access. If however the parties are unable to come to a satisfactory arrangement, I reserve leave to either to apply for an order.

There are three further matters of importance. The boys must be encouraged to write frequently. Full information as to their progress at school and in other activities must be provided at regular intervals. And it is a condition of the custody order that the children do not live anywhere other than Ohura.

Mrs Campbell and Mr Graham must appreciate that they have not won the case any more than Mr Campbell has lost it. As counsel said more than once, no one wins in a custody dispute. What I have done is change the emphasis of

responsibility. These three boys remain the responsibility of both parents. This is a grave responsibility; to be exercised, according to the role each parent now has to play, not for his or her own gratification, but for the welfare of the boys. The kind of men they become will be determined by the kind of parents Mr and Mrs Campbell, and Mr Graham are able to be.

A handwritten signature in dark ink, appearing to be 'L. J. G.', written in a cursive style.

Solicitors:

Henderson, MacGeroge, Wood & Blaikie, WAIMATE, for Appellant
Rutherford, McKinnon & Neil, DUNEDIN, for Respondent.