

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

1821

IN THE MATTER of the estate of  
MARIE LOUISE JOSEPHINE  
FITZHERBERT FALLON

BETWEEN THE PUBLIC TRUSTEE  
Plaintiff

A N D MYRTLE FRANCES BORGIA  
HOPKINS, NYRA JEAN  
WOOD, MABEL MILLICENT  
LARDNER, MICHAEL ERNEST  
LARDNER, MARIE GENE  
BENSTEAD, GRAEME PHILIP  
LARDNER, WALLACE ATHONY  
LARDNER, LUCILLE CLARIND  
LLOYD, MAY PATRICIA  
(also known as MOLLY  
PATRICIA) ATTEWELL  
Defendants

Date: 3 December 1986

Counsel: Beattie and O'Meagher for Plaintiff  
Murphy for Nyra Jean Wood and Michael Ernest Lardner  
Stewart for Estate Myrtle Francis Borgia Hopkins  
(Harold Hopkins)  
Bramwell for May Patricia Attewell  
Rawnsley for Graeme Philip Lardner and Wallace  
Anthony Lardner  
Crew for Estates of J E T Fallon, D E Fallon and  
W Fallon  
Anson for Attorney General

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MEMORANDUM OF SPEIGHT, J

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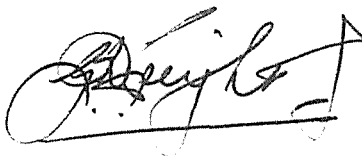
This originating summons for interpretation of the will of the deceased has dragged on for many years, but counsel have now resolved a number of issues. These are now recorded and one substantial matter remains to be determined and there is a fixture for the 2nd February. 1987. Everyone is much indebted to Mr Crew for a helpful memorandum filed, summarising the position from his point of view. Some of the suggestions he has made are acceptable to all Counsel, others to most Counsel,

but not to the Public Trustee.

First, everyone agrees that the answer to the main question, viz (a) in the originating summons is "yes".

Mr Crew on behalf of the three Estates of the Fallon brothers says that no claim is now pursued on their behalf and he does not wish to participate further in proceedings, except in due course as to costs. Accordingly counsel for all the other potential beneficiaries, namely Messrs Murphy, Stewart, Bramwell and Rawnsley agree with the viewpoint put forward by Mr Crew in his memorandum. They all submit that as the Power of Appointment given to the Public Trustee and the Roman Catholic Bishop was not exercised within the six months allowed, the property now vests in all the members of that class, namely the next of kin of Mary Ann Lardner. As they are in equal degree they would be entitled to take equal shares. It is on this point, namely on the matters asked in the second part of question (f) and in question (g), that counsel for the Public Trustee disagree. Mr O'Meagher says he wishes to have further time to consider whether there is a partial intestacy and whether the Power of Appointment cannot still be exercised or whether in default the class takes. Mr Murphy and the others strongly attack this point of view, but the Public Trustee is entitled to time to consider whether it will yield to the strong arguments based on the propositions expressed in paragraph 810 of Volume 36 of Halsbury (4th). Accordingly the fixture for 2nd February

must stand for determination of this issue. In the event of counsel for the Public Trustee agreeing on the proposition argued by the others before that date, the Court will probably still have to deal with a request on behalf of the beneficiaries that the Public Trustee file accounts and this will have substantial bearing on the question of costs.

A handwritten signature in cursive script, appearing to read "Greig", written over a horizontal line. The signature is written in dark ink and is the only handwritten element on the page.